

1 SB319  
2 155906-4  
3 By Senators Holtzclaw, Waggoner, Dunn and Ward  
4 RFD: Commerce, Transportation, and Utilities  
5 First Read: 06-FEB-14

8 SYNOPSIS: Under existing law, certain persons  
9 convicted of driving under the influence are  
10 required to have an ignition interlock device  
11 installed on their motor vehicles as a condition of  
12 driving.

13 This bill would authorize the Director of  
14 Public Safety to stay the required 90-day  
15 suspension of the driver's license upon a first  
16 conviction for driving under the influence if the  
17 offender has an ignition interlock device installed  
18 on his or her motor vehicle.

19 This bill would authorize the director to  
20 reduce the suspension period for a subsequent  
21 offense if the ignition interlock device is  
22 installed.

23 This bill would require certain offenders to  
24 have the ignition interlock device installed.

25 This bill would provide further for the  
26 distribution of the fee associated with monitoring  
27 the interlock device.

1                   This bill would provide for installation of  
2                   the device where the offender is adjudged indigent.  
3

4                   A BILL

5                   TO BE ENTITLED

6                   AN ACT

7

8                   To amend Sections 32-5A-191, 32-5A-191.4, 32-5A-301,  
9                   and 32-5A-304, Code of Alabama 1975, relating to driving under  
10                  the influence; to provide further for ignition interlock  
11                  devices on the automobiles of certain persons convicted of  
12                  driving under the influence; to provide further for the  
13                  distribution of the fee required of offenders for monitoring  
14                  the ignition interlock device; and to provide for installation  
15                  of the device where the offender is indigent.

16                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17                  Section 1. Sections 32-5A-191, 32-5A-191.4,  
18                  32-5A-301, and 32-5A-304, Code of Alabama 1975, are amended to  
19                  read as follows:

20                  "§32-5A-191.

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

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

25                  "(2) Under the influence of alcohol;

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

10                         "(b) A person who is under the age of 21 years shall  
11 not drive or be in actual physical control of any vehicle if  
12 there is 0.02 percent or more by weight of alcohol in his or  
13 her blood. The Department of Public Safety shall suspend or  
14 revoke the driver's license of any person, including, but not  
15 limited to, a juvenile, child, or youthful offender, convicted  
16 or adjudicated of, or subjected to a finding of, delinquency  
17 based on this subsection. Notwithstanding the foregoing, upon  
18 the first violation of this subsection by a person whose blood  
19 alcohol level is between 0.02 and 0.08, the person's driver's  
20 license or driving privilege shall be suspended for a period  
21 of 30 days in lieu of any penalties provided in subsection (e)  
22 of this section, and there shall be no disclosure, other than  
23 to courts, law enforcement agencies, the person's attorney of  
24 record, and the person's employer, by any entity or person of  
25 any information, documents, or records relating to the  
26 person's arrest, conviction, or adjudication of or finding of  
27 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 (k).

"(c) (1) 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 0.02 percent 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.

"(2) A person shall not drive or be in actual physical control of a commercial motor vehicle, as defined in 49 CFR Part 383.5 of the Federal Motor Carrier Safety Regulations as adopted pursuant to Section 32-9A-2, if there is 0.04 percent or greater by weight of alcohol in his or her blood. Notwithstanding the other provisions of this section, the commercial driver's license or commercial driving privilege of a person convicted of violating this subdivision shall be disqualified for the period provided in accordance

1 with 49 CFR Part 383.51, as applicable, and the person's  
2 regular driver's license or privilege to drive a regular motor  
3 vehicle shall be governed by the remainder of this section if  
4 the person is guilty of a violation of another provision of  
5 this section.

6                   "(3) Any commutation of suspension or revocation  
7 time as it relates to a court order, approval, and  
8 installation of an ignition interlock device shall not apply  
9 to commercial driving privileges or disqualifications.

