

1 SB301
2 192637-2
3 By Senator Bussman
4 RFD: Judiciary
5 First Read: 13-FEB-18

1 SB301

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3
4 ENGROSSED

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6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to persons charged with driving under the
12 influence; to amend Section 32-5A-191 and Section 32-5A-191.4,
13 Code of Alabama 1975, to further require and provide for the
14 use of ignition interlock devices including by persons
15 approved for pretrial diversion or persons released on bond;
16 to provide for the repeal of the ignition interlock request
17 for pretrial diversion participants in five years; to provide
18 for the distribution of court fees to municipal courts under
19 certain conditions; to provide for ignition interlock services
20 for the indigent under certain conditions; and in connection
21 therewith would have as its purpose or effect the requirement
22 of a new or increased expenditure of local funds within the
23 meaning of Amendment 621 of the Constitution of Alabama of
24 1901, now appearing as Section 111.05 of the Official
25 Recompilation of the Constitution of Alabama of 1901, as
26 amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 32-5A-191 and Section
2 32-5A-191.4, Code of Alabama 1975, are amended to read as
3 follows:

4 "§32-5A-191.

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

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

9 "(2) Under the influence of alcohol;

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

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

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

19 "(b) A person who is under the age of 21 years shall
20 not drive or be in actual physical control of any vehicle if
21 there is 0.02 percent or more by weight of alcohol in his or
22 her blood. The Alabama State Law Enforcement Agency shall
23 suspend or revoke the driver's license of any person,
24 including, but not limited to, a juvenile, child, or youthful
25 offender, convicted or adjudicated of, or subjected to a
26 finding of, delinquency based on this subsection.

27 Notwithstanding the foregoing, upon the first violation of

1 this subsection by a person whose blood alcohol level is
2 between 0.02 and 0.08, the person's driver's license or
3 driving privilege shall be suspended for a period of 30 days
4 in lieu of any penalties provided in subsection (e) of this
5 section, and there shall be no disclosure, other than to
6 courts, law enforcement agencies, the person's attorney of
7 record, and the person's employer, by any entity or person of
8 any information, documents, or records relating to the
9 person's arrest, conviction, or adjudication of or finding of
10 delinquency based on this subsection.

11 "All persons, except as otherwise provided in this
12 subsection for a first offense, including, but not limited to,
13 a juvenile, child, or youthful offender, convicted or
14 adjudicated of or subjected to a finding of delinquency based
15 on this subsection shall be fined pursuant to this section,
16 notwithstanding any other law to the contrary, and the person
17 shall also be required to attend and complete a DUI or
18 substance abuse court referral program in accordance with
19 subsection (k).

20 "(c) (1) A school bus or day care driver shall not
21 drive or be in actual physical control of any vehicle while in
22 performance of his or her duties if there is greater than 0.02
23 percent by weight of alcohol in his or her blood. A person
24 convicted pursuant to this subsection shall be subject to the
25 penalties provided by this section, except that on the first
26 conviction the Secretary of the Alabama State Law Enforcement

1 Agency shall suspend the driving privilege or driver's license
2 for a period of one year.

3 "(2) A person shall not drive or be in actual
4 physical control of a commercial motor vehicle, as defined in
5 49 CFR Part 383.5 of the Federal Motor Carrier Safety
6 Regulations as adopted pursuant to Section 32-9A-2, if there
7 is 0.04 percent or greater by weight of alcohol in his or her
8 blood. Notwithstanding the other provisions of this section,
9 the commercial driver's license or commercial driving
10 privilege of a person convicted of violating this subdivision
11 shall be disqualified for the period provided in accordance
12 with 49 CFR Part 383.51, as applicable, and the person's
13 regular driver's license or privilege to drive a regular motor
14 vehicle shall be governed by the remainder of this section if
15 the person is guilty of a violation of another provision of
16 this section.

17 "(3) Any commutation of suspension or revocation
18 time as it relates to a court order, approval, and
19 installation of an ignition interlock device shall not apply
20 to commercial driving privileges or disqualifications.

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

25 "(e) Upon first conviction, a person violating this
26 section shall be punished by imprisonment in the county or
27 municipal jail for not more than one year, or by fine of not

1 less than six hundred dollars (\$600) nor more than two
2 thousand one hundred dollars (\$2,100), or by both a fine and
3 imprisonment. In addition, on a first conviction, the
4 Secretary of the Alabama State Law Enforcement Agency shall
5 suspend the driving privilege or driver's license of the
6 person convicted for a period of 90 days. The 90-day
7 suspension shall be stayed if the offender elects to have an
8 approved ignition interlock device installed and operating on
9 the designated motor vehicle driven by the offender for ~~six~~
10 ~~months~~ 90 days. The offender shall present proof of
11 installation of the approved ignition interlock device to the
12 Alabama State Law Enforcement Agency and obtain an ignition
13 interlock restricted driver license. The remainder of the
14 suspension shall be commuted upon the successful completion of
15 the elected use, mandated use, or both, of the ignition
16 interlock device. If, on a first conviction, any person
17 refusing to provide a blood alcohol concentration, ~~or~~ if a
18 child under the age of 14 years was a passenger in the vehicle
19 at the time of the offense, ~~or~~ if someone else besides the
20 offender was injured at the time of the offense, or if the
21 offender is found to have had at least 0.15 percent or more by
22 weight of alcohol in his or her blood while operating or being
23 in actual physical control of a vehicle, the Secretary of the
24 Alabama State Law Enforcement Agency shall suspend the driving
25 privilege or driver's license of the person convicted for a
26 period of 90 days and the person shall be required to have an
27 ignition interlock device installed and operating on the

1 designated motor vehicle driven by the offender for a period
2 of ~~two years~~ one year from the date of issuance of a driver's
3 license indicating that the person's driving privileges are
4 subject to the condition of the installation and use of a
5 certified ignition interlock device on a motor vehicle. ~~After~~
6 ~~a minimum of 45 days of the license revocation or suspension~~
7 ~~pursuant to Section 32-5A-304 or this section, or both, is~~
8 ~~completed, upon~~ Upon receipt of a court order from the
9 convicting court, upon issuance of an ignition interlock
10 restricted driver license, and upon proof of installation of
11 an operational approved ignition interlock device on the
12 designated vehicle of the person convicted, the mandated
13 ignition interlock period of ~~two years~~ one year provided in
14 this subsection shall start and the suspension period,
15 revocation period, or both, as required under this subsection
16 shall be stayed. The remainder of the driver license
17 revocation period, suspension period, or both, shall be
18 commuted upon the successful completion of the period of time
19 in which the ignition interlock device is mandated to be
20 installed and operational.

21 "(f) On a second conviction within a five-year
22 period, a person convicted of violating this section shall be
23 punished by a fine of not less than one thousand one hundred
24 dollars (\$1,100) nor more than five thousand one hundred
25 dollars (\$5,100) and by imprisonment, which may include hard
26 labor in the county or municipal jail for not more than one
27 year. The sentence shall include a mandatory sentence, which

1 is not subject to suspension or probation, of imprisonment in
2 the county or municipal jail for not less than five days or
3 community service for not less than 30 days. In addition, the
4 Secretary of the Alabama State Law Enforcement Agency shall
5 revoke the driving privileges or driver's license of the
6 person convicted for a period of one year and the offender
7 shall be required to have an ignition interlock device
8 installed and operating on the designated motor vehicle driven
9 by the offender for a period of two years from the date of
10 issuance of a driver's license indicating that the person's
11 driving privileges are subject to the condition of the
12 installation and use of a certified ignition interlock device
13 on a motor vehicle. After a minimum of 45 days of the license
14 revocation or suspension pursuant to Section 32-5A-304, this
15 section, or both, is completed, upon receipt of a court order
16 from the convicting court, upon issuance of an ignition
17 interlock restricted driver license, and upon proof of
18 installation ~~or~~ of an operational approved ignition interlock
19 device on the designated vehicle of the person convicted, the
20 mandated ignition interlock period of two years approved in
21 this subsection shall start and the suspension period,
22 revocation period, or both, as required under this subsection
23 shall be stayed. The remainder of the driver license
24 revocation period, suspension period, or both, shall be
25 commuted upon the successful completion of the period of time
26 in which the ignition interlock device is mandated to be
27 installed and operational.

