

HB485

By Representative Black (M)

RFD Judiciary

Rd 1 17-FEB-05

SYNOPSIS: Existing law provides that prior convictions for driving under the influence could be considered for enhancement of the sentence of a person who is convicted of driving under the influence, however, the appellate courts of this state have ruled that only prior convictions rendered by Alabama courts could be considered.

This bill would 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 would be considered by a court for enhancement of the sentence of a person who is convicted of driving under the influence.

Amendment 621 of the Constitution of Alabama of 1901 prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of Amendment 621. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in Amendment 621.

A BILL
TO BE ENTITLED
AN ACT

To amend Section 32-5A-191, Code of Alabama 1975, 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, 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;

"(2) Under the influence of alcohol;

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

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

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

"(b) A person who is under the age of 21 years shall not drive or be in actual physical control of any vehicle if there is .02 percentage or more by weight of alcohol in his or her blood. The Department of Public Safety shall suspend or revoke the driver's license of any person, including, but not limited to, a juvenile, child, or youthful offender, convicted or adjudicated of, or subjected to a finding of delinquency based on this subsection. Notwithstanding the foregoing, upon the first violation of this subsection by a person whose blood alcohol level is between .02 and .08, the person's driver's license or driving privilege shall be suspended for a period of 30 days in lieu of any penalties provided in subsection (e) of this section and there shall be no disclosure, other than to courts, law enforcement agencies, and the person's employer, by any entity or person of any information, documents, or records relating to the person's arrest, conviction, or adjudication of or finding of delinquency based on this subsection.

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

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

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

"(e) Upon first conviction, a person violating this section shall be punished by imprisonment in the county or municipal jail for not more than one year, or by fine of not less than six hundred dollars (\$600) nor more than two thousand one hundred dollars (\$2,100), or by both a fine and

imprisonment. In addition, on a first conviction, the Director of Public Safety shall suspend the driving privilege or driver's license of the person convicted for a period of 90 days.

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

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

"(h) On a fourth or subsequent conviction, a person convicted of violating this section shall be guilty of a Class C felony and punished by a fine of not less than four thousand one hundred dollars (\$4,100) nor more than ten thousand one hundred dollars (\$10,100) and by imprisonment of not less than one year and one day nor more than 10 years. Any term of imprisonment may include hard labor for the county or state, and where imprisonment does not exceed three years confinement may be in the county jail. Where imprisonment does not exceed one year and one day, confinement shall be in the county jail. The minimum sentence shall include a term of imprisonment for at least one year and one day, provided, however, that there shall be a minimum mandatory sentence of 10 days which shall be served in the county jail. The remainder of the sentence may be suspended or probated, but only if as a condition of probation the defendant enrolls and successfully completes a state certified chemical dependency program recommended by the court referral officer and approved by the sentencing court. Where probation is granted, the sentencing court may, in its discretion, and where monitoring equipment is available, place the defendant on house arrest under electronic surveillance during the probationary term. In addition to the other penalties authorized, the Director of Public Safety shall revoke the driving privilege or driver's license of the person convicted for a period of five years.

~~"Any law to the contrary notwithstanding, the~~ The Alabama habitual felony offender law shall not apply to a conviction of a felony pursuant to this subsection, and a conviction of a felony pursuant to this subsection shall not be a felony conviction for purposes of the enhancement of punishment pursuant to Alabama's habitual felony offender law.

"(i) In addition to the penalties provided herein, any person convicted of violating this section shall be referred to the court referral officer for evaluation and referral to appropriate community resources. The defendant shall, at a minimum, be required to complete a DUI or substance abuse court referral program approved by the Administrative Office of Courts and operated in accordance with provisions of the Mandatory Treatment Act of 1990, Sections 12-23-1 to 12-23-19, inclusive. The Department of Public Safety shall not reissue a driver's license to a person

convicted under this section without receiving proof that the defendant has successfully completed the required program.

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

"(k) Except for fines collected for violations of this section charged pursuant to a municipal ordinance, fines collected for violations of this section shall be deposited to the State General Fund; however, beginning October 1, 1995, of any amount collected over two hundred fifty dollars (\$250) for a first conviction, over five hundred dollars (\$500) for a second conviction within five years, over one thousand dollars (\$1,000) for a third conviction within five years, and over two thousand dollars (\$2,000) for a fourth or subsequent conviction within five years, the first one hundred dollars (\$100) of that additional amount shall be deposited to the Alabama Chemical Testing Training and Equipment Trust Fund, after three percent of the one hundred dollars (\$100) is deducted for administrative costs, and beginning October 1, 1997, and thereafter, the second one hundred dollars (\$100) of that additional amount shall be deposited in the Impaired Drivers Trust Fund after deducting five percent of the one hundred dollars (\$100) for administrative costs and the remainder of the funds shall be deposited to the State General Fund. Fines collected for violations of this section charged pursuant to a municipal ordinance where the total fine is paid at one time shall be deposited as follows: The first three hundred fifty dollars (\$350) collected for a first conviction, the first six hundred dollars (\$600) collected for a second conviction within five years, the first one thousand one hundred dollars (\$1,100) collected for a third conviction, and the first two thousand one hundred dollars (\$2,100) collected for a fourth or subsequent conviction shall be deposited to the State Treasury with the first one hundred dollars (\$100) collected for each conviction credited to the Alabama Chemical Testing Training and Equipment Trust Fund and the second one hundred dollars (\$100) to the Impaired Drivers Trust Fund after deducting five percent of the one hundred dollars (\$100) for administrative costs and depositing this amount in the general fund of the municipality, and the balance credited to the State General Fund. Any amounts collected over these amounts shall be deposited as otherwise provided by law. Fines collected for violations of this section charged pursuant to a municipal ordinance, where the fine is paid on a partial or installment basis, shall be deposited as follows: The first two hundred dollars (\$200) of the fine collected for any conviction shall be deposited to the State Treasury with the first one hundred dollars (\$100) collected for any conviction credited to the Alabama Chemical Testing Training and Equipment Trust Fund and the second one hundred dollars (\$100) for any conviction credited to the Impaired Drivers Trust Fund after deducting five percent of the one hundred dollars (\$100) for administrative costs and depositing this amount in the general fund of the municipality. The second three hundred dollars (\$300) of the fine collected for a first conviction, the second eight hundred dollars (\$800) collected for a second conviction, the second one thousand eight hundred dollars (\$1,800) collected for a third conviction, and the second three thousand eight hundred dollars (\$3,800) collected for a fourth conviction shall be divided with 50 percent of the funds collected to be deposited to the State Treasury to be credited to the State General Fund and 50 percent deposited as otherwise provided by law for municipal ordinance violations. Any amounts collected over these amounts shall be deposited as otherwise provided by law for municipal ordinance violations. Notwithstanding any provision of law to the contrary, 90 percent of any fine assessed and collected for any DUI offense charged by municipal ordinance violation in district or circuit court shall be computed only on the amount assessed over the minimum fine

authorized, and upon collection shall be distributed to the municipal general fund with the remaining 10 percent distributed to the State General Fund.

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

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

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

"(o) 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 shall be considered by a court for imposing a sentence pursuant to this section.

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

Section 2. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621 because the bill defines a new crime or amends the definition of an existing crime.

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

Crimes and Offenses

Criminal Law and Procedure

Motor Vehicles

Alcoholic Beverages

Controlled Substances

Sentencing

Driving Under the Influence

Code Amended