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

14                  "(e) Upon first conviction, a person violating this  
15 section shall be punished by imprisonment in the county or  
16 municipal jail for not more than one year, or by fine of not  
17 less than six hundred dollars (\$600) nor more than two  
18 thousand one hundred dollars (\$2,100), or by both a fine and  
19 imprisonment. In addition, on a first conviction, the Director  
20 of Public Safety shall suspend the driving privilege or  
21 driver's license of the person convicted for a period of 90  
22 days. The 90-day suspension shall be stayed if the offender  
23 elects to have an approved ignition interlock device installed  
24 and operating on the designated motor vehicle driven by the  
25 offender for six months. The offender shall present proof of  
26 installation of the approved ignition interlock device to the  
27 Department of Public Safety and obtain an ignition interlock

restricted driver license. The remainder of the suspension shall be commuted upon the successful completion of the elected use, mandated use, or both, of the ignition interlock device. If, on a first conviction, any person refusing to provide a blood alcohol concentration or if a child under the age of 14 years was present a passenger in the vehicle at the time of the offense or if someone else besides the offender was injured at the time of the offense, the Director of the Department of Public Safety shall suspend the driving privilege or driver's license of the person convicted for a period of 90 days and the person shall be required to have an ignition interlock device installed and operating on the designated motor vehicle driven by the offender for a period of two years from the date of issuance of a driver's license indicating that the person's driving privileges are subject to the condition of the installation and use of a certified ignition interlock device on a motor vehicle. After a minimum of 45 days of the license revocation or suspension pursuant to Section 32-5A-304 or Section 32-5A-191, or both, is completed, upon receipt of a court order from the convicting court, upon issuance of an ignition interlock restricted driver license, and upon proof of installation of an operational approved ignition interlock device on the designated vehicle of the person convicted, the mandated ignition interlock period of two years provided in this subsection shall start and the suspension period, revocation period, or both, as required under this subsection shall be stayed. The remainder of the

1                   driver license revocation period, suspension period, or both,  
2                   shall be commuted upon the successful completion of the period  
3                   of time in which the ignition interlock device is mandated to  
4                   be installed and operational.

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 and the offender shall be required to have an  
18                  ignition interlock device installed and operating on the  
19                  designated motor vehicle driven by the offender for a period  
20                  of two years from the date of issuance of a driver's license  
21                  indicating that the person's driving privileges are subject to  
22                  the condition of the installation and use of a certified  
23                  ignition interlock device on a motor vehicle. After a minimum  
24                  of 45 days of the license revocation or suspension pursuant to  
25                  Section 32-5A-304, Section 32-5A-191, or both, is completed,  
26                  upon receipt of a court order from the convicting court, upon  
27                  issuance of an ignition interlock restricted driver license,

1                   and upon proof of installation or an operational approved  
2                   ignition interlock device on the designated vehicle of the  
3                   person convicted, the mandated ignition interlock period of  
4                   two years approved in this subsection shall start and the  
5                   suspension period, revocation period, or both, as required  
6                   under this subsection shall be stayed. The remainder of the  
7                   driver license revocation period, suspension period, or both,  
8                   shall be commuted upon the successful completion of the period  
9                   of time in which the ignition interlock device is mandated to  
10                   be installed and operational.

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

1                   vehicle. After a minimum of 180 days of the license revocation  
2                   or suspension pursuant to Section 32-5A-304, Section  
3                   32-5A-191, or both, is completed, upon receipt of a court  
4                   order from the convicting court, upon issuance of an ignition  
5                   interlock restricted driver license, and upon proof of  
6                   installation of an operational approved ignition interlock  
7                   device on the designated vehicle of the person convicted, the  
8                   mandated ignition interlock period of three years provided in  
9                   this subsection shall start and the suspension period,  
10                   revocation period, or both, as required under this subsection  
11                   shall be stayed. The remainder of the driver license  
12                   revocation period, suspension period, or both, shall be  
13                   commuted upon the successful completion of the period of time  
14                   in which the ignition interlock device is mandated to be  
15                   installed and operational.

