

1 HB87
2 115316-1
3 By Representative Collier
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 01/06/2010

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8 SYNOPSIS: Under existing law, there are no additional
9 penalties for driving under the influence with an
10 extreme percentage of blood alcohol content. Also,
11 the law provides that a person convicted of a third
12 offense receives a mandatory minimum sentence
13 greater than that for a fourth offense. Also, the
14 law has been judicially interpreted to prohibit
15 consideration of prior convictions older than 5
16 years for purposes of habitual offender sentencing.

17 This bill would double the minimum sentence
18 for a person convicted of DUI who has 0.15 percent
19 or greater by weight of alcohol in his or her
20 blood, thereby satisfying one of the programmatic
21 criteria for federal grant eligibility under the
22 federal "Safe, Accountable, Flexible, Efficient
23 Transportation Equity Act: A Legacy for Users"
24 (SAFETEA-LU). In addition, this bill would increase
25 the minimum mandatory sentence for a fourth offense
26 from 10 days to 120 days not subject to probation
27 or suspension; clarify that any prior conviction,

1 regardless of date and regardless of whether it was
2 in-state or out-of-state, will count as a prior
3 conviction for purposes of sentencing repeat
4 offenders; and would make technical corrections.

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

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

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

2
3 Relating to Alabama's DUI law; to amend Section
4 32-5A-191 of the Code of Alabama 1975; to provide for a
5 mandatory sentence of at least double the minimum punishment
6 for a person convicted of DUI who has 0.15 percent or more by
7 weight of alcohol in his or her blood within four hours of
8 operating or being in control of a motor vehicle; clarifying
9 that any prior conviction, regardless of date and regardless
10 of whether it was in-state or out-of-state, will count as a
11 prior conviction for purposes of sentencing repeat offenders;
12 to raise the mandatory minimum imprisonment for a fourth
13 offense to 120 days not subject to probation or suspension; to
14 make technical corrections; and in connection therewith would
15 have as its purpose or effect the requirement of a new or
16 increased expenditure of local funds within the meaning of
17 Amendment 621 of the Constitution of Alabama of 1901, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 32-5A-191 of the Code of Alabama
22 1975, is amended to read as follows:

23 "§32-5A-191.

24 "(a) A person shall not drive or be in actual
25 physical control of any vehicle while:

26 "(1) There is 0.08 percent or more by weight of
27 alcohol in his or her blood;

1 "(2) Under the influence of alcohol;

2 "(3) Under the influence of a controlled substance
3 to a degree which renders him or her incapable of safely
4 driving;

5 "(4) Under the combined influence of alcohol and a
6 controlled substance to a degree which renders him or her
7 incapable of safely driving; or

8 "(5) Under the influence of any substance which
9 impairs the mental or physical faculties of such person to a
10 degree which renders him or her incapable of safely driving.

11 "(b) A person who is under the age of 21 years shall
12 not drive or be in actual physical control of any vehicle if
13 there is 0.02 percentage percent or more by weight of alcohol
14 in his or her blood. The Department of Public Safety shall
15 suspend or revoke the driver's license of any person,
16 including, but not limited to, a juvenile, child, or youthful
17 offender, convicted or adjudicated of, or subjected to a
18 finding of delinquency based on this subsection.

19 Notwithstanding the foregoing, upon the first violation of
20 this subsection by a person whose blood alcohol level is
21 between 0.02 and 0.08, the person's driver's license or
22 driving privilege shall be suspended for a period of 30 days
23 in lieu of any penalties provided in subsection (e) of this
24 section, and there shall be no disclosure, other than to
25 courts, law enforcement agencies, and the person's employer,
26 by any entity or person, of any information, documents, or
27 records relating to the person's arrest, conviction, or

1 adjudication of or finding of delinquency based on this
2 subsection.

3 "All persons, except as otherwise provided in this
4 subsection for a first offense, including, but not limited to,
5 a juvenile, child, or youthful offender, convicted or
6 adjudicated of, or subjected to a finding of delinquency based
7 on this subsection shall be fined pursuant to this section,
8 notwithstanding any other law to the contrary, and the person
9 shall also be required to attend and complete a DUI or
10 substance abuse court referral program in accordance with
11 subsection (i).

