

1 SB258
2 209341-1
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 23-FEB-21

8 SYNOPSIS: Under current law, an expert witness may
9 testify in the form of an opinion or otherwise.

10 This bill would provide additional
11 circumstances in which an expert witness may give
12 expert testimony.

13 Under current law, any person who operates a
14 motor vehicle on the public highways of this state
15 is deemed to have given consent to a chemical test
16 of his or her blood, breath, or urine to determine
17 the alcoholic content of his or her blood.

18 This bill would also provide for additional
19 chemical tests that may be used to determine
20 whether a person was driving under the influence.

21 Under current law, only a physician, a
22 registered nurse, or other qualifying person may
23 withdraw blood for a chemical test of a person's
24 blood.

25 This bill would provide additional persons
26 who would be allowed to withdraw blood for a
27 chemical test of a person's blood.

1 This bill would provide that a witness may
2 give testimony solely on the issue of a driver's
3 impairment based on the results of a horizontal
4 gaze nystagmus test.

5 This bill would make nonsubstantive,
6 technical revisions to update the existing code
7 language to current style.

8 Amendment 621 of the Constitution of Alabama
9 of 1901, now appearing as Section 111.05 of the
10 Official Recompilation of the Constitution of
11 Alabama of 1901, as amended, prohibits a general
12 law whose purpose or effect would be to require a
13 new or increased expenditure of local funds from
14 becoming effective with regard to a local
15 governmental entity without enactment by a 2/3 vote
16 unless: it comes within one of a number of
17 specified exceptions; it is approved by the
18 affected entity; or the Legislature appropriates
19 funds, or provides a local source of revenue, to
20 the entity for the purpose.

21 The purpose or effect of this bill would be
22 to require a new or increased expenditure of local
23 funds within the meaning of the amendment.
24 However, the bill does not require approval of a
25 local governmental entity or enactment by a 2/3
26 vote to become effective because it comes within

1 one of the specified exceptions contained in the
2 amendment.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to driver's licenses; to amend Sections
9 12-21-160, 32-5-192, 32-5-200, 32-5A-194, 32-5A-300,
10 32-5A-301, 32-5A-302, 32-5A-303, 32-5A-304, 32-5A-306,
11 32-5A-307, 32-5A-308, and 32-6-49.13, Code of Alabama 1975, to
12 provide additional circumstances in which an expert witness
13 may give expert testimony; to provide for additional chemical
14 tests that may be used to determine if a person was driving
15 under the influence; to provide for additional persons who are
16 qualified to withdraw a person's blood for a chemical test; to
17 provide that a witness may provide testimony on the results of
18 a horizontal gaze nystagmus test; to make nonsubstantive,
19 technical revisions to update the existing code language to
20 current style; and in connection therewith would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds within the meaning of Amendment 621
23 of the Constitution of Alabama of 1901, now appearing as
24 Section 111.05 of the Official Recompilation of the
25 Constitution of Alabama of 1901, as amended.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Danny Kendall Johnson Act.

3 Section 2. Sections 12-21-160, 32-5-192, 32-5-200,
4 32-5A-194, 32-5A-300, 32-5A-301, 32-5A-302, 32-5A-303,
5 32-5A-304, 32-5A-306, 32-5A-307, 32-5A-308, and 32-6-49.13,
6 Code of Alabama 1975, are amended to read as follows:

7 "§12-21-160.

8 "(a) Generally. If scientific, technical, or other
9 specialized knowledge will assist the trier of fact to
10 understand the evidence or to determine a fact in issue, a
11 witness qualified as an expert by knowledge, skill,
12 experience, training, or education may testify thereto in the
13 form of an opinion or otherwise.

14 "(b) Scientific evidence. In addition to
15 requirements set forth in subsection (a), expert testimony
16 based on a scientific theory, principle, methodology, or
17 procedure is only admissible if all of the following occurs:

18 "(1) The testimony is based on sufficient facts or
19 data~~7~~.

20 "(2) The testimony is the product of reliable
21 principles and methods~~7~~and.

22 "(3) The witness has applied the principles and
23 methods reliably to the facts of the case.

24 "Notwithstanding any other provision of law, a
25 law enforcement witness in a criminal prosecution for a
26 violation of Section 32-5A-191 may give expert testimony
27 solely on the issue of impairment, and not on the issue of

1 specific alcohol or drug concentration levels, relating to
2 whether a person was under the influence of one or more
3 impairing substances, and the category of the impairing
4 substance, if the witness holds a current certification as a
5 Drug Recognition Expert at the time of the arrest, issued by
6 the International Association of Chiefs of Police, at the time
7 of the arrest.

8 "~~(c)~~ (d) Nothing in this section shall modify,
9 amend, or supersede any provisions of the Alabama Medical
10 Liability Act of 1987 and the Alabama Medical Liability Act of
11 1996, commencing with Section 6-5-540, et seq., or any
12 judicial interpretation thereof.

13 "~~(d)~~ (e) This section shall apply to all civil state
14 court actions commenced on or after January 1, 2012. In
15 criminal actions, this section shall only apply to
16 ~~non-juvenile~~ nonjuvenile felony proceedings ~~in which the~~ where
17 the defendant ~~that is the subject of the proceeding~~ was
18 arrested on the charge that is the subject of the proceeding
19 on or after January 1, 2012. This section shall not apply to
20 domestic relations, child support, juvenile, or probate cases.