16                   "(h) On a fourth or subsequent conviction, a person  
17                   convicted of violating this section shall be guilty of a Class  
18                   C felony and punished by a fine of not less than four thousand  
19                   one hundred dollars (\$4,100) nor more than ten thousand one  
20                   hundred dollars (\$10,100) and by imprisonment of not less than  
21                   one year and one day nor more than 10 years. Any term of  
22                   imprisonment may include hard labor for the county or state,  
23                   and where imprisonment does not exceed three years confinement  
24                   may be in the county jail. Where imprisonment does not exceed  
25                   one year and one day, confinement shall be in the county jail.  
26                   The minimum sentence shall include a term of imprisonment for  
27                   at least one year and one day, provided, however, that there

1 shall be a minimum mandatory sentence of 10 days which shall  
2 be served in the county jail. The remainder of the sentence  
3 may be suspended or probated, but only if as a condition of  
4 probation the defendant enrolls and successfully completes a  
5 state certified chemical dependency program recommended by the  
6 court referral officer and approved by the sentencing court.  
7 Where probation is granted, the sentencing court may, in its  
8 discretion, and where monitoring equipment is available, place  
9 the defendant on house arrest under electronic surveillance  
10 during the probationary term. In addition to the other  
11 penalties authorized, the Director of Public Safety shall  
12 revoke the driving privilege or driver's license of the person  
13 convicted for a period of five years and the offender shall be  
14 required to have an ignition interlock device installed and  
15 operating on the designated motor vehicle driven by the  
16 offender for a period of five years from the date of issuance  
17 of a driver's license indicating that the person's driving  
18 privileges are subject to the condition of the installation  
19 and use of a certified ignition interlock device on a motor  
20 vehicle. After a minimum of one year of the license revocation  
21 or suspension pursuant to Section 32-5A-304, Section  
22 32-5A-191, or both, is completed, upon receipt of a court  
23 order from the convicting court, upon issuance of an ignition  
24 interlock restricted driver license, and upon proof of  
25 installation of an operational approved ignition interlock  
26 device on the designated vehicle of the person convicted, the  
27 mandated ignition interlock period of five years provided in

1                   this subsection shall start and the suspension period,  
2                   revocation period, or both, as required under this subsection  
3                   shall be stayed. The remainder of the driver license  
4                   revocation period, suspension period, or both, shall be  
5                   commuted upon the successful completion of the period of time  
6                   in which the ignition interlock device is mandated to be  
7                   installed and operational.

8                    "The Alabama habitual felony offender law shall not  
9                    apply to a conviction of a felony pursuant to this subsection,  
10                   and a conviction of a felony pursuant to this subsection shall  
11                   not be a felony conviction for purposes of the enhancement of  
12                   punishment pursuant to Alabama's habitual felony offender law.  
13                   However, prior misdemeanor or felony convictions for driving  
14                   under the influence may be considered as part of the  
15                   sentencing calculations or determinations under the Alabama  
16                   Sentencing Guidelines or rules promulgated by the Alabama  
17                   Sentencing Commission.

18                   "(i) When any person convicted of violating this  
19                   section is found to have had at least 0.15 percent or more by  
20                   weight of alcohol in his or her blood while operating or being  
21                   in actual physical control of a vehicle, he or she shall be  
22                   sentenced to at least double the minimum punishment that the  
23                   person would have received if he or she had had less than 0.15  
24                   percent by weight of alcohol in his or her blood. Upon the  
25                   first violation of this subsection, the offender shall be  
26                   ordered by the court to have an ignition interlock device  
27                   installed and operating on his or her designated motor vehicle

1                   for a period of two years from the date of issuance of an  
2                   ignition interlock-restricted driver's license. If the  
3                   adjudicated offense is a misdemeanor, the minimum punishment  
4                   shall be imprisonment for one year, all of which may be  
5                   suspended except as otherwise provided for in Section  
6                   32-5A-191(f) and Section 32-5A-191 (g). ~~In addition, the~~  
7                   ~~Director of Public Safety shall revoke the driving privileges~~  
8                   ~~or driver's license of the person convicted for a period of~~  
9                   ~~not less than one year.~~

10                  "(j) When any person over the age of 21 years is  
11                  convicted of violating this section and it is found that a  
12                  child under the age of 14 years was present a passenger in the  
13                  vehicle at the time of the offense, the person shall be  
14                  sentenced to at least double the minimum punishment that the  
15                  person would have received if the child had not been present a  
16                  passenger in the motor vehicle.

