

1 SB149
2 115779-1
3 By Senators Keahey and Glover
4 RFD: Judiciary
5 First Read: 12-JAN-10

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8 SYNOPSIS: This bill would require a person on a first
9 conviction of driving under the influence of
10 alcohol or drugs to attend a victim's impact
11 program which would provide educational information
12 on the impact on victims of operating a motor
13 vehicle under the influence.

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

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

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 To amend Section 32-5A-191 of the Code of Alabama
14 1975, relating to the criminal offense of driving under the
15 influence of alcohol or drugs, to require a person on a first
16 conviction to attend a victim's impact program; and in
17 connection therewith would have as its purpose or effect the
18 requirement of a new or increased expenditure of local funds
19 within the meaning of Amendment 621 of the Constitution of
20 Alabama of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of Alabama of 1901,
22 as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 32-5A-191 of the Code of Alabama
25 1975, is amended to read as follows:

26 "§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 .02 percentage or more by weight of alcohol in his or
18 her blood. The Department of Public Safety shall suspend or
19 revoke the driver's license of any person, including, but not
20 limited to, a juvenile, child, or youthful offender, convicted
21 or adjudicated of, or subjected to a finding of delinquency
22 based on this subsection. Notwithstanding the foregoing, upon
23 the first violation of this subsection by a person whose blood
24 alcohol level is between .02 and .08, the person's driver's
25 license or driving privilege shall be suspended for a period
26 of 30 days in lieu of any penalties provided in subsection (e)
27 of this section and there shall be no disclosure, other than

1 to courts, law enforcement agencies, and the person's
2 employer, by any entity or person of any information,
3 documents, or records relating to the person's arrest,
4 conviction, or adjudication of or finding of delinquency based
5 on this subsection.

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

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

24 "(2) A person shall not drive or be in actual
25 physical control of a commercial motor vehicle as defined in
26 49 CFR Part 390.5 of the Federal Motor Carrier Safety
27 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. The sentence shall include a requirement that
21 the defendant attend a single session conducted by a victim's
22 impact program. For purposes of this subsection, "victim's
23 impact program" means a program operated by a county, a
24 municipality, or a not-for-profit organization authorized by a
25 county or municipality, or a combination thereof, which
26 provides educational information concerning the impact on
27 victims of operating a motor vehicle while under the influence

1 of alcohol or drugs. In addition, ~~on a first conviction,~~ the
2 Director of Public Safety shall suspend the driving privilege
3 or driver's license of the person convicted for a period of 90
4 days.

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

18 "(g) On a third conviction, a person convicted of
19 violating this section shall be punished by a fine of not less
20 than two thousand one hundred dollars (\$2,100) nor more than
21 ten thousand one hundred dollars (\$10,100) and by
22 imprisonment, which may include hard labor, in the county or
23 municipal jail for not less than 60 days nor more than one
24 year, to include a minimum of 60 days which shall be served in
25 the county or municipal jail and cannot be probated or
26 suspended. In addition, the Director of Public Safety shall

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

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

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

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

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

22 "(k) Except for fines collected for violations of
23 this section charged pursuant to a municipal ordinance, fines
24 collected for violations of this section shall be deposited to
25 the State General Fund; however, beginning October 1, 1995, of
26 any amount collected over two hundred fifty dollars (\$250) for
27 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
26 hundred dollars (\$100) to the Impaired Drivers Trust Fund
27 after deducting five percent of the one hundred dollars (\$100)

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

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

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

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

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

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

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

22 Section 2. Although this bill would have as its
23 purpose or effect the requirement of a new or increased
24 expenditure of local funds, the bill is excluded from further
25 requirements and application under Amendment 621, now
26 appearing as Section 111.05 of the Official Recompilation of
27 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 3. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.