1 "(g) On a third conviction, a person convicted of
2 violating this section shall be punished by a fine of not less
3 than two thousand one hundred dollars (\$2,100) nor more than
4 ten thousand one hundred dollars (\$10,100) and by
5 imprisonment, which may include hard labor, in the county or
6 municipal jail for not less than 60 days nor more than one
7 year, to include a minimum of 60 days which shall be served in
8 the county or municipal jail and cannot be probated or
9 suspended. In addition, the Secretary of the Alabama State Law
10 Enforcement Agency shall revoke the driving privilege or
11 driver's license of the person convicted for a period of three
12 years and the offender shall be required to have an ignition
13 interlock device installed and operating on the designated
14 motor vehicle driven by the offender for a period of three
15 years from the date of issuance of a driver's license
16 indicating that the person's driving privileges are subject to
17 the condition of the installation and use of a certified
18 ignition interlock device on a motor vehicle. After a minimum
19 of ~~180~~ 60 days of the license revocation or suspension
20 pursuant to Section 32-5A-304, this section, or both, is
21 completed, upon receipt of a court order from the convicting
22 court, upon issuance of an ignition interlock restricted
23 driver license, and upon proof of installation of an
24 operational approved ignition interlock device on the
25 designated vehicle of the person convicted, the mandated
26 ignition interlock period of three years provided in this
27 subsection shall start and the suspension period, revocation

1 period, or both, as required under this subsection shall be
2 stayed. The remainder of the driver license revocation period,
3 suspension period, or both, shall be commuted upon the
4 successful completion of the period of time in which the
5 ignition interlock device is mandated to be installed and
6 operational.

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

1 during the probationary term. In addition to the other
2 penalties authorized, the Secretary of the Alabama State Law
3 Enforcement Agency shall revoke the driving privilege or
4 driver's license of the person convicted for a period of five
5 years and the offender shall be required to have an ignition
6 interlock device installed and operating on the designated
7 motor vehicle driven by the offender for a period of ~~five~~ four
8 years from the date of issuance of a driver's license
9 indicating that the person's driving privileges are subject to
10 the condition of the installation and use of a certified
11 ignition interlock device on a motor vehicle. After a minimum
12 of one year of the license revocation or suspension pursuant
13 to Section 32-5A-304, this section, or both, is completed,
14 upon receipt of a court order from the convicting court, upon
15 issuance of an ignition interlock restricted driver license,
16 and upon proof of installation of an operational approved
17 ignition interlock device on the designated vehicle of the
18 person convicted, the mandated ignition interlock period of
19 ~~five~~ four years provided in this subsection shall start and
20 the suspension period, revocation period, or both, as required
21 under this subsection shall be stayed. The remainder of the
22 driver license revocation period, suspension period, or both,
23 shall be commuted upon the successful completion of the period
24 of time in which the ignition interlock device is mandated to
25 be installed and operational.

26 "The Alabama habitual felony offender law shall not
27 apply to a conviction of a felony pursuant to this subsection,

1 and a conviction of a felony pursuant to this subsection shall
2 not be a felony conviction for purposes of the enhancement of
3 punishment pursuant to Alabama's habitual felony offender law.
4 However, prior misdemeanor or felony convictions for driving
5 under the influence may be considered as part of the
6 sentencing calculations or determinations under the Alabama
7 Sentencing Guidelines or rules promulgated by the Alabama
8 Sentencing Commission.

9 "(i) 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 while operating or being
12 in actual physical control of a vehicle, he or she shall be
13 sentenced to at least double the minimum punishment that the
14 person would have received if he or she had had less than 0.15
15 percent by weight of alcohol in his or her blood. ~~Upon the~~
16 ~~first violation of this subsection, the offender shall be~~
17 ~~ordered by the court to have an ignition interlock device~~
18 ~~installed and operating on his or her designated motor vehicle~~
19 ~~for a period of two years from the date of issuance of an~~
20 ~~ignition interlock-restricted driver's license. This~~
21 ~~subsection does not apply to the duration of time an ignition~~
22 ~~interlock device is required by this section.~~ If the
23 adjudicated offense is a misdemeanor, the minimum punishment
24 shall be imprisonment for one year, all of which may be
25 suspended except as otherwise provided for in subsections (f)
26 and (g).

1 "(j) When any person over the age of 21 years is
2 convicted of violating this section and it is found that a
3 child under the age of 14 years was a passenger in the vehicle
4 at the time of the offense, the person shall be sentenced to
5 at least double the minimum punishment that the person would
6 have received if the child had not been a passenger in the
7 motor vehicle. This subsection does not apply to the duration
8 of time an ignition interlock device is required by this
9 section.

10 "(k) (1) In addition to the penalties provided
11 herein, any person convicted of violating this section shall
12 be referred to the court referral officer for evaluation and
13 referral to appropriate community resources. The defendant
14 shall, at a minimum, be required to complete a DUI or
15 substance abuse court referral program approved by the
16 Administrative Office of Courts and operated in accordance
17 with provisions of the Mandatory Treatment Act of 1990,
18 Sections 12-23-1 to 12-23-19, inclusive. The Alabama State Law
19 Enforcement Agency shall not reissue a driver's license to a
20 person convicted under this section without receiving proof
21 that the defendant has successfully completed the required
22 program.

23 "(2) Upon conviction, the court shall notify the
24 Alabama State Law Enforcement Agency if the person convicted
25 is required to install and maintain an approved ignition
26 interlock device. The agency shall suspend or revoke a
27 person's driving privileges until completion of the mandatory

1 suspension or revocation period required by this section, and
2 clearance of all other suspensions, revocations,
3 cancellations, or denials, and proof of installation of an
4 approved ignition interlock device is presented to the agency.
5 The agency shall not reissue a driver's license to a person
6 who has been ordered by a court or is required by law to have
7 the ignition interlock device installed until proof is
8 presented that the person is eligible for reinstatement of
9 driving privileges. Upon presentation of proof and compliance
10 with all ignition interlock requirements, the agency shall
11 issue a driver's license with a restriction indicating that
12 the licensee may operate a motor vehicle only with the
13 certified ignition interlock device installed and properly
14 operating. If the licensee fails to maintain the approved
15 ignition interlock device as required or is otherwise not in
16 compliance with any order of the court, the court shall notify
17 the agency of the noncompliance and the agency shall suspend
18 the person's driving privileges until the agency receives
19 notification from the court that the licensee is in
20 compliance. The requirement that the licensee use the ignition
21 interlock device may be removed only when the court of
22 conviction confirms to the agency that the licensee is no
23 longer subject to the ignition interlock device requirement.

24 "(1) Neither reckless driving nor any other traffic
25 infraction is a lesser included offense under a charge of
26 driving under the influence of alcohol or of a controlled
27 substance.