17                  "(k) (1) In addition to the penalties provided  
18                  herein, any person convicted of violating this section shall  
19                  be referred to the court referral officer for evaluation and  
20                  referral to appropriate community resources. The defendant  
21                  shall, at a minimum, be required to complete a DUI or  
22                  substance abuse court referral program approved by the  
23                  Administrative Office of Courts and operated in accordance  
24                  with provisions of the Mandatory Treatment Act of 1990,  
25                  Sections 12-23-1 to 12-23-19, inclusive. The Department of  
26                  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.

"(2) Upon conviction, the court shall notify the Department of Public Safety if the person convicted is required to install and maintain an approved ignition interlock device. The department shall suspend or revoke a person's driving privileges until completion of the mandatory suspension or revocation period required by this section, and clearance of all other suspensions, revocations, cancellations, or denials, and proof of installation of an approved ignition interlock device is presented to the department. The department shall not reissue a driver's license to a person who has been ordered by a court or is required by law to have the ignition interlock device installed until proof is presented that the person is eligible for reinstatement of driving privileges. Upon presentation of proof and compliance with all ignition interlock requirements, the department shall issue a driver's license with a restriction indicating that the licensee may operate a motor vehicle only with the certified ignition interlock device installed and properly operating. If the licensee fails to maintain the approved ignition interlock device as required or is otherwise not in compliance with any order of the court, the court shall notify the department of the noncompliance and the department shall suspend the person's driving privileges until the department receives notification from the court that the licensee is in compliance. The requirement that the

1           licensee use the ignition interlock device may be removed only  
2           when the court of conviction confirms to the department that  
3           the licensee is no longer subject to the ignition interlock  
4           device requirement.

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

9                 "(m) Except for fines collected for violations of  
10                 this section charged pursuant to a municipal ordinance, fines  
11                 collected for violations of this section shall be deposited to  
12                 the State General Fund; however, beginning October 1, 1995, of  
13                 any amount collected over two hundred fifty dollars (\$250) for  
14                 a first conviction, over five hundred dollars (\$500) for a  
15                 second conviction within five years, over one thousand dollars  
16                 (\$1,000) for a third conviction within five years, and over  
17                 two thousand dollars (\$2,000) for a fourth or subsequent  
18                 conviction within five years, the first one hundred dollars  
19                 (\$100) of that additional amount shall be deposited to the  
20                 Alabama Chemical Testing Training and Equipment Trust Fund,  
21                 after three percent of the one hundred dollars (\$100) is  
22                 deducted for administrative costs, and beginning October 1,  
23                 1997, and thereafter, the second one hundred dollars (\$100) of  
24                 that additional amount shall be deposited in the Impaired  
25                 Drivers Trust Fund after deducting five percent of the one  
26                 hundred dollars (\$100) for administrative costs and the  
27                 remainder of the funds shall be deposited to the State General

1 Fund. Fines collected for violations of this section charged  
2 pursuant to a municipal ordinance where the total fine is paid  
3 at one time shall be deposited as follows: The first three  
4 hundred fifty dollars (\$350) collected for a first conviction,  
5 the first six hundred dollars (\$600) collected for a second  
6 conviction within five years, the first one thousand one  
7 hundred dollars (\$1,100) collected for a third conviction, and  
8 the first two thousand one hundred dollars (\$2,100) collected  
9 for a fourth or subsequent conviction shall be deposited to  
10 the State Treasury with the first one hundred dollars (\$100)  
11 collected for each conviction credited to the Alabama Chemical  
12 Testing Training and Equipment Trust Fund and the second one  
13 hundred dollars (\$100) 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, and the balance credited to  
17 the State General Fund. Any amounts collected over these  
18 amounts shall be deposited as otherwise provided by law. Fines  
19 collected for violations of this section charged pursuant to a  
20 municipal ordinance, where the fine is paid on a partial or  
21 installment basis, shall be deposited as follows: The first  
22 two hundred dollars (\$200) of the fine collected for any  
23 conviction shall be deposited to the State Treasury with the  
24 first one hundred dollars (\$100) collected for any conviction  
25 credited to the Alabama Chemical Testing Training and  
26 Equipment Trust Fund and the second one hundred dollars (\$100)  
27 for any conviction credited to the Impaired Drivers Trust Fund