21 "~~(e)~~ (f) The provisions of this section, where
22 inconsistent with any Alabama Rule of Civil Procedure, Alabama
23 Rule of Criminal Procedure, or Alabama Rule of Evidence,
24 including, but not limited to, Ala. R. Evid. 702, shall
25 supersede ~~such~~ the rule or parts of rules.

26 "§32-5-192.

1 "(a) (1) Any person who operates a motor vehicle ~~upon~~
2 on the public highways of this state shall be deemed to have
3 given ~~his~~ consent, subject to ~~the provisions of~~ this division,
4 to a chemical test or tests of his or her blood, breath, ~~or~~
5 ~~urine~~ oral fluid for the purpose of determining the ~~alcoholic~~
6 content of ~~his blood~~ any impairing substance or substances
7 within a person's system, if lawfully arrested for any offense
8 arising out of acts alleged to have been committed while the
9 person was driving a motor vehicle on the public highways of
10 this state ~~while under the influence of intoxicating liquor in~~
11 violation of Section 32-5A-191.

12 "(2) The test or tests shall be administered at the
13 direction of a law enforcement officer having reasonable
14 grounds to believe that the person ~~to have been~~ was in
15 violation of Section 32-5A-191, while driving a motor vehicle
16 ~~upon~~ on the public highways of this state ~~while under the~~
17 ~~influence of intoxicating liquor.~~

18 "(3) The law enforcement agency ~~by which such~~ that
19 employs the officer ~~is employed~~ shall designate which ~~of the~~
20 ~~aforsaid tests~~ test or tests shall be administered. ~~Such~~ The
21 person shall be told that his or her failure to submit to ~~such~~
22 a chemical test or tests will result in the suspension of his
23 or her privilege to operate a motor vehicle for a ~~period~~
24 minimum of 90 days; ~~provided if such.~~ If the person objects to
25 a blood test, the law enforcement agency shall designate that
26 one of the other ~~aforsaid~~ tests be administered.

1 "(b) Any person who is dead, unconscious, or who is
2 otherwise in a condition rendering him or her incapable of
3 refusal, shall be deemed not to have withdrawn the consent
4 provided by subsection (a) ~~of this section~~ and the test or
5 tests may be administered, subject to ~~the provisions of this~~
6 division.

7 "(c) (1) If a person under arrest refuses upon the
8 request of a law enforcement officer to submit to a chemical
9 test or tests designated by the law enforcement agency as
10 provided in subsection (a) ~~of this section~~, none shall be
11 given, ~~but the Director of Public Safety~~ unless a court order
12 has been obtained ordering the person to submit to a chemical
13 test or tests.

14 "(2) The secretary, upon the receipt of a sworn
15 report of the law enforcement officer that he or she had
16 reasonable grounds to believe the arrested person had been
17 driving a motor vehicle upon the public highways of this state
18 ~~while under the influence of intoxicating liquor~~ in violation
19 of Section 32-5A-191 and that the person ~~had~~ refused to submit
20 to the test upon the request of the law enforcement officer,
21 ~~shall, on the first refusal, suspend his license or permit to~~
22 ~~drive, or the privilege of driving a motor vehicle on the~~
23 ~~highways of this state given to a nonresident; or if the~~
24 ~~person is a resident without a license or permit to operate a~~
25 ~~motor vehicle in this state, the director shall deny to the~~
26 ~~person the issuance of a license or permit, for a period of 90~~
27 ~~days, subject to review as hereinafter provided. For a second~~

1 ~~or subsequent refusal of such test within a five-year period,~~
2 ~~the director, upon said receipt of a sworn report, shall~~
3 ~~suspend his license or permit to drive, or the privilege of~~
4 ~~driving a motor vehicle on the highways of this state given to~~
5 ~~a nonresident for a period of one year; or if the person is a~~
6 ~~resident without a license or permit to operate a motor~~
7 ~~vehicle in this state, the director shall deny to the person~~
8 ~~the issuance of a license or permit, for a period of one year~~
9 ~~subject to review as hereinafter provided~~ suspend the driving
10 privilege as defined in Section 32-5-191 as provided in
11 Section 32-5A-304.

12 " (3) ~~If such the person is acquitted on the charge~~
13 ~~of driving a motor vehicle upon the highways of this state~~
14 ~~while under the influence of intoxicating liquor, then in that~~
15 ~~event the Director of Public Safety of violating Section~~
16 32-5A-191, the secretary may, in his or her discretion, may
17 ~~reduce said the period of suspension.~~

18 "(d) (1) ~~Upon suspending the license or permit to~~
19 ~~drive or the privilege of driving a motor vehicle on the~~
20 ~~highways of this state given to a nonresident or any person,~~
21 ~~or upon determining that the issuance of a license or permit~~
22 ~~shall be denied to the person, as hereinbefore in this section~~
23 ~~directed, the Director of Public Safety driving privilege, the~~
24 secretary or his or her duly authorized agent shall
25 immediately notify the person in writing of the suspension and
26 upon his a request filed by the person, the secretary shall
27 afford him an opportunity for provide a hearing in the same

1 manner ~~and under the same conditions~~ as is provided in Section
2 ~~32-6-16, for notification and hearings in the cases of~~
3 ~~suspension of licenses~~ Section 32-5A-307; except, that the
4 scope of ~~such a~~ the hearing for the purposes of this section
5 shall ~~cover the issues of whether~~ determine all of the
6 following:

7 "a. Whether a law enforcement officer had reasonable
8 grounds to believe the person had been driving a motor vehicle
9 upon the public highways of this state ~~while under the~~
10 ~~influence of intoxicating liquor, whether~~ in violation of
11 Section 32-5A-191.