12 "(c) (1) A school bus or day care driver shall not
13 drive or be in actual physical control of any vehicle while in
14 performance of his or her duties if there is greater than 0.02
15 ~~percentage~~ percent by weight of alcohol in his or her blood. A
16 person convicted pursuant to this subsection shall be subject
17 to the penalties provided by this section, except that on the
18 first conviction the Director of Public Safety shall suspend
19 the driving privilege or driver's license for a period of one
20 year.

21 "(2) A person shall not drive or be in actual
22 physical control of a commercial motor vehicle, as defined in
23 49 CFR Part 390.5 of the Federal Motor Carrier Safety
24 Regulations as adopted pursuant to Section 32-9A-2, if there
25 is 0.04 ~~percentage~~ percent or greater by weight of alcohol in
26 his or her blood. Notwithstanding the other provisions of this
27 section, the commercial driver's license or commercial driving

1 privilege of a person convicted of violating this subdivision
2 shall be suspended for the period provided in accordance with
3 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and
4 the person's regular driver's license or privilege to drive a
5 regular motor vehicle shall be governed by the remainder of
6 this section if the person is guilty of a violation of another
7 provision of this section.

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

12 "~~Upon first conviction~~ Except as provided in
13 subsection (b) for first-time offenders under the age of 21
14 years and subsection (f) for repeat offenders, a person
15 convicted of violating this section shall be punished by
16 imprisonment in the county or municipal jail for not more than
17 one year, or by fine of not less than six hundred dollars
18 (\$600) nor more than two thousand one hundred dollars
19 (\$2,100), or by both a fine and imprisonment. In addition, ~~on~~
20 ~~a first conviction,~~ the Director of Public Safety shall
21 suspend the driving privilege or driver's license of the
22 person convicted for a period of 90 days.

23 "(f) For purposes of imposing a sentence against a
24 repeat offender, a prior conviction is a conviction,
25 regardless of the date, of any offense under this section, or
26 of any offense in another state or territory, or municipality

1 thereof, the elements of which would establish an offense
2 under this section.

3 ~~"(f)(1)~~ On a second conviction within a five-year
4 period, a person convicted of violating this section who has
5 only one prior conviction shall be punished by a fine of not
6 less than one thousand one hundred dollars (\$1,100) nor more
7 than five thousand one hundred dollars (\$5,100) and by
8 imprisonment, which may include hard labor, in the county or
9 municipal jail for not more than one year. The sentence shall
10 include a mandatory sentence, which is not subject to
11 suspension or probation, of imprisonment in the county or
12 municipal jail for not less than five days or community
13 service for not less than 30 days. In addition the Director of
14 Public Safety shall revoke the driving privileges or driver's
15 license of the person convicted for a period of one year.

16 ~~"(g)(2) On a third conviction, a~~ A person convicted
17 of violating this section who has exactly two prior
18 convictions shall be punished by a fine of not less than two
19 thousand one hundred dollars (\$2,100) nor more than ten
20 thousand one hundred dollars (\$10,100) and by imprisonment,
21 which may include hard labor, in the county or municipal jail
22 for not less than 60 days nor more than one year, to include a
23 minimum of 60 days which shall be served in the county or
24 municipal jail and cannot be probated or suspended. In
25 addition, the Director of Public Safety shall revoke the
26 driving privilege or driver's license of the person convicted
27 for a period of three years.