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

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

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

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

14                         "(q) A prior conviction within a five-year period  
15 for driving under the influence of alcohol or drugs from this  
16 state, a municipality within this state, or another state or  
17 territory or a municipality of another state or territory  
18 shall be considered by a court for imposing a sentence  
19 pursuant to this section.

20                         "(r) Any person convicted of driving under the  
21 influence of alcohol, or a controlled substance, or both, or  
22 any substance which impairs the mental or physical faculties  
23 in violation of this section, a municipal ordinance adopting  
24 this section, or a similar law from another state or territory  
25 or a municipality of another state or territory more than once  
26 in a five-year period shall have his or her motor vehicle  
27 registration for all vehicles owned by the repeat offender

1 suspended by the Alabama Department of Revenue for the  
2 duration of the offender's driver's license suspension period,  
3 unless such action would impose an undue hardship to any  
4 individual, not including the repeat offender, who is  
5 completely dependent on the motor vehicle for the necessities  
6 of life, including any family member of the repeat offender  
7 and any co-owner of the vehicle or, in the case of a repeat  
8 offender, if the repeat offender has a functioning ignition  
9 interlock device installed on the designated vehicle for the  
10 duration of the offender's driver's license suspension period.

11                 "(s)(r)(1) Any person ordered by the court to have  
12 an ignition interlock device installed on a designated  
13 vehicle, and any person who elects to have the ignition  
14 interlock device installed on a designated vehicle for the  
15 purpose of reducing a period of suspension or revocation of  
16 his or her driver's license, shall pay to the court, during  
17 for each of the first four months following his or her license  
18 is suspended conviction or the first four months following the  
19 installation of the ignition interlock device on his or her  
20 vehicle, seventy-five dollars (\$75) per month, which shall be  
21 divided as follows:

22                 "(1)a. Forty Forty-five percent to the Alabama  
23 Interlock Indigent Fund.

24                 "(2)b. Twenty-five Twenty percent to the court of  
25 jurisdiction State Judicial Administration Fund administered  
26 by the Administrative Office of Courts.

1                         "(3)c. Twenty percent to the Highway Traffic Safety  
2 Fund administered by the Department of Public Safety.

3                         "(4)d. Fifteen percent to the ~~district attorney of~~  
4 ~~jurisdiction~~ District Attorney's Solicitor Fund.

5                         "(2) In addition to paying the court clerk  
6 seventy-five dollars (\$75) per month for the first four months  
7 following the conviction or the voluntary installation of the  
8 ignition interlock device, the defendant shall pay all costs  
9 associated with the installation, purchase, maintenance, or  
10 lease of the ignition interlock devices to an approved  
11 ignition interlock provider pursuant to the rules of the  
12 Department of Forensic Sciences, unless the defendant is  
13 subject to Section 32-5A-191.4(q)(4) during which he or she  
14 shall pay one-half the cost for the available indigency  
15 period.

16                         "(t)(s) The defendant shall designate the vehicle to  
17 be used by identifying the vehicle by the vehicle  
18 identification number to the court. The defendant, at his or  
19 her own expense, may designate additional motor vehicles on  
20 which an ignition interlock device may be installed for the  
21 use of the defendant.

22                         "(u)(t)(1) Any person who is required to comply with  
23 the ignition interlock provisions of this section as a  
24 condition of restoration or reinstatement of his or her  
25 driver's license, shall only operate the designated vehicle  
26 equipped with a functioning ignition interlock device for the

1 period of time consistent with the offense for which he or she  
2 was convicted as provided for in this section.

