

ACT No. 2006- 654

1 HB117
2 84931-2
3 By Representative Black (M)
4 RFD: Judiciary
5 First Read: 10-JAN-06
6 PFD: 01/05/2006



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ENROLLED, An Act,

To repeal Act 2006-298, amending Section 32-5A-191, Code of Alabama 1975; to amend Section 32-5A-191, as amended by Act 2005-326, 1st Special Session (Acts 2005, p. 795), relating to driving while under the influence of alcohol or a controlled substance; to provide that a prior conviction for driving under the influence of alcohol or drugs from this state, a municipality within this state, or another state or territory or a municipality of another state or territory could be considered by a court for enhancement of the sentence of a person who is convicted for driving under the influence; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 32-5A-191, Code of Alabama 1975, as amended by Act 2005-326, 1st Special Session (Acts 2005, p. 795), is amended to read as follows:

"§32-5A-191.

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

"(1) There is 0.08 percent or more by weight of 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 .02 percentage or more by weight of alcohol in his or
14 her blood. The Department of Public Safety shall suspend or
15 revoke the driver's license of any person, including, but not
16 limited to, a juvenile, child, or youthful offender, convicted
17 or adjudicated of, or subjected to a finding of delinquency
18 based on this subsection. Notwithstanding the foregoing, upon
19 the first violation of this subsection by a person whose blood
20 alcohol level is between .02 and .08, the person's driver's
21 license or driving privilege shall be suspended for a period
22 of 30 days in lieu of any penalties provided in subsection (e)
23 of this section and there shall be no disclosure, other than
24 to courts, law enforcement agencies, and the person's
25 employer, by any entity or person of any information,

1 documents, or records relating to the person's arrest,
 2 conviction, or adjudication of or finding of delinquency based
 3 on this subsection.

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

13 "(c) (1) A school bus or day care driver shall not
 14 drive or be in actual physical control of any vehicle while in
 15 performance of his or her duties if there is greater than .02
 16 percentage by weight of alcohol in his or her blood. A person
 17 convicted pursuant to this subsection shall be subject to the
 18 penalties provided by this section except that on the first
 19 conviction the Director of Public Safety shall suspend the
 20 driving privilege or driver's license for a period of one
 21 year.

22 "(2) A person shall not drive or be in actual
 23 physical control of a commercial motor vehicle as defined in
 24 49 CFR Part 390.5 of the Federal Motor Carrier Safety
 25 Regulations as adopted pursuant to Section 32-9A-2, if there

1 is .04 percentage or greater by weight of alcohol in his or
2 her blood. Notwithstanding the other provisions of this
3 section, the commercial driver's license or commercial driving
4 privilege of a person convicted of violating this subdivision
5 shall be suspended for the period provided in accordance with
6 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and
7 the person's regular driver's license or privilege to drive a
8 regular motor vehicle shall be governed by the remainder of
9 this section if the person is guilty of a violation of another
10 provision of this section.

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

15 "(e) Upon first conviction, a person violating this
16 section shall be punished by imprisonment in the county or
17 municipal jail for not more than one year, or by fine of not
18 less than six hundred dollars (\$600) nor more than two
19 thousand one hundred dollars (\$2,100), or by both a fine and
20 imprisonment. In addition, on a first conviction, the Director
21 of Public Safety shall suspend the driving privilege or
22 driver's license of the person convicted for a period of 90
23 days.

24 "(f) On a second conviction within a five-year
25 period, a person convicted of violating this section shall be

1 punished by a fine of not less than one thousand one hundred
2 dollars (\$1,100) nor more than five thousand one hundred
3 dollars (\$5,100) and by imprisonment, which may include hard
4 labor in the county or municipal jail for not more than one
5 year. The sentence shall include a mandatory sentence, which
6 is not subject to suspension or probation, of imprisonment in
7 the county or municipal jail for not less than five days or
8 community service for not less than 30 days. In addition the
9 Director of Public Safety shall revoke the driving privileges
10 or driver's license of the person convicted for a period of
11 one year.