1 "(m) Except for fines collected for violations of
2 this section charged pursuant to a municipal ordinance, fines
3 collected for violations of this section shall be deposited to
4 the State General Fund; however, beginning October 1, 1995, of
5 any amount collected over two hundred fifty dollars (\$250) for
6 a first conviction, over five hundred dollars (\$500) for a
7 second conviction within five years, over one thousand dollars
8 (\$1,000) for a third conviction within five years, and over
9 two thousand dollars (\$2,000) for a fourth or subsequent
10 conviction within five years, the first one hundred dollars
11 (\$100) of that additional amount shall be deposited to the
12 Alabama Chemical Testing Training and Equipment Trust Fund,
13 after three percent of the one hundred dollars (\$100) is
14 deducted for administrative costs, and beginning October 1,
15 1997, and thereafter, the second one hundred dollars (\$100) of
16 that additional amount shall be deposited in the Alabama Head
17 and Spinal Cord Injury Trust Fund after deducting five percent
18 of the one hundred dollars (\$100) for administrative costs and
19 the remainder of the funds shall be deposited to the State
20 General Fund. Fines collected for violations of this section
21 charged pursuant to a municipal ordinance where the total fine
22 is paid at one time shall be deposited as follows: The first
23 three hundred fifty dollars (\$350) collected for a first
24 conviction, the first six hundred dollars (\$600) collected for
25 a second conviction within five years, the first one thousand
26 one hundred dollars (\$1,100) collected for a third conviction,
27 and the first two thousand one hundred dollars (\$2,100)

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

1 three thousand eight hundred dollars (\$3,800) collected for a
2 fourth conviction shall be divided with 50 percent of the
3 funds collected to be deposited to the State Treasury to be
4 credited to the State General Fund and 50 percent deposited as
5 otherwise provided by law for municipal ordinance violations.
6 Any amounts collected over these amounts shall be deposited as
7 otherwise provided by law for municipal ordinance violations.
8 Notwithstanding any provision of law to the contrary, 90
9 percent of any fine assessed and collected for any DUI offense
10 charged by municipal ordinance violation in district or
11 circuit court shall be computed only on the amount assessed
12 over the minimum fine authorized, and upon collection shall be
13 distributed to the municipal general fund with the remaining
14 10 percent distributed to the State General Fund. In addition
15 to fines imposed pursuant to this subsection, a mandatory fee
16 of one hundred dollars (\$100) shall be collected from any
17 individual that successfully completes any pretrial diversion
18 or deferral program in any municipal, district, or circuit
19 court where the individual was charged with a violation of
20 this section or a corresponding municipal ordinance. The one
21 hundred dollars (\$100) shall be deposited into the Alabama
22 Chemical Testing Training and Equipment Fund.

23 "(n) (1) A person who has been arrested for violating
24 this section shall not be released from jail under bond or
25 otherwise, until there is less than the same percent by weight
26 of alcohol in his or her blood as specified in subsection

1 (a) (1) or, in the case of a person who is under the age of 21
2 years, subsection (b) hereof.

3 "(2) A judge may require an offender to install and
4 use a certified ignition interlock device as a condition of
5 bond. In that instance, the Secretary of the Alabama State Law
6 Enforcement Agency shall issue the offender a restricted
7 driver's license indicating the person's driving privileges
8 are subject to the condition of the installation and use of a
9 certified ignition interlock device on a motor vehicle. Any
10 driver's license suspension or revocation period pursuant to
11 Section 32-5A-304 shall be stayed during the period the
12 offender is under the bond condition. The period of time the
13 offender has the ignition interlock device installed as a
14 condition of bond shall not be credited to any requirement to
15 have an ignition interlock device upon conviction.

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

23 "(p) A prior conviction within a five-year period
24 for driving under the influence of alcohol or drugs from this
25 state, a municipality within this state, or another state or
26 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 "(q) 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 or, in the case of a repeat
18 offender, if the repeat offender has a functioning ignition
19 interlock device installed on the designated vehicle for the
20 duration of the offender's driver's license suspension period.

21 "(r) (1) Any person ordered by the court to have an
22 ignition interlock device installed on a designated vehicle,
23 and any person who elects to have the ignition interlock
24 device installed on a designated vehicle for the purpose of
25 reducing a period of suspension or revocation of his or her
26 driver's license, shall pay to the court, ~~for each of the~~
27 ~~first four months~~ following his or her conviction ~~or the first~~

1 ~~four months following the installation of the ignition~~
2 ~~interlock device on his or her vehicle, seventy-five dollars~~
3 ~~(\$75) per month~~ two hundred dollars (\$200), which may be paid
4 in installments and which shall be divided as follows:

5 "a. ~~Forty-five~~ Seventeen percent to the Alabama
6 Interlock Indigent Fund.

7 "b. ~~Twenty~~ For cases in the district or circuit
8 court, 30 percent to the State Judicial Administration Fund
9 administered by the Administrative Office of Courts and for
10 cases in the municipal court, 30 percent to the municipal
11 judicial administration fund of the municipality where the
12 municipal court is located to be used for the operation of the
13 municipal court.

14 "c. ~~Twenty~~ Thirty percent to the Highway Traffic
15 Safety Fund administered by the Alabama State Law Enforcement
16 Agency.

17 "d. ~~Fifteen~~ Twenty-three percent to the District
18 Attorney's Solicitor Fund.

19 "(2) In addition to paying the court clerk
20 ~~seventy-five dollars (\$75) per month for the first four months~~
21 the fee required in subdivision (1) following the conviction
22 or the voluntary installation of the ignition interlock
23 device, the defendant shall pay all costs associated with the
24 installation, purchase, maintenance, or lease of the ignition
25 interlock devices to an approved ignition interlock provider
26 pursuant to the rules of the Department of Forensic Sciences,
27 unless the defendant is subject to Section ~~32-5A-191.4(g)(4)~~

1 ~~during which he or she shall pay one-half the cost for the~~
2 ~~available indigency period 32-5A-191.4(i)(4).~~

3 "(s) The defendant shall designate the vehicle to be
4 used by identifying the vehicle by the vehicle identification
5 number to the court. The defendant, at his or her own expense,
6 may designate additional motor vehicles on which an ignition
7 interlock device may be installed for the use of the
8 defendant.

9 "(t) (1) Any person who is required to comply with
10 the ignition interlock provisions of this section as a
11 condition of restoration or reinstatement of his or her
12 driver's license, shall only operate the designated vehicle
13 equipped with a functioning ignition interlock device for the
14 period of time consistent with the offense for which he or she
15 was convicted as provided for in this section.

16 "(2) The duration of the time an ignition interlock
17 device is required by this section shall be ~~doubled~~ one year
18 if the offender refused the prescribed chemical test for
19 intoxication, ~~or if the offender's blood alcohol concentration~~
20 ~~was 0.15 grams percent or greater unless already doubled by a~~
21 ~~previous section.~~

22 "(u) (1) The Alabama State Law Enforcement Agency may
23 set a fee of not more than one hundred fifty dollars (\$150)
24 for the issuance of a driver's license indicating that the
25 person's driving privileges are subject to the condition of
26 the installation and use of a certified ignition interlock
27 device on a motor vehicle. Fifteen percent of the fee shall be

1 distributed to the general fund of the county where the person
2 was convicted to be utilized for law enforcement purposes.
3 Eighty-five percent shall be distributed to the State General
4 Fund. In addition, at the end of the time the person's driving
5 privileges are subject to the above conditions, the agency
6 shall set a fee of not more than seventy-five dollars (\$75) to
7 reissue a regular driver's license. The fee shall be deposited
8 as provided in Sections 32-6-5, 32-6-6, and 32-6-6.1.

9 "(2) The defendant shall provide proof of
10 installation of an approved ignition interlock device to the
11 Alabama State Law Enforcement Agency as a condition of the
12 issuance of a restricted driver's license.

13 "(3) Any ignition interlock driving violation
14 committed by the offender during the mandated ignition
15 interlock period shall extend the duration of ignition
16 interlock use for six months ~~from the date of violation.~~
17 Ignition interlock driving violations include any of the
18 following:

19 "a. A breath sample at or above a minimum blood
20 alcohol concentration level of 0.02 recorded ~~more than~~ four or
21 more times during the monthly reporting period unless a
22 subsequent test performed within 10 minutes registers a breath
23 alcohol concentration lower than 0.02.