12 "b. Whether the person was placed under arrest, ~~and~~
13 ~~whether.~~

14 "c. Whether he or she refused to submit to the test
15 upon request of the officer.

16 "(2) Whether the person was informed that ~~his or her~~
17 the privilege to drive would be suspended or denied if he or
18 she refused to submit to the test shall not be an issue.

19 "(3) ~~The Director of Public Safety~~ secretary shall
20 order that the suspension or determination that there should
21 be a denial of issuance either be rescinded or sustained.

22 "(e) If the suspension or determination that there
23 should be a denial of issuance is sustained by the ~~Director of~~
24 ~~Public Safety~~ secretary, or his or her authorized agent upon
25 ~~such~~ the hearing, the person whose ~~license or permit to drive~~
26 ~~or nonresident operating privilege has been suspended or to~~
27 ~~whom a license or permit is denied, under the provisions of~~

1 ~~this section,~~ driving privilege has been suspended shall have
2 the right to file a petition in the appropriate court to
3 review the final order of suspension or denial by the ~~director~~
4 secretary, or his or her duly authorized agent, in the same
5 manner ~~and under the same conditions~~ as ~~is~~ provided in Section
6 ~~32-6-16 in the cases of suspensions and denials~~ 32-5A-307.

7 "(f) ~~When it has been finally determined under the~~
8 ~~procedures of this section~~ Upon a determination that a
9 nonresident's privilege to operate a motor vehicle in this
10 state has been suspended, the director secretary shall give
11 ~~information provide,~~ in writing ~~of,~~ the action taken by this
12 state to the motor vehicle administrator of the state of the
13 person's residence and ~~of~~ to any state in which he or she has
14 a license.

15 "§32-5-200.

16 "(a) Any person who operates a motor vehicle on the
17 public highways of this state who is involved in ~~an accident a~~
18 crash that results in death or a serious physical injury to
19 any person shall be deemed to have given consent to a chemical
20 test or tests of his or her blood for the purpose of
21 determining the alcoholic content of his or her blood or the
22 presence of ~~amphetamines, opiates, or cannabis~~ any other
23 impairing substance. The test or tests shall be administered
24 at the direction of a law enforcement officer having
25 reasonable grounds to believe that the person, while driving a
26 motor vehicle on the public highways of this state, was under
27 the influence of alcohol, ~~amphetamines, opiates, or cannabis~~

1 or any other impairing substance. The person shall be informed
2 by the law enforcement officer who is investigating the
3 ~~accident~~ crash that failure to submit to a test will result in
4 the suspension of his or her privilege to operate a motor
5 vehicle for a period of two years.

6 "(b) For purposes of this section, the term "serious
7 physical injury" means physical injury ~~which~~ that creates a
8 substantial risk of death, or which causes serious and
9 protracted disfigurement, protracted impairment of health, or
10 protracted loss or impairment of the function of any bodily
11 organ.

12 "(c) Any person who is dead, unconscious, or who is
13 otherwise in a condition in which they are incapable of
14 refusal, shall be deemed not to have withdrawn the consent
15 provided by subsection (a).

16 "(d) If a person refuses to submit to a chemical
17 test or tests, none shall be given, unless a court order has
18 been obtained ordering the person to submit to a chemical test
19 or tests. If the person is found not to have been at fault in
20 causing the ~~accident~~ crash, the ~~Director of Public Safety~~
21 secretary may reduce the period of suspension.

22 "(e) (1) Upon suspending the license or permit to
23 drive or the privilege of driving a motor vehicle on the
24 highways of this state that is given to a nonresident or any
25 person, or upon determining that the issuance of a license or
26 permit shall be denied to the person, the ~~Director of Public~~
27 ~~Safety~~ secretary, or his or her authorized agent, shall within

1 three days of suspension notify the person in writing. Upon a
2 request filed by the person within five days from the date of
3 the notice of suspension or denial, the ~~director~~ secretary
4 shall schedule a hearing with notice of the hearing to be
5 provided by certified mail to the person stating the date,
6 time, place, and scope of the hearing. The scope of the
7 hearing shall ~~pertain to~~ determine all of the following
8 ~~issues:~~

9 "~~(1)~~ a. Whether a law enforcement officer had
10 reasonable grounds to believe the person had been driving a
11 motor vehicle on the public highways of this state while under
12 the influence of ~~the substances enumerated in subsection (a)~~
13 alcohol or any impairing substance.

14 "~~(2)~~ b. Whether the person was at fault in causing
15 the ~~accident~~ crash.

16 "~~(3)~~ c. Whether the person refused to submit to the
17 test upon request of a law enforcement officer.

