

1 HB489
2 214817-1
3 By Representatives Shaver, Wood (D), Pettus, Bedsole,
4 Treadaway, Farley and Clouse
5 RFD: Public Safety and Homeland Security
6 First Read: 10-MAR-22

8 SYNOPSIS: Under existing law, if a person is convicted
9 of boating under the influence, the person's
10 boating license is suspended, and if a person is
11 convicted of operating a motor vehicle under the
12 influence, the person's driver's license is
13 suspended.

14 This bill would further provide for the
15 period of suspension of boating operating
16 privileges resulting from a conviction from boating
17 under the influence.

18 This bill would provide that if a person is
19 convicted of boating under the influence, the
20 person's boating license and driver's license will
21 be suspended, and that if a person is convicted of
22 operating a motor vehicle under the influence, the
23 person's driver's license and boating license or
24 boater safety certification will be suspended.

25 This bill would also make nonsubstantive,
26 technical revisions to update the existing code
27 language to current style.

1 Amendment 621 of the Constitution of Alabama
2 of 1901, as amended by Amendment 890, now appearing
3 as Section 111.05 of the Official ReCompilation of
4 the Constitution of Alabama of 1901, as amended,
5 prohibits a general law whose purpose or effect
6 would be to require a new or increased expenditure
7 of local funds from becoming effective with regard
8 to a local governmental entity without enactment by
9 a 2/3 vote unless: it comes within one of a number
10 of specified exceptions; it is approved by the
11 affected entity; or the Legislature appropriates
12 funds, or provides a local source of revenue, to
13 the entity for the purpose.

14 The purpose or effect of this bill would be
15 to require a new or increased expenditure of local
16 funds within the meaning of the amendment. However,
17 the bill does not require approval of a local
18 governmental entity or enactment by a 2/3 vote to
19 become effective because it comes within one of the
20 specified exceptions contained in the amendment.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 Relating to boating under the influence; to amend
27 Section 32-5A-191.3, Code of Alabama 1975, to further provide

1 for the suspension of a person's boating license and driver's
2 license upon a conviction for boating under the influence; to
3 provide for the suspension of a person's driver's license and
4 boating license upon a conviction for operating a motor
5 vehicle under the influence; to make nonsubstantive, technical
6 revisions to update the existing code language to current
7 style; and in connection therewith would have as its purpose
8 or effect the requirement of a new or increased expenditure of
9 local funds within the meaning of Amendment 621 of the
10 Constitution of Alabama of 1901, as amended by Amendment 890,
11 now appearing as Section 111.05 of the Official Recompilation
12 of the Constitution of Alabama of 1901, as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 32-5A-191.3, Code of Alabama
15 1975, is amended to read as follows:

16 "§32-5A-191.3.

17 "(a) A person shall not operate or be in actual
18 physical control of any vessel, or manipulate any water skis,
19 aquaplane, or any other marine transportation device on the
20 waters of this state, as ~~the waters are~~ defined in Section
21 33-5-3, under any condition in which a person would be guilty
22 of driving under the influence ~~of alcohol or drugs~~ pursuant to
23 Section 32-5A-191 if the person was driving or ~~controlling in~~
24 actual physical control of a motor vehicle.

25 "(b) In the case of a vessel or other marine device
26 described in subsection (a), where a law enforcement officer
27 has probable cause to believe that the operator of the vessel

1 or other marine device is operating in violation of this
2 section, the law enforcement officer ~~is authorized to~~
3 ~~administer and~~ may test the operator, at the scene, by using a
4 field breathalyzer or other approved device, as a screening
5 device, to determine if the operator ~~may be~~ is operating ~~a~~ the
6 vessel or device in violation of subsection (a). Refusal to
7 submit to a field breathalyzer test or other approved testing
8 device shall result in the same punishment as provided in
9 subsection (c) of Section 32-5-192 for operators of motor
10 vehicles on the state highways.

11 "(c) The fact that any person charged with violating
12 this section is or has been legally entitled to use alcohol or
13 a controlled substance shall not constitute a defense against
14 any charge of violating this section.