24 "b. Any tampering, circumvention, or bypassing of
25 the ignition interlock device, or attempt thereof.

1 "c. Failure to comply with the servicing or
2 calibration requirements of the ignition interlock device
3 every 30 days.

4 "(v) Nothing in this section and Section 32-5A-191.4
5 shall require an employer to install an ignition interlock
6 device in a vehicle owned or operated by the employer for use
7 by an employee required to use the device as a condition of
8 driving pursuant to this section and Section 32-5A-191.4.

9 "(w) The provisions in this section and Section
10 32-5A-191.4 relating to ignition interlock devices shall not
11 apply to persons who commit violations of this section while
12 under 19 years of age and who are adjudicated in juvenile
13 court, unless specifically ordered otherwise by the court.

14 "(x) (1) The amendatory language in Act 2014-222 to
15 this section, authorizing the Alabama State Law Enforcement
16 Agency to stay a driver's license suspension or revocation
17 upon compliance with the ignition interlock requirement shall
18 apply retroactively if any of the following occurs:

19 "a. The offender files an appeal with the court of
20 jurisdiction requesting all prior suspensions or revocation,
21 or both, be stayed upon compliance with the ignition interlock
22 requirement.

23 "b. The offender wins appeal with the court of
24 jurisdiction relating to this section.

25 "c. The court of jurisdiction notifies the Alabama
26 State Law Enforcement Agency that the offender is eligible to
27 have the driver's license stayed.

1 "d. The Alabama State Law Enforcement Agency issues
2 an ignition interlock restricted driver's license.

3 "e. The offender remains in compliance of ignition
4 interlock requirements.

5 "(2) The remainder of the driver license revocation,
6 suspension, or both, shall be commuted upon the successful
7 completion of the period of time in which the ignition
8 interlock device is mandated to be installed and operational.

9 "(y) (1) Any person charged in a district, circuit,
10 or municipal court with a violation of this section or a
11 municipal ordinance adopted in conformance with this section
12 who is approved for any pretrial diversion program or similar
13 program shall be required to install an ignition interlock
14 device for a minimum of six months or the duration of the
15 pretrial diversion program, whichever is greater, and meet all
16 the requirements of this section and Section 32-5A-191.4. A
17 participant in a pretrial diversion program shall be eligible
18 for indigency status if the program enrolls indigent
19 defendants and waives fees for indigent defendants.

20 "(2) Upon receipt of a court order or an agreement
21 from the district attorney or prosecutor indicating the
22 offender has entered a pretrial diversion program or any other
23 form of deferred prosecution agreement, the Secretary of the
24 Alabama State Law Enforcement Agency shall indicate as the
25 agency shall determine the person's driving privileges are
26 subject to the condition of the installation and use of a
27 certified ignition interlock device on a motor vehicle. Any

1 driver's license suspension period pursuant to Section
2 32-5A-304 shall be stayed and then commuted upon the
3 successful completion of the pretrial diversion program, or
4 any other form of deferred prosecution agreement.

5 "(z) Pursuant to Section 15-22-54, the maximum
6 probation period for persons convicted under this section
7 shall be extended until all ignition interlock requirements
8 have been completed by the offender.

9 "§32-5A-191.4.

10 "(a) As used in Section 32-5A-191, the term,
11 "ignition interlock device" means a constant monitoring device
12 that prevents a motor vehicle from being started at any time
13 without first determining the equivalent blood alcohol level
14 of the operator through the taking of a breath sample for
15 testing. The system shall be calibrated so that the motor
16 vehicle may not be started if the blood alcohol level of the
17 operator, as measured by the test, reaches a blood alcohol
18 concentration level of 0.02.

19 "(b) The ignition interlock device shall be
20 installed, calibrated, and monitored directly by trained
21 technicians who shall train the offender for whom the device
22 is being installed in the proper use of the device. The use of
23 a mail in or remote calibration system where the technician is
24 not in the immediate proximity of the vehicle being calibrated
25 is prohibited. The Department of Forensic Sciences shall
26 promulgate rules for punishment and appeal for ignition
27 interlock providers relating to violation of this subsection.

1 "(c) The Department of Forensic Sciences shall
2 formulate and promulgate rules for the proper approval,
3 installation, and use of ignition interlock devices.
4 Additionally, the Department of Forensic Sciences shall
5 maintain and make public the list of approved ignition
6 interlock devices.

7 "(d) The Department of Forensic Sciences may adopt
8 in whole or relevant part the guidelines, rules, regulations,
9 studies, or independent laboratory tests performed or relied
10 upon by other states, their agencies, or commissions.

11 "(e) The Department of Forensic Sciences shall
12 promulgate rules regulating approved ignition interlock
13 providers related to areas of consumer coverage. The rules
14 shall address areas of consumer coverage and shall provide for
15 a two-year period from July 1, 2014, to allow provider
16 compliance.

17 "(f) The Department of Forensic Sciences shall
18 charge an application fee of two thousand dollars (\$2,000) to
19 any ignition interlock provider to evaluate the instrument.
20 Any ignition interlock provider whose ignition interlock
21 device is approved by the Department of Forensic Sciences
22 shall be permitted to install and calibrate its approved
23 device in Alabama. Each year during the month of April, the
24 Department of Forensic Sciences may receive applications and
25 instruments to review for approval.

26 "~~The Department of Public Safety~~ Alabama State
27 Law Enforcement Agency shall be responsible for enforcing the

1 rules promulgated by the Department of Forensic Sciences
2 related to ignition interlock devices and providers. The
3 ~~Department of Public Safety~~ Alabama State Law Enforcement
4 Agency shall promulgate rules regulating the inspection and
5 enforcement of approved ignition interlock providers and any
6 associate service locations.

7 "(h) In the absence of negligence, wantonness, or
8 willful misconduct, no person or employer or agent of a person
9 who installs an ignition interlock device pursuant to Section
10 32-5A-191 shall be liable for any occurrence related to the
11 device, including, but not limited to, occurrences resulting
12 from or related to a malfunction of the device or use of,
13 misuse of, or failure to use the device or the vehicle in
14 which the device was installed.

15 "(i) (1) When the court imposes the use of an
16 ignition interlock device as required by Section 32-5A-191,
17 the court shall require that the person provide proof of
18 installation of a device to the court or a probation officer
19 within 30 days of the date the defendant becomes eligible to
20 receive an ignition interlock-restricted license from the
21 ~~Department of Public Safety~~ Alabama State Law Enforcement
22 Agency. If the person fails to provide proof of installation
23 within that period, absent a finding by the court of good
24 cause for that failure which is entered into the court record,
25 the court may revoke the person's probation where applicable
26 after a petition to revoke probation has been filed and the
27 defendant has been given notice and an opportunity to be heard

1 on the petition. The court in which the defendant is convicted
2 shall notify the ~~department~~ agency that the defendant is
3 restricted to the operation of a motor vehicle only when an
4 approved ignition interlock device is installed and properly
5 operating. Nothing in this subsection shall permit a person
6 who does not own a vehicle or otherwise have an ignition
7 interlock device installed on a motor vehicle to operate a
8 motor vehicle without an approved ignition interlock device
9 installed and properly operating.

10 "(2) Proof of installation for the purpose of this
11 subsection may be furnished by either a certificate of
12 installation or a copy of the lease agreement in the name of
13 the offender for the designated vehicle with an approved
14 ignition interlock device company.