18 "~~(4)~~ (2) Whether the person was informed that his or
19 her privilege to drive would be suspended or denied if he or
20 she refused to submit to the test shall not be an issue.

21 "(f) If the suspension or determination that there
22 should be a denial or issuance is sustained by the ~~director~~
23 secretary, or his or her authorized agent, the person whose
24 license or permit to drive or a nonresident operating
25 privilege has been suspended, or to whom a license or permit
26 is denied, shall have the right to file a petition to review
27 the final order, suspension, or denial within 30 days after

1 the entry of the final order of suspension or denial by the
2 ~~director~~ secretary in the appropriate court to review the
3 final order of suspension.

4 "(g) ~~When it has been finally determined under the~~
5 ~~procedures of this section~~ Upon a determination that the
6 ~~privilege of a nonresident~~ a nonresident's privilege to
7 operate a motor vehicle in this state has been suspended, the
8 ~~director~~ secretary shall ~~give information~~ provide, in writing
9 ~~of,~~ the action taken to the motor vehicle administrator of the
10 state of ~~the residence of the person~~ person's residence and to
11 any state in which the person has a license.

12 "§32-5A-194.

13 "(a) Upon the trial of any civil, criminal, or
14 quasi-criminal action or proceeding arising out of acts
15 alleged to have been committed by any person while driving or
16 in actual physical control of a vehicle while under the
17 influence ~~of alcohol or controlled substance,~~ evidence of the
18 amount of alcohol ~~or,~~ controlled substance, or other impairing
19 substance in a person's blood at the alleged time, as
20 determined by a chemical analysis of the person's blood,
21 ~~urine,~~ breath, oral fluid, or other bodily substance, or any
22 combination thereof, shall be admissible. Where ~~such~~ a
23 chemical test ~~is~~ or tests are made, the following provisions
24 shall apply:

25 "(1) Chemical analyses of the person's blood, ~~urine,~~
26 breath, oral fluid, or other bodily substance to be considered
27 valid ~~under the provisions of this section~~ shall have been

1 performed according to methods approved by the Department of
2 Forensic Sciences and by an individual possessing a valid
3 permit issued by the Department of Forensic Sciences ~~for this~~
4 ~~purpose~~. The court trying the case may take judicial notice of
5 the methods approved by the Department of Forensic Sciences.
6 The Department of Forensic Sciences ~~is authorized to~~ may
7 approve satisfactory techniques or methods, to ascertain the
8 qualifications and competence of individuals to conduct ~~such~~
9 the analyses, and to issue permits which shall be subject to
10 termination or revocation at the discretion of the Department
11 of Forensic Sciences. The Department of Forensic Sciences
12 shall approve permits required in this section only for
13 employees of state, county, municipal, and federal law
14 enforcement agencies, and for laboratory personnel employed by
15 the Department of Forensic Sciences.

16 "(2) When a person shall submit to a blood test at
17 the direction of a law enforcement officer ~~under the~~
18 ~~provisions of~~ pursuant to Section 32-5-192, only a physician
19 ~~or~~, a registered nurse, a paramedic, a phlebotomist, ~~(or other~~
20 ~~qualified person)~~, may withdraw blood for the purpose of
21 determining the alcoholic content ~~therein~~ or the presence of
22 other impairing substances. This limitation shall not apply to
23 the taking of breath or oral fluid ~~urine specimens~~. ~~If the~~
24 ~~test given under Section 32-5-192 is a chemical test of urine,~~
25 ~~the person tested shall be given such privacy in the taking of~~
26 ~~the urine specimen as will insure the accuracy of the specimen~~

1 ~~and, at the same time, maintain the dignity of the individual~~
2 ~~involved.~~

3 "(3) The person tested may at his or her own expense
4 have a physician, ~~or a~~ qualified technician, registered nurse,
5 or other qualified person of his or her own choosing
6 administer a chemical test or tests in addition to any
7 administered at the discretion of a law enforcement officer.
8 The failure or inability to obtain an additional test by a
9 person shall not preclude the admission of evidence relating
10 to the test or tests taken at the direction of a law
11 enforcement officer.

12 "(4) Upon the written request of the person who
13 shall submit to a chemical test or tests at the request of a
14 law enforcement officer, full information concerning the test
15 or tests shall be made available to him or her or his or her
16 attorney.

17 "(5) Percent by weight of alcohol in the blood shall
18 be based upon grams of alcohol per 100 cubic centimeters of
19 blood or grams of alcohol per 210 liters of breath.

20 "(b) Upon the trial of any civil, criminal, or
21 quasi-criminal action or proceeding arising out of acts
22 alleged to have been committed by any person while driving or
23 in actual physical control of a vehicle while under the
24 influence of alcohol, the amount of alcohol in the person's
25 blood at the time alleged as shown by chemical analysis of the
26 person's blood, ~~urine, or~~ breath, ~~or other bodily substance~~
27 shall give rise to all of the following presumptions:

1 "(1) If there were at that time 0.05 percent or less
2 by weight of alcohol in the person's blood, it shall be
3 presumed that the person was not under the influence of
4 alcohol unless the person was operating a motor vehicle in
5 performance of his or her duties as a school bus driver or day
6 care driver at that time or was under the age of 21 years at
7 that time.