15 "(d) (1) Upon a ~~first or subsequent~~ conviction, a
16 person violating this section shall be punished in the same
17 manner and under the same conditions as a person convicted of
18 driving under the influence ~~of alcohol or drugs~~ pursuant to
19 Section 32-5A-191, or any successor section or sections
20 providing for the offense of driving under the influence ~~of~~
21 ~~alcohol or drugs, except that in any case where reference is~~
22 ~~made to the Director of Public Safety and the driving~~
23 ~~privilege or driver's license of the person, the reference~~
24 ~~shall be deemed to refer to the Commissioner of Conservation~~
25 ~~and Natural Resources and the vessel operating privilege or~~
26 ~~boater safety certification of the person convicted under this~~
27 ~~section.~~

1 "(2)a. In addition to the driver's license
2 suspension required under subdivision (1), the Secretary of
3 the Alabama State Law Enforcement Agency shall suspend a
4 person's vessel operating privileges or boater safety
5 certification as follows:

6 "1. Ninety days for a first conviction.

7 "2. One year for a second conviction, provided that
8 the prior conviction occurred within 10 years of the current
9 offense.

10 "3. Three years for a third conviction, provided
11 that the prior convictions occurred within 10 years of the
12 current offense.

13 "4. Five years for a fourth or subsequent
14 conviction, provided that the prior convictions occurred
15 within 10 years of the current offense.

16 "b. A prior conviction for boating under the
17 influence from this state, from a municipality within this
18 state, from another state or territory, or from a municipality
19 of another state or territory shall be considered by a court
20 for imposing a sentence pursuant to this section if the prior
21 conviction occurred within 10 years of the date of the current
22 offense.

23 "(e) Neither reckless or careless operation of a
24 vessel, nor any other boating or water safety infraction, is a
25 lesser included offense under a charge of operating a vessel
26 while under the influence of alcohol or controlled substances.

1 "(f) All fines collected for a violation of this
2 section as to vessels or other marine devices on the waters of
3 this state shall be paid into the ~~State Water Safety Fund~~
4 State Treasury to the credit of the Public Safety Fund.

5 "(g) A person who has been arrested for violating
6 this section shall not be released from jail under bond or
7 otherwise, until there is less than ~~the same~~ 0.08 percent by
8 weight of alcohol in the person's blood ~~as specified in~~
9 ~~subdivision (1) of subsection (a).~~

10 "(h) Upon verification that a defendant arrested
11 ~~pursuant to~~ under this section is currently on probation from
12 another court of this state as a result of a conviction for
13 any criminal offense, the prosecutor shall provide written or
14 ~~oral~~ verbal notification of the defendant's subsequent arrest
15 and pending prosecution to the court in which the prior
16 conviction occurred.

17 "(i) When any person over the age of 21 years is
18 convicted ~~pursuant to~~ under this section and a child under the
19 age of 14 years was present on the vessel or other marine
20 device described in subsection (a) at the time of the offense,
21 the defendant shall be sentenced to double the minimum
22 punishment that the person would have received if the child
23 had not been present.

24 "(j) "Vessel," for the purposes of this section,
25 ~~shall mean~~ means any vessel as defined in Section 33-5-3,
26 operated on the waters of this state, as defined in Section
27 33-5-3.

1 "(k) No provision of this section shall be construed
2 to assess points for DUI convictions under motor vehicle
3 convictions for driving under the influence nor shall a
4 conviction under this section be used as an enhancement of
5 punishment for a violation of 32-5A-191.

6 Section 2. In addition to any other penalties for
7 driving under the influence as provided in Section 32-5A-191,
8 Code of Alabama 1975, upon conviction of an offense under
9 Section 32-5A-191, Code of Alabama 1975, the Alabama State Law
10 Enforcement Agency shall suspend an individual's vessel
11 operating privilege or boater safety certification under the
12 same conditions and in the same manner as provided in Section
13 32-5A-191, Code of Alabama 1975, excluding any ignition
14 interlock requirements.

15 Section 3. Although this bill would have as its
16 purpose or effect the requirement of a new or increased
17 expenditure of local funds, the bill is excluded from further
18 requirements and application under Amendment 621, as amended
19 by Amendment 890, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of Alabama of 1901,
21 as amended, because the bill defines a new crime or amends the
22 definition of an existing crime.

23 Section 4. This act shall become effective May 1,
24 2023, following its passage and approval by the Governor, or
25 its otherwise becoming law.