15 "(3) A defendant who is determined by the court to
16 be indigent for the purpose of ignition interlock may have an
17 ignition interlock device installed by an ignition interlock
18 provider as provided in this subsection. Criteria for
19 determining indigency for the purpose of ignition interlock
20 shall be the same criteria as set forth in Section 15-12-5(b)
21 and (c) after the report is complete. ~~In determining whether~~
22 ~~the defendant is indigent for the purpose of ignition~~
23 ~~interlock, the judge shall require an investigation and report~~
24 ~~by a sheriff, adult probation officer, or other officer of the~~
25 ~~court. The report may include input from the district attorney~~
26 ~~or municipal prosecutor.~~ The defendant shall execute an
27 affidavit of substantial hardship on a form approved by the

1 Supreme Court. The completed affidavit of substantial hardship
2 and the subsequent order of the court either denying or
3 granting indigency status for the purpose of ignition
4 interlock to the offender shall become a part of the official
5 court record in the case and shall be submitted by the
6 offender to the interlock provider.

7 "(4) Any offender granted indigency status for the
8 purpose of ignition interlock shall ~~pay one-half of~~ not be
9 required to pay the costs associated with installing and
10 maintaining an interlock device nor required to pay any
11 interlock fees charged to a defendant who does not own a
12 vehicle or otherwise have an ignition interlock device
13 installed on a vehicle pursuant to subdivision (6) for a the
14 period of no more than two years at which time the offender
15 shall pay the full remaining cost for any sentence left for
16 ignition interlock. The defendant shall pay any fees for any
17 violation of ignition interlock requirements and for any
18 optional services elected by the defendant and for any missing
19 or damaged equipment. This section shall not affect any fees
20 associated with the driver's license of the defendant.

21 "(5) a. ~~All interlock providers shall be required to~~
22 ~~pay one and one-half percent of all payments collected less~~
23 ~~any payments made by a defendant determined as indigent for~~
24 ~~the purpose of ignition interlock to the Alabama Ignition~~
25 ~~Interlock Indigent Fund in the State Treasury.~~ The Alabama
26 State Law Enforcement Agency shall require each approved
27 manufacturer to provide a minimum number of indigent

1 defendants with ignition interlock services, including
2 installation, lease, calibration, and removal at no cost to
3 the indigent defendant. The minimum number of indigent
4 defendants provided services shall be equal to five percent of
5 the total installations provided by the manufacturer during
6 the prior calendar year.

7 "b. The Alabama State Law Enforcement Agency shall
8 oversee the administration of indigent services on an annual
9 basis by doing all of the following:

10 "1. Verifying the total number of installations
11 provided by the manufacturer each year.

12 "2. Verifying the number of installations for
13 indigent defendants provided each year by each manufacturer.

14 "3. Conducting random audits of payments based on
15 the list of indigent defendants serviced by each manufacturer.

16 "c. Each manufacturer who fails to meet the five
17 percent threshold for indigent defendants shall be subject to
18 a civil penalty of five hundred dollars (\$500) for each
19 indigent defendant the manufacturer failed to provide services
20 below the five percent threshold. All fines shall be collected
21 by the agency and deposited in the Alabama Ignition Interlock
22 Indigent Fund.

23 "~~b.d.~~ The Alabama Ignition Interlock Indigent Fund
24 is created in the State Treasury. The fund shall be
25 administered by ~~the Department of Public Safety~~ the Alabama
26 State Law Enforcement Agency. ~~All~~ Except as provided in
27 paragraph e., all of the money in the fund shall be used to

1 reimburse ignition interlock device providers who have
2 installed devices in vehicles of indigent persons pursuant to
3 court orders issued under this section. No provider shall be
4 reimbursed for an interlock device installed without the
5 completed affidavit of substantial hardship and the subsequent
6 order of the court granting indigency status. Payments to
7 interlock device providers pursuant to this subdivision shall
8 be made every three months. If the amount of money in the fund
9 at the time payments are made is not sufficient to pay all
10 requests for reimbursement submitted during that three-month
11 period, the Comptroller shall make payments on a pro rata
12 basis and those payments shall be considered payment in full
13 for the requests submitted. At the end of each fiscal year,
14 all monies above five hundred thousand dollars (\$500,000)
15 remaining in the Alabama Ignition Interlock Indigent Fund
16 shall be divided as follows:

17 "1. Thirty percent to the Highway Traffic Safety
18 Fund administered by the ~~Department of Public Safety~~ Alabama
19 State Law Enforcement Agency.

20 "2. Twenty percent to the Alabama Chemical Testing
21 Training and Equipment Trust Fund administered by the
22 Department of Forensic Sciences.

23 "3. Thirty percent to the District Attorney's
24 Solicitor's Fund.

25 "4. Twenty percent to the Office of Prosecution
26 Services.

1 "e. Notwithstanding the provisions of paragraph d.,
2 10 percent of the first five hundred thousand dollars
3 (\$500,000) collected in the fund each year may be used by the
4 Alabama State Law Enforcement Agency for any of the following
5 additional purposes on an annual basis:

6 "1. Annual reporting and assessment of manufacturer
7 compliance with indigent service requirements.

8 "2. Notice and collection of any fines for
9 noncompliance.

10 "3. Annual inspection of interlock service centers
11 by the agency.

12 "(6) Any defendant who does not own a vehicle or
13 otherwise have an ignition interlock device installed on a
14 vehicle shall be required to pay seventy-five dollars (\$75)
15 per month for the entire period the defendant is required or
16 elects to have an ignition interlock device unless the
17 defendant is determined by the court to be indigent as
18 provided for in subdivision (3). The defendant shall still
19 serve all license suspension or revocation, or both, during
20 this period. Any monies paid pursuant to this subdivision
21 shall be paid to the court clerk and shall be deposited in the
22 Alabama Impaired Driving Prevention and Enforcement Fund in
23 the State Treasury to be used by the ~~Department of Public~~
24 ~~Safety~~ Alabama State Law Enforcement Agency for impaired
25 driving education and enforcement.

1 "(j) No person who is prohibited from operating a
2 motor vehicle unless it is equipped with an ignition interlock
3 device as provided in Section 32-5A-191 shall knowingly:

4 "(1) Operate, lease, or borrow a motor vehicle
5 unless that vehicle is equipped with a functioning ignition
6 interlock device.

7 "(2) Request or solicit any other person to blow
8 into an ignition interlock device or to start a motor vehicle
9 equipped with the device for the purpose of providing the
10 person so restricted with an operable motor vehicle.

11 "(k) (1) Any person who operates a motor vehicle in
12 violation of subsection (j) shall be immediately removed from
13 the vehicle and taken into custody. The vehicle, regardless of
14 ownership or possessory interest of the operator or person
15 present in the vehicle, except when the owner of the vehicle
16 or another family member of the owner is present in the
17 vehicle and presents a valid driver's license, shall be
18 impounded by any duly sworn law enforcement officer pursuant
19 to Section 32-6-19(c). If there is an emergency or medical
20 necessity jeopardizing life or limb, the law enforcement
21 officer may elect not to impound the vehicle.

22 "(2) A violation of subsection (j) on the first
23 offense is a Class A misdemeanor ~~and punishable as provided by~~
24 ~~law~~. In addition, the time the defendant is required to use an
25 ignition interlock device shall be extended by six months.
26 Upon second conviction of a violation of subsection (j), the
27 sentence shall include a mandatory sentence, which is not

1 subject to suspension or probation, of imprisonment in the
2 county or municipal jail for not less than 48 hours and the
3 time the defendant is required to use an ignition interlock
4 device shall be extended by six months. Upon a third or
5 subsequent conviction of a violation of subsection (j), the
6 sentence shall include a mandatory sentence, which is not
7 subject to suspension or probation, of imprisonment in the
8 county or municipal jail for not less than five days and the
9 time the defendant shall be required to use an ignition
10 interlock device shall be extended by one year.

11 "(l) No person shall blow into an ignition interlock
12 device or start a motor vehicle equipped with the device for
13 the purpose of providing an operable motor vehicle to a person
14 who is prohibited from operating a motor vehicle without an
15 ignition interlock device.

