

1 HB478  
2 139521-4  
3 By Representatives Jones and Colston  
4 RFD: Judiciary  
5 First Read: 06-MAR-12



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

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

7           ~~"(5) (2)a.~~ Under the influence of any substance  
8 ~~which impairs the mental or physical faculties of such person~~  
9 ~~or substances~~ to a degree which renders him or her incapable  
10 of safely driving.

11           "b. For the purposes of this section, the term  
12 "under the influence" means not having the normal use of  
13 mental or physical faculties by reason of the introduction  
14 into the body of alcohol, a controlled substance, a drug, or  
15 any other substance, or a combination of two or more of those  
16 substances.

17           "(b) A person who is under the age of 21 years shall  
18 not drive or be in actual physical control of any vehicle if  
19 there is 0.02 percent or more by weight of alcohol in his or  
20 her blood. The Department of Public Safety shall suspend or  
21 revoke the driver's license of any person, including, but not  
22 limited to, a juvenile, child, or youthful offender, convicted  
23 or adjudicated of, or subjected to a finding of, delinquency  
24 based on this subsection. Notwithstanding the foregoing, upon  
25 the first violation of this subsection by a person whose blood  
26 alcohol level is between 0.02 and 0.08, the person's driver's  
27 license or driving privilege shall be suspended for a period

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

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

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

26 "(2) A person shall not drive or be in actual  
27 physical control of a commercial motor vehicle, as defined in

1 49 CFR Part 383.5 of the Federal Motor Carrier Safety  
2 Regulations as adopted pursuant to Section 32-9A-2, if there  
3 is 0.04 percent or greater by weight of alcohol in his or her  
4 blood. Notwithstanding the other provisions of this section,  
5 the commercial driver's license or commercial driving  
6 privilege of a person convicted of violating this subdivision  
7 shall be disqualified for the period provided in accordance  
8 with 49 CFR Part 383.51, as applicable, and the person's  
9 regular driver's license or privilege to drive a regular motor  
10 vehicle shall be governed by the remainder of this section if  
11 the person is guilty of a violation of another provision of  
12 this section.

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

17 "(e) Upon first conviction, a person violating this  
18 section shall be punished by imprisonment in the county or  
19 municipal jail for not more than one year, or by fine of not  
20 less than six hundred dollars (\$600) nor more than two  
21 thousand one hundred dollars (\$2,100), or by both a fine and  
22 imprisonment. In addition, on a first conviction, the Director  
23 of Public Safety shall suspend the driving privilege or  
24 driver's license of the person convicted for a period of 90  
25 days. If, on a first conviction, the person provides blood  
26 alcohol concentration of 0.15 or greater or any person  
27 refusing to provide a blood alcohol concentration or if a

1 child under the age of 14 years was present in the vehicle at  
2 the time of the offense or if someone else besides the  
3 offender was injured at the time of the offense, the Director  
4 of the Department of Public Safety shall suspend the driving  
5 privilege or driver's license of the person convicted for a  
6 period of 90 days and the person shall be required to have an  
7 ignition interlock device installed and operating on the  
8 designated motor vehicle driven by the offender for a period  
9 of two 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.

13 "(f) On a second conviction within a five-year  
14 period, a person convicted of violating this section shall be  
15 punished by a fine of not less than one thousand one hundred  
16 dollars (\$1,100) nor more than five thousand one hundred  
17 dollars (\$5,100) and by imprisonment, which may include hard  
18 labor in the county or municipal jail for not more than one  
19 year. The sentence shall include a mandatory sentence, which  
20 is not subject to suspension or probation, of imprisonment in  
21 the county or municipal jail for not less than five days or  
22 community service for not less than 30 days. In addition the  
23 Director of Public Safety shall revoke the driving privileges  
24 or driver's license of the person convicted for a period of  
25 one year and the offender shall be required to have an  
26 ignition interlock device installed and operating on the  
27 designated motor vehicle driven by the offender for a period

1 of two years from the date of issuance of a driver's license  
2 indicating that the person's driving privileges are subject to  
3 the condition of the installation and use of a certified  
4 ignition interlock device on a motor vehicle.