8 "(2) If there were at the time in excess of 0.05
9 percent but less than 0.08 percent by weight of alcohol in the
10 person's blood, ~~such~~ this fact shall not give rise to any
11 presumption that the person was or was not under the influence
12 of alcohol, but ~~such~~ this fact may be considered with other
13 competent evidence in determining whether the person was under
14 the influence of alcohol unless the person was operating a
15 motor vehicle in performance of his or her duties as a school
16 bus driver or day care driver at that time or was under the
17 age of 21 years at that time.

18 "(3) If there were at that time 0.08 percent or more
19 by weight of alcohol in the person's blood, or greater than
20 .02 percent if the person was operating a motor vehicle in
21 performance of his or her duties as a school bus driver or day
22 care driver at that time or was under the age of 21 years at
23 that time, it shall be presumed that the person was under the
24 influence of alcohol.

25 "~~(4) The foregoing provisions of this subsection~~
26 Nothing in this section shall ~~not~~ be construed as limiting the
27 introduction of any other competent evidence ~~bearing upon~~

1 relating to the question of whether the person was under the
2 influence of alcohol.

3 "(c) If a person under arrest refuses to submit to a
4 chemical test ~~under the provisions of~~ or tests pursuant to
5 Section 32-5-192, evidence of refusal shall be admissible in
6 any civil, criminal, or quasi-criminal action or proceeding
7 arising out of acts alleged to have been committed while the
8 person was driving or in actual physical control of a motor
9 vehicle while under the influence ~~of alcohol or controlled~~
10 ~~substance~~.

11 "(d) No physician, registered nurse, ~~or~~
12 phlebotomist, paramedic, duly licensed chemical laboratory
13 technologist or clinical laboratory technician, fire
14 department, rescue squad, private ambulance company, or
15 medical facility shall incur any civil or criminal liability
16 as a result of the proper administering of a blood test when
17 requested in writing by a law enforcement officer to
18 administer such a test.

19 "§32-5A-300.

20 "(a) The ~~director~~ secretary, or his or her agent,
21 shall suspend the driving privilege of any person upon a
22 determination that the person drove or was in actual physical
23 control of a motor vehicle while the amount of alcohol in the
24 blood of the person was above the legal limit.

25 "(b) The ~~director~~ secretary, or his or her agent,
26 shall suspend the driving privilege of any person upon a
27 determination that the person refused a test to determine the

1 ~~amount of drug or alcohol content~~ in the blood of the person
2 as provided in Section 32-5-192.

3 "(c) The ~~director~~ secretary, or his or her agent,
4 shall make a determination pursuant to subsections (a) and (b)
5 based on the report of a law enforcement officer required in
6 Section 32-5A-301, and this determination shall be final
7 unless an administrative review is requested under Section
8 32-5A-306 or a hearing is held under Section 32-5A-307.

9 "(d) The determination of these facts by the
10 ~~director~~ secretary, or his or her agent, is independent of the
11 determination of the same or similar facts in the adjudication
12 of any criminal charges arising out of the same occurrence.
13 ~~The disposition of these criminal charges shall not affect any~~
14 ~~suspension under this section.~~

15 "§32-5A-301.

16 "(a) A law enforcement officer who arrests any
17 person for a violation of Section 32-5A-191 shall within five
18 days after the day of arrest, excluding weekends and state
19 holidays, hand deliver, mail, or submit electronically to the
20 ~~department~~ agency a sworn report of all information relevant
21 to the enforcement action, including information which
22 adequately identifies the arrested person, a statement of the
23 officer's grounds for belief that the person violated Section
24 32-5A-191, the results of any chemical test which was
25 conducted, a statement if the person refused to submit to a
26 test, and a copy of the citation or complaint filed with the
27 court.

1 "(b) The report required by this section shall be
2 made on forms supplied by the ~~department~~ agency or in a manner
3 specified by regulations of the ~~department~~ agency.

4 "(c) The ~~department~~ agency shall not take action on
5 any report not sworn to and not mailed and postmarked or
6 received by the ~~department~~ agency within five days after the
7 day of arrest, excluding weekends and state holidays.

8 "§32-5A-302.

9 "(a) Upon receipt of the report of the law
10 enforcement officer, the ~~director~~ secretary, or his or her
11 agent, shall make the determination described in Section
12 32-5A-300. If the ~~director~~ secretary, or his or her agent,
13 determines that the person is subject to driving privilege
14 suspension, the ~~director~~ secretary, or the agent, shall issue
15 a notice of the suspension.

16 "(b) The notice of suspension shall be mailed to the
17 person at the last known address shown on the ~~department's~~
18 agency's record. The notice is deemed received three days
19 after mailing.

20 "(c) The notice of suspension shall clearly specify
21 the reason and statutory grounds for suspension, the effective
22 date of the suspension, the right of the person to request an
23 administrative review and a hearing, the procedure for
24 requesting an administrative review and a hearing, and the
25 date by which a request for an administrative review is
26 required to be made in order to receive a determination prior
27 to the effective date of the suspension.

1 "(d) If the ~~director~~ secretary, or his or her agent,
2 determines that the person is not subject to driving privilege
3 suspension, the ~~director~~ secretary, or his or her agent, shall
4 notify the person of the determination.

5 "§32-5A-303.