16 "(m) No person shall intentionally attempt to tamper
17 with, defeat, or circumvent the operation of an ignition
18 interlock device.

19 "(n) Any person convicted of a violation of this
20 section other than subsection (j) shall be punished by
21 imprisonment for not more than six months or a fine of not
22 more than five hundred dollars (\$500), or both."

23 Section 2. Five years from the effective date of
24 this act, Section 32-5A-191, Code of Alabama 1975, as amended
25 by Section 1 of this act, is further amended to read as
26 follows:

27 §32-5A-191.

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

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

5 "(2) Under the influence of alcohol;

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

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

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

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

23 Notwithstanding the foregoing, upon the first violation of
24 this subsection by a person whose blood alcohol level is
25 between 0.02 and 0.08, the person's driver's license or
26 driving privilege shall be suspended for a period of 30 days
27 in lieu of any penalties provided in subsection (e) of this

1 section, and there shall be no disclosure, other than to
2 courts, law enforcement agencies, the person's attorney of
3 record, and the person's employer, by any entity or person of
4 any information, documents, or records relating to the
5 person's arrest, conviction, or adjudication of or finding of
6 delinquency based on this subsection.

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

16 "(c) (1) A school bus or day care driver shall not
17 drive or be in actual physical control of any vehicle while in
18 performance of his or her duties if there is greater than 0.02
19 percent by weight of alcohol in his or her blood. A person
20 convicted pursuant to this subsection shall be subject to the
21 penalties provided by this section, except that on the first
22 conviction the Secretary of the Alabama State Law Enforcement
23 Agency shall suspend the driving privilege or driver's license
24 for a period of one year.

25 "(2) A person shall not drive or be in actual
26 physical control of a commercial motor vehicle, as defined in
27 49 CFR Part 383.5 of the Federal Motor Carrier Safety

1 Regulations as adopted pursuant to Section 32-9A-2, if there
2 is 0.04 percent or greater by weight of alcohol in his or her
3 blood. Notwithstanding the other provisions of this section,
4 the commercial driver's license or commercial driving
5 privilege of a person convicted of violating this subdivision
6 shall be disqualified for the period provided in accordance
7 with 49 CFR Part 383.51, as applicable, and the person's
8 regular driver's license or privilege to drive a regular motor
9 vehicle shall be governed by the remainder of this section if
10 the person is guilty of a violation of another provision of
11 this section.

12 "(3) Any commutation of suspension or revocation
13 time as it relates to a court order, approval, and
14 installation of an ignition interlock device shall not apply
15 to commercial driving privileges or disqualifications.

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

20 "(e) Upon first conviction, a person violating this
21 section shall be punished by imprisonment in the county or
22 municipal jail for not more than one year, or by fine of not
23 less than six hundred dollars (\$600) nor more than two
24 thousand one hundred dollars (\$2,100), or by both a fine and
25 imprisonment. In addition, on a first conviction, the
26 Secretary of the Alabama State Law Enforcement Agency shall
27 suspend the driving privilege or driver's license of the

1 person convicted for a period of 90 days. The 90-day
2 suspension shall be stayed if the offender elects to have an
3 approved ignition interlock device installed and operating on
4 the designated motor vehicle driven by the offender for 90
5 days. The offender shall present proof of installation of the
6 approved ignition interlock device to the Alabama State Law
7 Enforcement Agency and obtain an ignition interlock restricted
8 driver license. The remainder of the suspension shall be
9 commuted upon the successful completion of the elected use,
10 mandated use, or both, of the ignition interlock device. If,
11 on a first conviction, any person refusing to provide a blood
12 alcohol concentration or if a child under the age of 14 years
13 was a passenger in the vehicle at the time of the offense or
14 if someone else besides the offender was injured at the time
15 of the offense, or if the offender is found to have had at
16 least 0.15 percent or more by weight of alcohol in his or her
17 blood while operating or being in actual control of a vehicle,
18 the Secretary of the Alabama State Law Enforcement Agency
19 shall suspend the driving privilege or driver's license of the
20 person convicted for a period of 90 days and the person shall
21 be required to have an ignition interlock device installed and
22 operating on the designated motor vehicle driven by the
23 offender for a period of one year from the date of issuance of
24 a driver's license indicating that the person's driving
25 privileges are subject to the condition of the installation
26 and use of a certified ignition interlock device on a motor
27 vehicle. After a minimum of 45 days of the license revocation

1 or suspension pursuant to Section 32-5A-304 or this section,
2 or both, is completed, upon receipt of a court order from the
3 convicting court, upon issuance of an ignition interlock
4 restricted driver license, and upon proof of installation of
5 an operational approved ignition interlock device on the
6 designated vehicle of the person convicted, the mandated
7 ignition interlock period of one year provided in this
8 subsection shall start and the suspension period, revocation
9 period, or both, as required under this subsection shall be
10 stayed. The remainder of the driver license revocation period,
11 suspension period, or both, shall be commuted upon the
12 successful completion of the period of time in which the
13 ignition interlock device is mandated to be installed and
14 operational.

15 "(f) On a second conviction within a five-year
16 period, a person convicted of violating this section shall be
17 punished by a fine of not less than one thousand one hundred
18 dollars (\$1,100) nor more than five thousand one hundred
19 dollars (\$5,100) and by imprisonment, which may include hard
20 labor in the county or municipal jail for not more than one
21 year. The sentence shall include a mandatory sentence, which
22 is not subject to suspension or probation, of imprisonment in
23 the county or municipal jail for not less than five days or
24 community service for not less than 30 days. In addition, the
25 Secretary of the Alabama State Law Enforcement Agency shall
26 revoke the driving privileges or driver's license of the
27 person convicted for a period of one year and the offender

1 shall be required to have an ignition interlock device
2 installed and operating on the designated motor vehicle driven
3 by the offender for a period of two years from the date of
4 issuance of a driver's license indicating that the person's
5 driving privileges are subject to the condition of the
6 installation and use of a certified ignition interlock device
7 on a motor vehicle. After a minimum of 45 days of the license
8 revocation or suspension pursuant to Section 32-5A-304, this
9 section, or both, is completed, upon receipt of a court order
10 from the convicting court, upon issuance of an ignition
11 interlock restricted driver license, and upon proof of
12 installation of an operational approved ignition interlock
13 device on the designated vehicle of the person convicted, the
14 mandated ignition interlock period of two years approved in
15 this subsection shall start and the suspension period,
16 revocation period, or both, as required under this subsection
17 shall be stayed. The remainder of the driver license
18 revocation period, suspension period, or both, shall be
19 commuted upon the successful completion of the period of time
20 in which the ignition interlock device is mandated to be
21 installed and operational.

22 "(g) On a third conviction, a person convicted of
23 violating this section shall be punished by a fine of not less
24 than two thousand one hundred dollars (\$2,100) nor more than
25 ten thousand one hundred dollars (\$10,100) and by
26 imprisonment, which may include hard labor, in the county or
27 municipal jail for not less than 60 days nor more than one

1 year, to include a minimum of 60 days which shall be served in
2 the county or municipal jail and cannot be probated or
3 suspended. In addition, the Secretary of the Alabama State Law
4 Enforcement Agency shall revoke the driving privilege or
5 driver's license of the person convicted for a period of three
6 years and the offender shall be required to have an ignition
7 interlock device installed and operating on the designated
8 motor vehicle driven by the offender for a period of three
9 years from the date of issuance of a driver's license
10 indicating that the person's driving privileges are subject to
11 the condition of the installation and use of a certified
12 ignition interlock device on a motor vehicle. After a minimum
13 of 60 days of the license revocation or suspension pursuant to
14 Section 32-5A-304, this section, or both, is completed, upon
15 receipt of a court order from the convicting court, upon
16 issuance of an ignition interlock restricted driver license,
17 and upon proof of installation of an operational approved
18 ignition interlock device on the designated vehicle of the
19 person convicted, the mandated ignition interlock period of
20 three years provided in this subsection shall start and the
21 suspension period, revocation period, or both, as required
22 under this subsection shall be stayed. The remainder of the
23 driver license revocation period, suspension period, or both,
24 shall be commuted upon the successful completion of the period
25 of time in which the ignition interlock device is mandated to
26 be installed and operational.

