

1 SB91  
2 126044-1  
3 By Senators Keahey and Glover  
4 RFD: Judiciary  
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, a person convicted of  
9 driving under the influence on the first conviction  
10 is punished by a jail sentence of up to one year or  
11 a fine between \$600 and \$2,100, and his or her  
12 driver's license is suspended for 90 days.

13 This bill would also require the defendant  
14 to attend a session conducted by a victim's impact  
15 program concerning the impact on victims of the  
16 operation of a motor vehicle while under the  
17 influence of alcohol or drugs.

18 Amendment 621 of the Constitution of Alabama  
19 of 1901, now appearing as Section 111.05 of the  
20 Official Recompilation of the Constitution of  
21 Alabama of 1901, as amended, prohibits a general  
22 law whose purpose or effect would be to require a  
23 new or increased expenditure of local funds from  
24 becoming effective with regard to a local  
25 governmental entity without enactment by a 2/3 vote  
26 unless: it comes within one of a number of  
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates  
2 funds, or provides a local source of revenue, to  
3 the entity for the purpose.

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

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
15

16 To amend Section 32-5A-191 of the Code of Alabama  
17 1975, relating to driving under the influence of alcohol or a  
18 controlled substance; to require a defendant convicted on a  
19 first offense to attend a session conducted by a victims  
20 impact program; and in connection therewith would have as its  
21 purpose or effect the requirement of a new or increased  
22 expenditure of local funds within the meaning of Amendment 621  
23 of the Constitution of Alabama of 1901, now appearing as  
24 Section 111.05 of the Official ReCompilation of the  
25 Constitution of Alabama of 1901, as amended.  
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Section 32-5A-191 of the Code of Alabama  
2 1975, is amended to read as follows:

3                   "§32-5A-191.

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

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

8                   "(2) Under the influence of alcohol;

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

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

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

18                   "(b) A person who is under the age of 21 years shall  
19 not drive or be in actual physical control of any vehicle if  
20 there is .02 percentage or more by weight of alcohol in his or  
21 her blood. The Department of Public Safety shall suspend or  
22 revoke the driver's license of any person, including, but not  
23 limited to, a juvenile, child, or youthful offender, convicted  
24 or adjudicated of, or subjected to a finding of delinquency  
25 based on this subsection. Notwithstanding the foregoing, upon  
26 the first violation of this subsection by a person whose blood  
27 alcohol level is between .02 and .08, the person's driver's

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

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

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

1           "(2) A person shall not drive or be in actual  
2 physical control of a commercial motor vehicle as defined in  
3 49 CFR Part 390.5 of the Federal Motor Carrier Safety  
4 Regulations as adopted pursuant to Section 32-9A-2, if there  
5 is .04 percentage or greater by weight of alcohol in his or  
6 her blood. Notwithstanding the other provisions of this  
7 section, the commercial driver's license or commercial driving  
8 privilege of a person convicted of violating this subdivision  
9 shall be suspended for the period provided in accordance with  
10 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and  
11 the person's regular driver's license or privilege to drive a  
12 regular motor vehicle shall be governed by the remainder of  
13 this section if the person is guilty of a violation of another  
14 provision of this section.

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

19           "(e) Upon first conviction, a person violating this  
20 section shall be punished by imprisonment in the county or  
21 municipal jail for not more than one year, or by fine of not  
22 less than six hundred dollars (\$600) nor more than two  
23 thousand one hundred dollars (\$2,100), or by both a fine and  
24 imprisonment. The sentence shall include a requirement that  
25 the defendant attend a single session conducted by a victim's  
26 impact program. For purposes of this subsection, "victim's  
27 impact program" means a program operated by a county, a

1 municipality, or a not-for-profit organization authorized by a  
2 county or municipality, or a combination thereof, which  
3 provides educational information concerning the impact on  
4 victims of operating a motor vehicle while under the influence  
5 of alcohol or a controlled substance. In addition, on a first  
6 conviction, the Director of Public Safety shall suspend the  
7 driving privilege or driver's license of the person convicted  
8 for a period of 90 days.

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

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 Director of Public Safety shall  
4 revoke the driving privilege or driver's license of the person  
5 convicted for a period of three years.

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



1 penalties authorized, the Director of Public Safety shall  
2 revoke the driving privilege or driver's license of the person  
3 convicted for a period of five years.

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

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

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

25 "(k) Except for fines collected for violations of  
26 this section charged pursuant to a municipal ordinance, fines  
27 collected for violations of this section shall be deposited to

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

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

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

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

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

24 "(n) When any person over the age of 21 years is  
25 convicted pursuant to this section and a child under the age  
26 of 14 years was present in the vehicle at the time of the  
27 offense, the defendant shall be sentenced to double the

1 minimum punishment that the person would have received if the  
2 child had not been present in the motor vehicle.

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

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

24 Section 2. Although this bill would have as its  
25 purpose or effect the requirement of a new or increased  
26 expenditure of local funds, the bill is excluded from further  
27 requirements and application under Amendment 621, now

1 appearing as Section 111.05 of the Official ReCompilation of  
2 the Constitution of Alabama of 1901, as amended, because the  
3 bill defines a new crime or amends the definition of an  
4 existing crime.

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