1 ~~"(h)(3) On a fourth or subsequent conviction, a~~ A
2 person convicted of violating this section who has three or
3 more prior convictions shall be guilty of a Class C felony and
4 punished by a fine of not less than four thousand one hundred
5 dollars (\$4,100) nor more than ten thousand one hundred
6 dollars (\$10,100) and by imprisonment of not less than one
7 year and one day nor more than 10 years, to include a
8 mandatory minimum of 120 days which shall be served in the
9 county jail and cannot be probated or suspended. Any term of
10 imprisonment may include hard labor for the county or state,
11 and where imprisonment does not exceed three years
12 confinement, may be in the county jail. Where imprisonment
13 does not exceed one year and one day, confinement shall be in
14 the county jail. ~~The minimum sentence shall include a term of~~
15 ~~imprisonment for at least one year and one day, provided,~~
16 ~~however, that there shall be a minimum mandatory sentence of~~
17 ~~10 days which shall be served in the county jail. The~~
18 ~~remainder~~ Any portion of the sentence in excess of 120 days
19 may be suspended or probated, but only if as a condition of
20 probation the defendant enrolls and successfully completes a
21 state certified chemical dependency program recommended by the
22 court referral officer and approved by the sentencing court.
23 Where probation is granted, the sentencing court may, in its
24 discretion, and where monitoring equipment is available, place
25 the defendant on house arrest under electronic surveillance
26 during the probationary term. In addition to the other
27 penalties authorized, the Director of Public Safety shall

1 revoke the driving privilege or driver's license of the person
2 convicted for a period of five years.

3 "The Alabama habitual felony offender law shall not
4 apply to a conviction of a felony pursuant to this ~~subsection~~
5 subdivision, and a conviction of a felony pursuant to this
6 ~~subsection~~ subdivision shall not be a felony conviction for
7 purposes of the enhancement of punishment pursuant to
8 Alabama's habitual felony offender law.

9 "(g) When any person convicted of violating this
10 section is found to have had at least 0.15 percent or more by
11 weight of alcohol in his or her blood within four hours of
12 operating or being in actual physical control of a vehicle, he
13 or she shall be sentenced to at least double the minimum
14 punishment that the person would have received if he or she
15 had had less than 0.15 percent or more by weight of alcohol in
16 his or her blood. If the adjudicated offense is a misdemeanor,
17 the minimum punishment shall be imprisonment for one year, all
18 of which may be suspended except as otherwise provided for in
19 Section 32-5A-191(f). In addition, the Director of Public
20 Safety shall revoke the driving privileges or driver's license
21 of the person convicted for a period of not less than one
22 year.

23 "(h) When any person over the age of 21 years is
24 convicted of violating this section and it is found that a
25 child under the age of 14 years was present in the vehicle at
26 the time of the offense, the person shall be sentenced to at
27 least double the minimum punishment that the person would have

1 received if the child had not been present in the motor
2 vehicle.

3 "(i) In addition to the penalties provided herein,
4 any person convicted of violating this section shall be
5 referred to the court referral officer for evaluation and
6 referral to appropriate community resources. The defendant
7 shall, at a minimum, be required to complete a DUI or
8 substance abuse court referral program approved by the
9 Administrative Office of Courts and operated in accordance
10 with provisions of the Mandatory Treatment Act of 1990,
11 Sections 12-23-1 to 12-23-19, inclusive. The Department of
12 Public Safety shall not reissue a driver's license to a person
13 convicted under this section without receiving proof that the
14 defendant has successfully completed the required program.

15 "(j) Neither reckless driving nor any other traffic
16 infraction is a lesser included offense under a charge of
17 driving under the influence of alcohol or of a controlled
18 substance.

19 "(k) Except for fines collected for violations of
20 this section charged pursuant to a municipal ordinance, fines
21 collected for violations of this section shall be deposited to
22 the State General Fund; however, beginning October 1, 1995, of
23 any amount collected over two hundred fifty dollars (\$250) for
24 a first conviction, over five hundred dollars (\$500) for a
25 second conviction within five years, over one thousand dollars
26 (\$1,000) for a third conviction within five years, and over
27 two thousand dollars (\$2,000) for a fourth or subsequent