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

1 device installed and operating on the designated motor vehicle
2 driven by the offender for a period of four years from the
3 date of issuance of a driver's license indicating that the
4 person's driving privileges are subject to the condition of
5 the installation and use of a certified ignition interlock
6 device on a motor vehicle. After a minimum of one year of the
7 license revocation or suspension pursuant to Section
8 32-5A-304, this section, or both, is completed, upon receipt
9 of a court order from the convicting court, upon issuance of
10 an ignition interlock restricted driver license, and upon
11 proof of installation of an operational approved ignition
12 interlock device on the designated vehicle of the person
13 convicted, the mandated ignition interlock period of four
14 years provided in this subsection shall start and the
15 suspension period, revocation period, or both, as required
16 under this subsection shall be stayed. The remainder of the
17 driver license revocation period, suspension period, or both,
18 shall be commuted upon the successful completion of the period
19 of time in which the ignition interlock device is mandated to
20 be installed and operational.

21 "The Alabama habitual felony offender law shall not
22 apply to a conviction of a felony pursuant to this subsection,
23 and a conviction of a felony pursuant to this subsection shall
24 not be a felony conviction for purposes of the enhancement of
25 punishment pursuant to Alabama's habitual felony offender law.
26 However, prior misdemeanor or felony convictions for driving
27 under the influence may be considered as part of the

1 sentencing calculations or determinations under the Alabama
2 Sentencing Guidelines or rules promulgated by the Alabama
3 Sentencing Commission.

4 "(i) When any person convicted of violating this
5 section is found to have had at least 0.15 percent or more by
6 weight of alcohol in his or her blood while operating or being
7 in actual physical control of a vehicle, he or she shall be
8 sentenced to at least double the minimum punishment that the
9 person would have received if he or she had had less than 0.15
10 percent by weight of alcohol in his or her blood. This
11 subsection does not apply to the duration of time an ignition
12 interlock device is required by this section. If the
13 adjudicated offense is a misdemeanor, the minimum punishment
14 shall be imprisonment for one year, all of which may be
15 suspended except as otherwise provided for in subsections (f)
16 and (g).

17 "(j) When any person over the age of 21 years is
18 convicted of violating this section and it is found that a
19 child under the age of 14 years was a passenger in the vehicle
20 at the time of the offense, the person shall be sentenced to
21 at least double the minimum punishment that the person would
22 have received if the child had not been a passenger in the
23 motor vehicle. This subsection does not apply to the duration
24 of time an ignition interlock device is required by this
25 section.

26 "(k) (1) In addition to the penalties provided
27 herein, any person convicted of violating this section shall

1 be referred to the court referral officer for evaluation and
2 referral to appropriate community resources. The defendant
3 shall, at a minimum, be required to complete a DUI or
4 substance abuse court referral program approved by the
5 Administrative Office of Courts and operated in accordance
6 with provisions of the Mandatory Treatment Act of 1990,
7 Sections 12-23-1 to 12-23-19, inclusive. The Alabama State Law
8 Enforcement Agency shall not reissue a driver's license to a
9 person convicted under this section without receiving proof
10 that the defendant has successfully completed the required
11 program.

12 "(2) Upon conviction, the court shall notify the
13 Alabama State Law Enforcement Agency if the person convicted
14 is required to install and maintain an approved ignition
15 interlock device. The agency shall suspend or revoke a
16 person's driving privileges until completion of the mandatory
17 suspension or revocation period required by this section, and
18 clearance of all other suspensions, revocations,
19 cancellations, or denials, and proof of installation of an
20 approved ignition interlock device is presented to the agency.
21 The agency shall not reissue a driver's license to a person
22 who has been ordered by a court or is required by law to have
23 the ignition interlock device installed until proof is
24 presented that the person is eligible for reinstatement of
25 driving privileges. Upon presentation of proof and compliance
26 with all ignition interlock requirements, the agency shall
27 issue a driver's license with a restriction indicating that

1 the licensee may operate a motor vehicle only with the
2 certified ignition interlock device installed and properly
3 operating. If the licensee fails to maintain the approved
4 ignition interlock device as required or is otherwise not in
5 compliance with any order of the court, the court shall notify
6 the agency of the noncompliance and the agency shall suspend
7 the person's driving privileges until the agency receives
8 notification from the court that the licensee is in
9 compliance. The requirement that the licensee use the ignition
10 interlock device may be removed only when the court of
11 conviction confirms to the agency that the licensee is no
12 longer subject to the ignition interlock device requirement.

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

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

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

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

1 over the minimum fine authorized, and upon collection shall be
2 distributed to the municipal general fund with the remaining
3 10 percent distributed to the State General Fund. In addition
4 to fines imposed pursuant to this subsection, a mandatory fee
5 of one hundred dollars (\$100) shall be collected from any
6 individual that successfully completes any pretrial diversion
7 or deferral program in any municipal, district, or circuit
8 court where the individual was charged with a violation of
9 this section or a corresponding municipal ordinance. The one
10 hundred dollars (\$100) shall be deposited into the Alabama
11 Chemical Testing Training and Equipment Fund.

12 "(n) (1) A person who has been arrested for violating
13 this section shall not be released from jail under bond or
14 otherwise, until there is less than the same percent by weight
15 of alcohol in his or her blood as specified in
16 subsection(a) (1) or, in the case of a person who is under the
17 age of 21 years, subsection (b) hereof.

18 "(2) A judge may require an offender to install and
19 use a certified ignition interlock device as a condition of
20 bond. In that instance, the Secretary of the Alabama State Law
21 Enforcement Agency shall issue the offender a restricted
22 driver's license indicating the person's driving privileges
23 are subject to the condition of the installation and use of a
24 certified ignition interlock device on a motor vehicle. Any
25 driver's license suspension or revocation period pursuant to
26 Section 32-5A-304 shall be stayed during the period the
27 offender is under the bond condition. The period of time the

1 offender has the ignition interlock device installed as a
2 condition of bond shall not be credited to any requirement to
3 have an ignition interlock device upon conviction.

4 "(o) Upon verification that a defendant arrested
5 pursuant to this section is currently on probation from
6 another court of this state as a result of a conviction for
7 any criminal offense, the prosecutor shall provide written or
8 oral notification of the defendant's subsequent arrest and
9 pending prosecution to the court in which the prior conviction
10 occurred.

11 "(p) A prior conviction within a five-year period
12 for driving under the influence of alcohol or drugs from this
13 state, a municipality within this state, or another state or
14 territory or a municipality of another state or territory
15 shall be considered by a court for imposing a sentence
16 pursuant to this section.

17 "(q) Any person convicted of driving under the
18 influence of alcohol, or a controlled substance, or both, or
19 any substance which impairs the mental or physical faculties
20 in violation of this section, a municipal ordinance adopting
21 this section, or a similar law from another state or territory
22 or a municipality of another state or territory more than once
23 in a five-year period shall have his or her motor vehicle
24 registration for all vehicles owned by the repeat offender
25 suspended by the Alabama Department of Revenue for the
26 duration of the offender's driver's license suspension period,
27 unless such action would impose an undue hardship to any

1 individual, not including the repeat offender, who is
2 completely dependent on the motor vehicle for the necessities
3 of life, including any family member of the repeat offender
4 and any co-owner of the vehicle or, in the case of a repeat
5 offender, if the repeat offender has a functioning ignition
6 interlock device installed on the designated vehicle for the
7 duration of the offender's driver's license suspension period.