6 "(a) If the chemical test results for a person
7 charged with a violation of Section 32-5A-191 show 0.08
8 percent or more by weight of alcohol in the blood of the
9 person, or the person refuses a test, the officer, acting on
10 behalf of the ~~director~~ secretary, shall serve a notice of
11 intended suspension personally on the arrested person.

12 "(b) When serving a notice of intended suspension,
13 the law enforcement officer shall take possession of any
14 driver's license issued by this state which is held by the
15 person. When taking possession of a valid driver's license
16 issued by this state, the officer, acting on behalf of the
17 ~~director~~ secretary, shall issue a temporary driving permit
18 which is valid for 30 days after the date of issuance.

19 "(c) A copy of the completed notice of intended
20 suspension form, a copy of any completed temporary driving
21 permit form, and any driver's license taken into possession
22 under this section shall be forwarded within five days to the
23 ~~department~~ secretary by the officer.

24 "(d) The ~~department~~ agency shall provide forms for
25 notice of intended suspension and for temporary driving
26 permits to law enforcement agencies.

27 "§32-5A-304.

1 "(a) A driving privilege suspension shall become
2 effective 45 days after the person has received a notice of
3 intended suspension as provided in Section 32-5A-303, or is
4 deemed to have received a notice of suspension by mail as
5 provided in Section 32-5A-302 if no notice of intended
6 suspension was served.

7 "(b) The period of driving privilege suspension
8 under this section shall be as follows:

9 "(1) Ninety days if the driving record of a person
10 shows no prior alcohol or drug-related enforcement contacts
11 during the immediately preceding five years.

12 "(2) One year if the driving record of a person
13 shows one prior alcohol or drug-related enforcement contact
14 during the immediately preceding five years.

15 "(3) Three years if the driving record of a person
16 shows two or three alcohol or drug-related enforcement
17 contacts during the immediately preceding five years.

18 "(4) Five years if the driving record of a person
19 shows four or more alcohol or drug-related enforcement
20 contacts during the immediately preceding five years.

21 "(5) For purposes of this section, "alcohol or
22 drug-related enforcement contacts" shall include all
23 suspensions under this article, any suspension or revocation
24 entered in this or any other state for a refusal to submit to
25 chemical testing under an implied consent law, and any
26 conviction in this or any other state for a violation which
27 involves driving a motor vehicle while having an unlawful

1 percent of alcohol in the blood, or while under the influence
2 of alcohol or drugs, or alcohol and drugs except that no more
3 than one alcohol or drug-related contact on any one DUI arrest
4 may be considered by the agency in determining the period of
5 suspension.

6 "(c) If a license is suspended under this section
7 for having ~~.08~~ 0.08 or more by weight of alcohol in the blood
8 of the person and the person is also convicted on criminal
9 charges arising out of the same occurrence for a violation of
10 Section 32-5A-191, the suspension under this section shall be
11 imposed, giving credit for suspension time served toward the
12 duration of suspension or revocation required under Section
13 32-5A-191. If a license is suspended under this section for
14 having .08 or more by weight of alcohol in the blood of the
15 person and the criminal charge against the person for
16 violation of Section 32-5A-191 is dismissed, nolle prossed, or
17 the person is acquitted of the charge, the ~~director~~ secretary
18 shall rescind the suspension order and remove the
19 administrative suspension from the person's driving record,
20 except for those persons holding a commercial ~~driver~~ driver's
21 license, a commercial ~~learner~~ learner's license, or a person
22 operating a commercial motor vehicle.

23 "§32-5A-306.

24 "(a) Any person who has received a notice of
25 suspension or a notice of intended suspension under this
26 article may request an administrative review. The request may
27 be accompanied by a sworn statement or statements and any

1 other relevant evidence which the person wants the ~~director~~
2 secretary, or his or her agent, to consider in reviewing the
3 determination made pursuant to Sections 32-5A-300 and
4 32-5A-302.

5 " (b) When a request for an administrative review is
6 made, the ~~director~~ secretary, or his or her agent, shall
7 review the determination made pursuant to Sections 32-5A-300
8 and 32-5A-302. In the review, the ~~director~~ secretary, or his
9 or her agent, shall give consideration to any relevant sworn
10 statement or other evidence accompanying the request for the
11 review, and to the sworn statement of the law enforcement
12 officer required by Section 32-5A-301. If the ~~director~~
13 secretary, or his or her agent, determines, by a preponderance
14 of the evidence, that the person drove or was in actual
15 physical control of a motor vehicle with 0.08 percent or more
16 by weight of alcohol in the blood, or the person refused the
17 test, the ~~director~~ secretary, or his or her agent, shall
18 sustain the order of suspension or suspend the ~~driver~~ driver's
19 license or driving privilege of the person if no order of
20 suspension has been issued. If the evidence does not support
21 such a determination, the ~~director~~ secretary, or his or her
22 agent, shall rescind the order of suspension or take no
23 suspension action if an order of suspension has not been
24 issued. The determination by the ~~director~~ secretary, or his or
25 her agent, upon administrative review is final unless a
26 hearing is requested under Section 32-5A-307.