5 "(g) On a third conviction, a person convicted of  
6 violating this section shall be punished by a fine of not less  
7 than two thousand one hundred dollars (\$2,100) nor more than  
8 ten thousand one hundred dollars (\$10,100) and by  
9 imprisonment, which may include hard labor, in the county or  
10 municipal jail for not less than 60 days nor more than one  
11 year, to include a minimum of 60 days which shall be served in  
12 the county or municipal jail and cannot be probated or  
13 suspended. In addition, the Director of Public Safety shall  
14 revoke the driving privilege or driver's license of the person  
15 convicted for a period of three years and the offender shall  
16 be required to have an ignition interlock device installed and  
17 operating on the designated motor vehicle driven by the  
18 offender for a period of three years from the date of issuance  
19 of a driver's license indicating that the person's driving  
20 privileges are subject to the condition of the installation  
21 and use of a certified ignition interlock device on a motor  
22 vehicle.

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  
26 one hundred dollars (\$4,100) nor more than ten thousand one  
27 hundred dollars (\$10,100) and by imprisonment of not less than

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



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) When any person convicted of violating this  
7 section is found to have had at least 0.15 percent or more by  
8 weight of alcohol in his or her blood while operating or being  
9 in actual physical control of a vehicle, he or she shall be  
10 sentenced to at least double the minimum punishment that the  
11 person would have received if he or she had had less than 0.15  
12 percent by weight of alcohol in his or her blood. 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 Section  
16 32-5A-191(f) and Section 32-5A-191 (g). In addition, the  
17 Director of Public Safety shall revoke the driving privileges  
18 or driver's license of the person convicted for a period of  
19 not less than one year.

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

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

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

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

1 distributed to the municipal general fund with the remaining  
2 10 percent distributed to the State General Fund.

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

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

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

22 "(q) A prior conviction within a five-year period  
23 for driving under the influence of alcohol or drugs from this  
24 state, a municipality within this state, or another state or  
25 territory or a municipality of another state or territory  
26 shall be considered by a court for imposing a sentence  
27 pursuant to this section.

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

19           "(s) Any person ordered by the court to have an  
20 ignition interlock device installed on a designated vehicle  
21 shall pay to the court, during the first four months his or  
22 her license is suspended, seventy-five dollars (\$75) per  
23 month, which shall be divided as follows:

24           "(1) Forty percent to the Alabama Interlock Indigent  
25 Fund.

26           "(2) Twenty-five percent to the court of  
27 jurisdiction.

1           "(3) Twenty percent to the Department of Public  
2 Safety.

3           "(4) Fifteen percent to the district attorney of  
4 jurisdiction.

5           "(t) The defendant shall designate the vehicle to be  
6 used by identifying the vehicle by the vehicle identification  
7 number to the court.

8           "(u) (1) Any person who is required to comply with  
9 the ignition interlock provisions of this section as a  
10 condition of restoration or reinstatement of his or her  
11 driver's license, shall only operate the designated vehicle  
12 equipped with a functioning ignition interlock device for the  
13 period of time consistent with the offense for which he or she  
14 was convicted as provided for in this section.

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

20           "(v) (1) The Department of Public Safety may set a  
21 fee of not more than one hundred fifty dollars (\$150) for the  
22 issuance of a driver's license indicating that the person's  
23 driving privileges are subject to the condition of the  
24 installation and use of a certified ignition interlock device  
25 on a motor vehicle. Fifteen percent of the fee shall be  
26 distributed to the general fund of the county where the person  
27 was convicted to be utilized for law enforcement purposes. In

1 addition, at the end of the time the person's driving  
2 privileges are subject to the above conditions, the department  
3 shall set a fee of not more than seventy-five dollars (\$75) to  
4 reissue a regular driver's license. The fee shall be deposited  
5 as provided in Sections 32-6-5, 32-6-6, and 32-6-6.1.

6 "(2) The defendant shall provide proof of  
7 installation of an approved ignition interlock device to the  
8 Department of Public Safety as a condition of the issuance of  
9 a restricted driver's license.

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

16 "a. A breath sample at or above a minimum blood  
17 alcohol concentration level of 0.02 recorded more than four  
18 times during the monthly reporting period.

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

21 "c. Failure to comply with the servicing or  
22 calibration requirements of the ignition interlock device  
23 every 30 days.

24 "(w) Nothing in this section and Section 32-5A-191.4  
25 shall require an employer to install an ignition interlock  
26 device in a vehicle owned or operated by the employer for use



1 by an employee required to use the device as a condition of  
2 driving pursuant to this section and Section 32-5A-191.4."

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. This act shall become effective on August  
12 1, 2012, following its passage and approval by the Governor,  
13 or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... . . . . . 06-MAR-12

Read for the second time and placed  
on the calendar with 1 substitute  
and..... . . . . . 05-APR-12

Read for the third time and passed  
as amended..... . . . . . 12-APR-12

Yeas 54, Nays 8, Abstains 0

Greg Pappas  
Clerk