3                     "(2) The duration of the time an ignition interlock  
4 device is required by this section shall be doubled if the  
5 offender refused the prescribed chemical test for  
6 intoxication, or if the offender's blood alcohol concentration  
7 was 0.15 grams percent or greater unless already doubled by a  
8 previous section.

9                     "~~v~~(u)(1) The Department of Public Safety may set a  
10 fee of not more than one hundred fifty dollars (\$150) for the  
11 issuance of a driver's license indicating that the person's  
12 driving privileges are subject to the condition of the  
13 installation and use of a certified ignition interlock device  
14 on a motor vehicle. Fifteen percent of the fee shall be  
15 distributed to the general fund of the county where the person  
16 was convicted to be utilized for law enforcement purposes.

17                     Eighty-five percent shall be distributed to the Highway  
18 Traffic Safety Fund administered by the Department of Public  
19 Safety. In addition, at the end of the time the person's  
20 driving privileges are subject to the above conditions, the  
21 department shall set a fee of not more than seventy-five  
22 dollars (\$75) to reissue a regular driver's license. The fee  
23 shall be deposited as provided in Sections 32-6-5, 32-6-6, and  
24 32-6-6.1.

25                     "(2) The defendant shall provide proof of  
26 installation of an approved ignition interlock device to the

Department of Public Safety as a condition of the issuance of a restricted driver's license.

"(3) Any ignition interlock driving violation committed by the offender during the mandated ignition interlock period shall extend the duration of ignition interlock use for six months from the date of violation and photo-based positive identification ignition interlock shall be required for the duration of the term. Ignition interlock driving violations include any of the following:

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

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

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

"~~(w)~~(v) Nothing in this section and Section 32-5A-191.4 shall require an employer to install an ignition interlock device in a vehicle owned or operated by the employer for use by an employee required to use the device as a condition of driving pursuant to this section and Section 32-5A-191.4.

"(w) The provisions in this section and Section 32-5A-191.4 relating to ignition interlock devices shall not apply to persons who commit violations of this section while

1       under 19 years of age and who are adjudicated in juvenile  
2       court, unless specifically ordered otherwise by the court.

3               "§32-5A-191.4.

4               "(a) As used in Section 32-5A-191, the term,  
5       "ignition interlock device" means a constant monitoring device  
6       that prevents a motor vehicle from being started at any time  
7       without first determining the equivalent blood alcohol level  
8       of the operator through the taking of a breath sample for  
9       testing. The system shall be calibrated so that the motor  
10      vehicle may not be started if the blood alcohol level of the  
11      operator, as measured by the test, reaches a blood alcohol  
12      concentration level of 0.02.

13               "(b) The ignition interlock device shall be  
14      installed, calibrated, and monitored directly by trained  
15      technicians who shall train the offender for whom the device  
16      is being installed in the proper use of the device. The use of  
17      a mail in or remote calibration system where the technician is  
18      not in the immediate proximity of the vehicle being calibrated  
19      is prohibited. The Department of Forensic Sciences shall  
20      promulgate rules for punishment and appeal for ignition  
21      interlock providers relating to violation of this subsection.

22               "(c) The Department of Forensic Sciences shall  
23      formulate and promulgate rules for the proper approval,  
24      installation, and use of ignition interlock devices.  
25      Additionally, the Department of Forensic Sciences shall  
26      maintain and make public the list of approved ignition  
27      interlock devices.

"(d) The Department of Forensic Sciences may adopt in whole or relevant part the guidelines, rules, regulations, studies, or independent laboratory tests performed or relied upon by other states, their agencies, or commissions.

"(e) The Department of Forensic Sciences shall promulgate rules regulating approved ignition interlock providers related to areas of consumer coverage. The rules shall address areas of consumer coverage and shall provide for a two-year period from the effective date of the act adding this language to allow provider compliance.