1 "(c) The ~~director~~ secretary, or his or her agent,
2 shall make a determination upon administrative review prior to
3 the effective date of the suspension order if the request for
4 review is received by the ~~department~~ agency within 10 days
5 following service of the notice of intended suspension. Where
6 the request for administrative review is received by the
7 ~~department~~ agency more than 10 days following service of the
8 notice of intended suspension, the ~~director~~ secretary, or his
9 or her agent, shall make the determination within 30 days
10 following the receipt of the request for review.

11 "(d) A request for administrative review shall not
12 stay the driving privilege suspension or revocation. If the
13 ~~director~~ secretary, or his or her agent, is unable to make a
14 determination within the time limits specified in subsection
15 (c), the ~~director~~ secretary or agent shall stay the suspension
16 pending the determination.

17 "(e) The request for administrative review shall be
18 in writing and may be made by mail or in person to the
19 ~~Department of Public Safety~~ Alabama State Law Enforcement
20 Agency, Driver License Division, Montgomery, Alabama. A person
21 may request an administrative review at any time within 90
22 days of the notice of suspension under Section 32-5A-302 or
23 the notice of intended suspension under Section 32-5A-303.

24 "(f) A person may request and be granted a hearing
25 under Section 32-5A-307 without first requesting
26 administrative review under this section. An administrative
27 review is not available after a hearing is held.

1 "§32-5A-307.

2 "(a) Any person who has received a notice of
3 intended suspension pursuant to Section 32-5A-303 or a notice
4 of suspension pursuant to Section 32-5A-302 where no notice of
5 intended suspension was served may request an administrative
6 hearing. A request for an administrative hearing shall be in
7 writing and shall be hand delivered or mailed to the Alabama
8 ~~Department of Public Safety~~ State Law Enforcement Agency,
9 Driver License Division, in Montgomery, Alabama. The request
10 shall be received by the ~~department~~ agency or be mailed and
11 postmarked within 10 days of the notice of intended suspension
12 issued pursuant to Section 32-5A-303 or the notice of
13 suspension issued pursuant to Section 32-5A-302 where no
14 notice of intended suspension was served. Failure to request
15 an administrative hearing within 10 days shall constitute a
16 waiver of the person's right to an administrative hearing and
17 judicial review under this article. If the driver's license of
18 the person has not been previously surrendered, it shall be
19 surrendered at the hearing. A request for a hearing shall not
20 stay the driving privilege suspension.

21 "(b) The hearing shall be scheduled to be held as
22 quickly as practicable and not more than 30 days after the
23 filing of the request for a hearing. The hearing shall be held
24 at a location designated by the ~~director~~ secretary unless the
25 parties agree to a different location. The ~~department~~ agency
26 shall provide a written notice of the time and place of the
27 hearing to the party requesting the hearing at least five days

1 prior to the scheduled hearing, unless the parties agree to
2 waive this requirement.

3 "(c) The hearing shall be before the ~~Director of~~
4 ~~Public Safety~~ secretary or his or her duly authorized agent.
5 Upon the hearing, the ~~Director of Public Safety~~ secretary, or
6 his or her duly authorized agent, l may administer oaths and may
7 issue subpoenas for the attendance of witnesses and the
8 production of relevant books and papers and may require a
9 re-examination of the licensee. Upon the hearing, the ~~Director~~
10 ~~of Public Safety~~ secretary, or his or her duly authorized
11 agent, l shall make a final determination which either rescinds
12 the order of suspension or, for good cause appearing,
13 continues, modifies, or extends the suspension of the
14 licensee. If the hearing is conducted by a duly authorized
15 agent instead of by the ~~Director of Public Safety~~ personally
16 secretary, the determination of the ~~department~~ agency shall
17 not be final until approved by the ~~Director of Public Safety~~
18 secretary.

19 "(d) The sole issues at the hearing shall be whether
20 by a preponderance of the evidence the person drove or was in
21 actual physical control of a motor vehicle with 0.08 percent
22 or more by weight of alcohol in the blood, or whether the
23 person refused a test as provided in Section 32-5-192.

24 "(e) The decision of the ~~director~~ secretary shall be
25 rendered in writing, and shall be mailed to the person who
26 requested the hearing at their last known address on file with
27 the ~~department~~ agency.

1 "(f) If the person who requested the hearing fails
2 to appear without just cause, the right to a hearing shall be
3 waived.

4 "(g) The procedures set forth in this article shall
5 be the sole and exclusive manner to determine the
6 administration of this article. The Alabama Administrative
7 Procedure Act in Sections 41-22-1 to 41-22-27, inclusive,
8 shall not apply.

9 "§32-5A-308.

10 "Within 30 days of the issuance of the final
11 determination of the ~~department~~ agency following a hearing
12 under Section 32-5A-307, a person aggrieved by the
13 determination shall have the right to file a petition in the
14 circuit court of the county where the arrest was made for
15 judicial review. The appeal shall be taken by serving written
16 notice of the appeal upon the ~~director~~ secretary, which
17 service shall be made by delivering a copy of the notice to
18 the ~~director~~ secretary in Montgomery, Alabama, and filing the
19 original ~~thereof~~ with the clerk of the court to which the
20 appeal is taken. The court shall set the matter for hearing
21 upon 30 days' written notice to the ~~director~~ secretary. At the
22 hearing, the court may take testimony and examine the facts of
23 the case. After the hearing, the court may either reverse or
24 sustain the final determination of the ~~department~~ agency. The
25 filing of a petition for judicial review shall not stay the
26 suspension order.