8 "(r) (1) Any person ordered by the court to have an
9 ignition interlock device installed on a designated vehicle,
10 and any person who elects to have the ignition interlock
11 device installed on a designated vehicle for the purpose of
12 reducing a period of suspension or revocation of his or her
13 driver's license, shall pay to the court, following his or her
14 conviction, two hundred dollars (\$200), which may be paid in
15 installments and which shall be divided as follows:

16 "a. Seventeen percent to the Alabama Interlock
17 Indigent Fund.

18 "b. For cases in the district or circuit court, 30
19 percent to the State Judicial Administration Fund administered
20 by the Administrative Office of Courts and for cases in the
21 municipal court, 30 percent to the municipal judicial
22 administration fund of the municipality where the municipal
23 court is located to be used for the operation of the municipal
24 court.

25 "c. Thirty percent to the Highway Traffic Safety
26 Fund administered by the Alabama State Law Enforcement Agency.

1 "d. Twenty-three percent to the District Attorney's
2 Solicitor Fund.

3 "(2) In addition to paying the court clerk the fee
4 required above following the conviction or the voluntary
5 installation of the ignition interlock device, the defendant
6 shall pay all costs associated with the installation,
7 purchase, maintenance, or lease of the ignition interlock
8 devices to an approved ignition interlock provider pursuant to
9 the rules of the Department of Forensic Sciences, unless the
10 defendant is subject to Section 32-5A-191.4(i)(4).

11 "(s) The defendant shall designate the vehicle to be
12 used by identifying the vehicle by the vehicle identification
13 number to the court. The defendant, at his or her own expense,
14 may designate additional motor vehicles on which an ignition
15 interlock device may be installed for the use of the
16 defendant.

17 "(t) (1) Any person who is required to comply with
18 the ignition interlock provisions of this section as a
19 condition of restoration or reinstatement of his or her
20 driver's license, shall only operate the designated vehicle
21 equipped with a functioning ignition interlock device for the
22 period of time consistent with the offense for which he or she
23 was convicted as provided for in this section.

24 "(2) The duration of the time an ignition interlock
25 device is required by this section shall be one year if the
26 offender refused the prescribed chemical test for
27 intoxication.

1 "(u) (1) The Alabama State Law Enforcement Agency may
2 set a fee of not more than one hundred fifty dollars (\$150)
3 for the issuance of a driver's license indicating that the
4 person's driving privileges are subject to the condition of
5 the installation and use of a certified ignition interlock
6 device on a motor vehicle. Fifteen percent of the fee shall be
7 distributed to the general fund of the county where the person
8 was convicted to be utilized for law enforcement purposes.
9 Eighty-five percent shall be distributed to the State General
10 Fund. In addition, at the end of the time the person's driving
11 privileges are subject to the above conditions, the agency
12 shall set a fee of not more than seventy-five dollars (\$75) to
13 reissue a regular driver's license. The fee shall be deposited
14 as provided in Sections 32-6-5, 32-6-6, and 32-6-6.1.

15 "(2) The defendant shall provide proof of
16 installation of an approved ignition interlock device to the
17 Alabama State Law Enforcement Agency as a condition of the
18 issuance of a restricted driver's license.

19 "(3) Any ignition interlock driving violation
20 committed by the offender during the mandated ignition
21 interlock period shall extend the duration of ignition
22 interlock use for six months. Ignition interlock driving
23 violations include any of the following:

24 "a. A breath sample at or above a minimum blood
25 alcohol concentration level of 0.02 recorded four or more
26 times during the monthly reporting period unless a subsequent

1 test performed within 10 minutes registers a breath alcohol
2 concentration lower than 0.02.

3 "b. Any tampering, circumvention, or bypassing of
4 the ignition interlock device, or attempt thereof.

5 "c. Failure to comply with the servicing or
6 calibration requirements of the ignition interlock device
7 every 30 days.

8 "(v) Nothing in this section and Section 32-5A-191.4
9 shall require an employer to install an ignition interlock
10 device in a vehicle owned or operated by the employer for use
11 by an employee required to use the device as a condition of
12 driving pursuant to this section and Section 32-5A-191.4.

13 "(w) The provisions in this section and Section
14 32-5A-191.4 relating to ignition interlock devices shall not
15 apply to persons who commit violations of this section while
16 under 19 years of age and who are adjudicated in juvenile
17 court, unless specifically ordered otherwise by the court.

18 "(x) (1) The amendatory language in Act 2014-222 to
19 this section, authorizing the Alabama State Law Enforcement
20 Agency to stay a driver's license suspension or revocation
21 upon compliance with the ignition interlock requirement shall
22 apply retroactively if any of the following occurs:

23 "a. The offender files an appeal with the court of
24 jurisdiction requesting all prior suspensions or revocation,
25 or both, be stayed upon compliance with the ignition interlock
26 requirement.

1 "b. The offender wins appeal with the court of
2 jurisdiction relating to this section.

3 "c. The court of jurisdiction notifies the Alabama
4 State Law Enforcement Agency that the offender is eligible to
5 have the driver's license stayed.

6 "d. The Alabama State Law Enforcement Agency issues
7 an ignition interlock restricted driver's license.

8 "e. The offender remains in compliance of ignition
9 interlock requirements.

10 " (2) The remainder of the driver license revocation,
11 suspension, or both, shall be commuted upon the successful
12 completion of the period of time in which the ignition
13 interlock device is mandated to be installed and operational.

14 ~~"(y) (1) Any person charged in a district, circuit,
15 or municipal court with a violation of this section or a
16 municipal ordinance adopted in conformance with this section
17 who is approved for any pretrial diversion program or similar
18 program shall be required to install an ignition interlock
19 device for a minimum of six months or the duration of the
20 pretrial diversion program, whichever is greater, and meet all
21 the requirements of this section and Section 32-5A-191.4. A
22 participant in a pretrial diversion program shall be eligible
23 for indigency status if the program enrolls indigent
24 defendants and waives fees for indigent defendants.~~

25 ~~"(2) Upon receipt of a court order or an agreement
26 from the district attorney or prosecutor indicating the
27 offender has entered a pretrial diversion program or any other~~

1 ~~form of deferred prosecution agreement, the Secretary of the~~
2 ~~Alabama State Law Enforcement Agency shall indicate as the~~
3 ~~agency shall determine the person's driving privileges are~~
4 ~~subject to the condition of the installation and use of a~~
5 ~~certified ignition interlock device on a motor vehicle. Any~~
6 ~~driver's license suspension period pursuant to Section~~
7 ~~32-5A-304 shall be stayed and then commuted upon the~~
8 ~~successful completion of the pretrial diversion program, or~~
9 ~~any other form of deferred prosecution agreement.~~

10 "~~(z)~~ (y) Pursuant to Section 15-22-54, the maximum
11 probation period for persons convicted under this section
12 shall be extended until all ignition interlock requirements
13 have been completed by the offender."

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

22 Section 4. (a) The provisions of Section 1 and
23 Section 2 shall govern the construction and punishment for any
24 offense defined in Section 1 and Section 2 committed after the
25 effective date of this act, except the provisions of
26 subsection (y) of Section 32-5A-191, Code of Alabama 1975, as

1 amended by Section 1, shall only apply for five years after
2 the effective date of this act.

3 (b) The provisions of Section 1 do not apply to or
4 govern the construction and punishment of any offense
5 committed prior to the effective date of this act. The
6 provisions of Section 2 do not apply to or govern the
7 construction and punishment of any offense committed prior to
8 the effective date of Section 2.

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

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 13-FEB-18

Read for the second time and placed on the calen-
dar 1 amendment..... 15-FEB-18

Read for the third time and passed as amended 06-MAR-18

Yeas 28
Nays 0

Patrick Harris,
Secretary.