"~~(e)~~(f) The Department of Forensic Sciences shall charge an application fee of two thousand dollars (\$2,000) to any ignition interlock provider to evaluate the instrument. Any ignition interlock provider whose ignition interlock device is approved by the Department of Forensic Sciences shall be permitted to install and calibrate its approved device in Alabama. Each year during the month of April, the Department of Forensic Sciences may receive applications and instruments to review for approval.

"(q) The Department of Public Safety shall be responsible for enforcing the rules promulgated by the Department of Forensic Sciences related to ignition interlock devices and providers. The Department of Public Safety shall promulgate rules regulating the inspection and enforcement of approved ignition interlock providers and any associate service locations.

"(f)(h) In the absence of negligence, wantonness, or willful misconduct, no person or employer or agent of a person who installs an ignition interlock device pursuant to Section 32-5A-191 shall be liable for any occurrence related to the device, including, but not limited to, occurrences resulting from or related to a malfunction of the device or use of, misuse of, or failure to use the device or the vehicle in which the device was installed.

"~~(g)~~(i) (1) When the court imposes the use of an ignition interlock device as required by Section 32-5A-191, the court shall require that the person provide proof of installation of a device to the court or a probation officer within 30 days of the date the defendant becomes eligible to receive an ignition interlock-restricted license from the Department of Public Safety. If the person fails to provide proof of installation within that period, absent a finding by the court of good cause for that failure which is entered into the court record, the court ~~shall~~ may revoke the person's probation where applicable after a petition to revoke probation has been filed and the defendant has been given notice and an opportunity to be heard on the petition. The court in which the defendant is convicted shall notify the department that the defendant is restricted to the operation of a motor vehicle only when an approved ignition interlock device is installed and properly operating. Nothing in this subsection shall permit a person who does not own a vehicle or otherwise have an ignition interlock device installed on a

1                   motor vehicle to operate a motor vehicle without an approved  
2                   ignition interlock device installed and properly operating.

3                   "(2) Proof of installation for the purpose of this  
4 subsection may be furnished by either a certificate of  
5 installation or a copy of the lease agreement in the name of  
6 the offender for the designated vehicle with an approved  
7 ignition interlock device company.

8                   "(3) A defendant who is determined by the court to  
9 be indigent for the purpose of ignition interlock may have an  
10 ignition interlock device installed by an ignition interlock  
11 provider as provided in this subsection. Criteria for  
12 determining indigency for the purpose of ignition interlock  
13 shall be the same criteria as set forth in Section 15-12-5(b)  
14 and (c) after the report is complete. In determining whether  
15 the defendant is indigent for the purpose of ignition  
16 interlock, the judge shall require an investigation and report  
17 by a sheriff, adult probation officer, or other officer of the  
18 court. The report may include input from the district attorney  
19 or municipal prosecutor. The accused defendant shall execute  
20 an affidavit of substantial hardship on a form approved by the  
21 Supreme Court. The completed affidavit of substantial hardship  
22 and the subsequent order of the court either denying or  
23 granting indigency status for the purpose of ignition  
24 interlock to the offender shall become a part of the official  
25 court record in the case and shall be submitted by the  
26 offender to the interlock provider.

"(4) Any offender granted indigency status for the purpose of ignition interlock shall pay one-half of the costs associated with installing and maintaining an interlock device for a period of no more than two years at which time the offender shall pay the full remaining cost for any sentence left for ignition interlock. This section shall not affect any fees associated with the driver's license of the defendant.

"(5)a. All interlock providers shall be required to pay one and one-half percent of all payments collected less any payments made by a defendant determined as indigent for the purpose of ignition interlock to the Alabama Interlock Indigent Fund in the State Treasury.