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

23 "(h) On a fourth or subsequent conviction, a person
24 convicted of violating this section shall be guilty of a Class
25 C felony and punished by a fine of not less than four thousand

1 one hundred dollars (\$4,100) nor more than ten thousand one
2 hundred dollars (\$10,100) and by imprisonment of not less than
3 one year and one day nor more than 10 years. Any term of
4 imprisonment may include hard labor for the county or state,
5 and where imprisonment does not exceed three years confinement
6 may be in the county jail. Where imprisonment does not exceed
7 one year and one day, confinement shall be in the county jail.
8 The minimum sentence shall include a term of imprisonment for
9 at least one year and one day, provided, however, that there
10 shall be a minimum mandatory sentence of 10 days which shall
11 be served in the county jail. The remainder of the sentence
12 may be suspended or probated, but only if as a condition of
13 probation the defendant enrolls and successfully completes a
14 state certified chemical dependency program recommended by the
15 court referral officer and approved by the sentencing court.
16 Where probation is granted, the sentencing court may, in its
17 discretion, and where monitoring equipment is available, place
18 the defendant on house arrest under electronic surveillance
19 during the probationary term. In addition to the other
20 penalties authorized, the Director of Public Safety shall
21 revoke the driving privilege or driver's license of the person
22 convicted for a period of five years.

23 ~~"Any law to the contrary notwithstanding, the~~ The
24 Alabama habitual felony offender law shall not apply to a
25 conviction of a felony pursuant to this subsection, and a

1 conviction of a felony pursuant to this subsection shall not
2 be a felony conviction for purposes of the enhancement of
3 punishment pursuant to Alabama's habitual felony offender law.

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

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

20 "(k) Except for fines collected for violations of
21 this section charged pursuant to a municipal ordinance, fines
22 collected for violations of this section shall be deposited to
23 the State General Fund; however, beginning October 1, 1995, of
24 any amount collected over two hundred fifty dollars (\$250) for
25 a first conviction, over five hundred dollars (\$500) for a

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

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

1 credited to the State General Fund and 50 percent deposited as
2 otherwise provided by law for municipal ordinance violations.
3 Any amounts collected over these amounts shall be deposited as
4 otherwise provided by law for municipal ordinance violations.
5 Notwithstanding any provision of law to the contrary, 90
6 percent of any fine assessed and collected for any DUI offense
7 charged by municipal ordinance violation in district or
8 circuit court shall be computed only on the amount assessed
9 over the minimum fine authorized, and upon collection shall be
10 distributed to the municipal general fund with the remaining
11 10 percent distributed to the State General Fund.

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

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

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

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

13 "~~(o)~~ (p) Any person convicted of driving under the
14 influence of alcohol, or a controlled substance, or both, or
15 any substance which impairs the mental or physical faculties
16 in violation of this section, a municipal ordinance adopting
17 this section, or a similar law from another state or territory
18 or a municipality of another state or territory more than once
19 in a five-year period shall have his or her motor vehicle
20 registration for all vehicles owned by the repeat offender
21 suspended by the Alabama Department of Revenue for the
22 duration of the offender's driver's license suspension period,
23 unless such action would impose an undue hardship to any
24 individual, not including the repeat offender, who is
25 completely dependent on the motor vehicle for the necessities

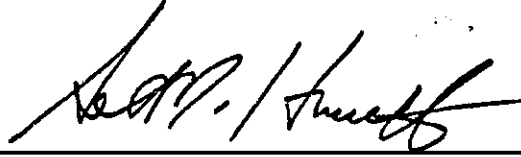
1 of life, including any family member of the repeat offender
2 and any co-owner of the vehicle."

3 Section 2. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 3. Act 2006-298, amending Section 32-5A-191,
12 Code of Alabama 1975, is repealed.

13 Section 4. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives




President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 17-JAN-06.

Greg Pappas
Clerk

Senate	17-APR-06	Amended and Passed
House	17-APR-06	Concurred in Senate Amendment

APPROVED April 28, 2006
 TIME 10:00 a.m.

 GOVERNOR

Alabama Secretary Of State
 Act Num.....: 2006-654
 Bill Num....: H-117
 Recv'd 04/28/06 11:12amJJB