1 conviction within five years, the first one hundred dollars
2 (\$100) of that additional amount shall be deposited to the
3 Alabama Chemical Testing Training and Equipment Trust Fund,
4 after three percent of the one hundred dollars (\$100) is
5 deducted for administrative costs, and beginning October 1,
6 1997, and thereafter, the second one hundred dollars (\$100) of
7 that additional amount shall be deposited in the Impaired
8 Drivers Trust Fund after deducting five percent of the one
9 hundred dollars (\$100) for administrative costs and the
10 remainder of the funds shall be deposited to the State General
11 Fund. Fines collected for violations of this section charged
12 pursuant to a municipal ordinance where the total fine is paid
13 at one time shall be deposited as follows: The first three
14 hundred fifty dollars (\$350) collected for a first conviction,
15 the first six hundred dollars (\$600) collected for a second
16 conviction within five years, the first one thousand one
17 hundred dollars (\$1,100) collected for a third conviction, and
18 the first two thousand one hundred dollars (\$2,100) collected
19 for a fourth or subsequent conviction shall be deposited to
20 the State Treasury with the first one hundred dollars (\$100)
21 collected for each conviction credited to the Alabama Chemical
22 Testing Training and Equipment Trust Fund and the second one
23 hundred dollars (\$100) to the Impaired Drivers Trust Fund
24 after deducting five percent of the one hundred dollars (\$100)
25 for administrative costs and depositing this amount in the
26 general fund of the municipality, and the balance credited to
27 the State General Fund. Any amounts collected over these

1 amounts shall be deposited as otherwise provided by law. Fines
2 collected for violations of this section charged pursuant to a
3 municipal ordinance, where the fine is paid on a partial or
4 installment basis, shall be deposited as follows: The first
5 two hundred dollars (\$200) of the fine collected for any
6 conviction shall be deposited to the State Treasury with the
7 first one hundred dollars (\$100) collected for any conviction
8 credited to the Alabama Chemical Testing Training and
9 Equipment Trust Fund and the second one hundred dollars (\$100)
10 for any conviction credited to the Impaired Drivers Trust Fund
11 after deducting five percent of the one hundred dollars (\$100)
12 for administrative costs and depositing this amount in the
13 general fund of the municipality. The second three hundred
14 dollars (\$300) of the fine collected for a first conviction,
15 the second eight hundred dollars (\$800) collected for a second
16 conviction, the second one thousand eight hundred dollars
17 (\$1,800) collected for a third conviction, and the second
18 three thousand eight hundred dollars (\$3,800) collected for a
19 fourth conviction shall be divided with 50 percent of the
20 funds collected to be deposited to the State Treasury to be
21 credited to the State General Fund and 50 percent deposited as
22 otherwise provided by law for municipal ordinance violations.
23 Any amounts collected over these amounts shall be deposited as
24 otherwise provided by law for municipal ordinance violations.
25 Notwithstanding any provision of law to the contrary, 90
26 percent of any fine assessed and collected for any DUI offense
27 charged by municipal ordinance violation in district or

1 circuit court shall be computed only on the amount assessed
2 over the minimum fine authorized, and upon collection shall be
3 distributed to the municipal general fund with the remaining
4 10 percent distributed to the State General Fund.

5 "(l) 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 percent by weight
8 of alcohol in his or her blood as specified in subsection
9 (a) (1) or, in the case of a person who is under the age of 21
10 years, subsection (b) hereof.

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

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

24 ~~"(o) A prior conviction within a five-year period
25 for driving under the influence of alcohol or drugs from this
26 state, a municipality within this state, or another state or
27 territory or a municipality of another state or territory~~

1 ~~shall be considered by a court for imposing a sentence~~
2 ~~pursuant to this section.~~

3 ~~(p)~~ (n) Any person convicted of driving under the
4 influence of alcohol, or a controlled substance, or both, or
5 any substance which impairs the mental or physical faculties
6 in violation of this section, a municipal ordinance adopting
7 this section, or a similar law from another state or territory
8 or a municipality of another state or territory more than once
9 in a five-year period shall have his or her motor vehicle
10 registration for all vehicles owned by the repeat offender
11 suspended by the Alabama Department of Revenue for the
12 duration of the offender's driver's license suspension period,
13 unless such action would impose an undue hardship to any
14 individual, not including the repeat offender, who is
15 completely dependent on the motor vehicle for the necessities
16 of life, including any family member of the repeat offender
17 and any co-owner of the vehicle."

18 Section 2. Although this bill would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds, the bill is excluded from further
21 requirements and application under Amendment 621, now
22 appearing as Section 111.05 of the Official Recompilation of
23 the Constitution of Alabama of 1901, as amended, because the
24 bill defines a new crime or amends the definition of an
25 existing crime.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.