27 "§32-6-49.13.

1 "(a) A person who drives a commercial motor vehicle
2 within this state is deemed to have given consent, subject to
3 provisions of Section 32-5-192, to take a test or tests of
4 that person's blood, breath, or ~~urine~~ oral fluid, or any
5 combination thereof, for the purpose of determining that
6 person's alcohol concentration, ~~or~~ the presence of other
7 drugs, or any other impairing substance.

8 "(b) (1) A test or tests shall be administered at the
9 direction of a law enforcement officer, who after stopping or
10 detaining the commercial motor vehicle driver, has probable
11 cause to believe that the driver was driving a commercial
12 motor vehicle while having ~~alcohol or drugs~~ any impairing
13 substance in his or her system. The law enforcement officer
14 shall test the driver at the scene by using a field
15 breathalyzer or other approved device, technique, or procedure
16 approved by the Department of Forensic Sciences, or transport
17 the driver to an appropriate facility where a chemical test or
18 tests by an approved method shall be administered either by
19 the officer or at his or her direction, or both.

20 "(2) A test or tests shall be administered at the
21 direction of a law enforcement officer to all commercial motor
22 vehicle drivers who are involved in any vehicular ~~accident~~
23 crash which results in death or physical injury requiring
24 hospitalization or emergency medical treatment.

25 "(c) A person requested to submit to a test or tests
26 as provided in subsection (a) ~~above~~ must be warned by the law
27 enforcement officer requesting the test or tests, that a

1 refusal to submit to the test or tests will result in that
2 person being immediately placed out of service for a period of
3 24 hours and being disqualified from operating a commercial
4 motor vehicle for a period of not less than two years under
5 Section 32-6-49.12.

6 "(d) If the person refuses testing, or submits to a
7 test which discloses an alcohol concentration of 0.04 or more,
8 the law enforcement officer shall submit a sworn report to the
9 ~~department~~ agency certifying that the test was requested
10 pursuant to subsection (b) and that the person refused to
11 submit to testing, or submitted to a test which disclosed an
12 alcohol concentration of 0.04 or more.

13 "(e) Upon receipt of the sworn report of a law
14 enforcement officer submitted under subsection (d), the
15 ~~department~~ agency shall disqualify the driver from driving a
16 commercial motor vehicle for a period of not less than two
17 years under Section 32-6-49.12. This penalty shall be in
18 addition to and cumulative of any other penalties imposed upon
19 the driver under any other existing laws and shall run
20 consecutively with any penalties for other offenses.

21 "(f) Upon suspending the license or permit to drive
22 or the privilege of driving a motor vehicle on the highways of
23 this state that is given to a nonresident or any person, or
24 upon determining that the issuance of a license or permit
25 shall be denied to the person, the ~~director~~ secretary, or his
26 or her authorized agent, shall within three days of suspension
27 notify the person in writing. Upon a request filed by the

1 person within five days from the date of the notice of
2 suspension or denial, the ~~director~~ secretary shall schedule a
3 hearing with notice of the hearing to be provided by certified
4 mail to the person stating the date, time, place, and scope of
5 the hearing. The scope of the hearing shall pertain to all of
6 the following ~~issues~~:

7 "(1) Whether the law enforcement officer had
8 reasonable grounds to believe the person had been driving a
9 motor vehicle on the public highways of this state while under
10 the influence of the substances enumerated in subsection (a).

11 "(2) Whether the person refused to submit to the
12 test upon request of a law enforcement officer.

13 "(3) Whether the person was informed that his or her
14 privilege to drive would be suspended or denied if he or she
15 refused to submit to the test.

16 "(g) If the suspension or determination that there
17 should be a denial of issuance is sustained by the ~~director~~
18 secretary, or his or her authorized agent, the person whose
19 license or permit to drive or a nonresident operating
20 privilege has been suspended, or to whom a license or permit
21 is denied, shall have the right to file a petition to review
22 the final order, suspension, or denial within 30 days after
23 the entry of the final order of suspension or denial by the
24 ~~director~~ secretary in the appropriate court to review the
25 final order of suspension.

26 "~~(h) When it has been finally determined under the~~
27 ~~procedures of this section~~ Upon a determination that ~~the~~

1 ~~privilege of a nonresident~~ a nonresident's privilege to
2 operate a motor vehicle in this state has been suspended, the
3 ~~director~~ secretary shall ~~give information~~ provide in writing
4 ~~of~~ the action taken to the motor vehicle administrator of the
5 state of ~~the residence of the person~~ person's residence and to
6 any state in which the person has a license."

7 Section 3. Notwithstanding any other provision of
8 law and for purposes of prosecutions under Section 32-5A-191,
9 a law enforcement witness may give testimony solely on the
10 issue of impairment, and not on the issue of specific alcohol
11 or drug concentration levels, based on the results of a
12 horizontal gaze nystagmus test when the test is administered
13 in accordance with the individual's training and administered
14 by an individual who has successfully completed training in
15 the horizontal gaze nystagmus test.

16 Section 4. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill defines a new crime or amends the definition of an
23 existing crime.

24 Section 5. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.