"b. The Alabama Ignition Interlock Indigent Fund is created in the State Treasury. The fund shall be administered by the Department of Public Safety. All of the money in the fund shall be used to reimburse ignition interlock device providers who have installed devices in vehicles of indigent persons pursuant to court orders issued under this section. No provider shall be reimbursed for an interlock device installed without the completed affidavit of substantial hardship and the subsequent order of the court granting indigency status. Payments to interlock device providers pursuant to this subdivision shall be made every three months. If the amount of money in the fund at the time payments are made is not sufficient to pay all requests for reimbursement submitted during that three-month period, the Comptroller shall make payments on a pro rata basis and those payments shall be

considered payment in full for the requests submitted. At the end of each fiscal year, all monies above ~~one hundred thousand dollars (\$100,000)~~ five hundred thousand dollars (\$500,000) remaining in the Alabama Interlock Indigent Fund shall be divided as follows:

"a.1. Thirty percent to the Highway Traffic Safety Fund administered by the Department of Public Safety.

"b.2. Twenty percent to the Alabama Chemical Testing  
Training and Equipment Trust Fund administered by the  
Department of Forensic Sciences.

"c.3. Thirty percent to the ~~district attorney of~~  
~~jurisdiction~~ District Attorney's Solicitor Fund.

"d.4. Twenty percent to the Office of Prosecution Services.

"(6) Any defendant who does not own a vehicle or otherwise have an ignition interlock device installed on ~~the a~~ vehicle shall be required to pay seventy-five dollars (\$75) per month, ~~the same approximate cost the defendant would have paid to an ignition interlock provider if the defendant had an interlock device installed for the entire period the defendant is required or elects to have an ignition interlock device.~~

The defendant shall still serve all license suspension or revocation, or both, during this period. Any monies paid pursuant to this subdivision shall be paid to the court clerk and shall be deposited in the Alabama Impaired Driving Prevention and Enforcement Fund in the State Treasury to be

1 used by the Department of Public Safety for impaired driving  
2 education and enforcement.

3                   "(h) (j) No person who is prohibited from operating a  
4 motor vehicle unless it is equipped with an ignition interlock  
5 device as provided in Section 32-5A-191 shall knowingly:

6                   "(1) Operate, lease, or borrow a motor vehicle  
7 unless that vehicle is equipped with a functioning ignition  
8 interlock device.

9                   "(2) Request or solicit any other person to blow  
10 into an ignition interlock device or to start a motor vehicle  
11 equipped with the device for the purpose of providing the  
12 person so restricted with an operable motor vehicle.

13                   "(i) (j) (1) Any person who operates a motor vehicle  
14 in violation of subsection (h) (j) shall be immediately  
15 removed from the vehicle and taken into custody. The vehicle,  
16 regardless of ownership or possessory interest of the operator  
17 or person present in the vehicle, except when the owner of the  
18 vehicle or another family member of the owner is present in  
19 the vehicle and presents a valid driver's license, shall be  
20 impounded by any duly sworn law enforcement officer pursuant  
21 to Section 32-6-19(c). If there is an emergency or medical  
22 necessity jeopardizing life or limb, the law enforcement  
23 officer may elect not to impound the vehicle.

24                   "(2) A violation of subsection (h) (j) on the first  
25 offense is a Class A misdemeanor and punishable as provided by  
26 law. In addition, the time the defendant is required to use an  
27 ignition interlock device shall be extended by six months.

1       Upon second conviction of a violation of subsection ~~(h)~~ (j),  
2       the sentence shall include a mandatory sentence, which is not  
3       subject to suspension or probation, of imprisonment in the  
4       county or municipal jail for not less than 48 hours and the  
5       time the defendant is required to use an ignition interlock  
6       device shall be extended by six months. Upon a third or  
7       subsequent conviction of a violation of subsection ~~(h)~~ (j),  
8       the sentence shall include a mandatory sentence, which is not  
9       subject to suspension or probation, of imprisonment in the  
10      county or municipal jail for not less than five days and the  
11      time the defendant shall be required to use an ignition  
12      interlock device shall be extended by one year.

13            "~~(j)~~(l) No person shall blow into an ignition  
14        interlock device or start a motor vehicle equipped with the  
15        device for the purpose of providing an operable motor vehicle  
16        to a person who is prohibited from operating a motor vehicle  
17        without an ignition interlock device.

18            "~~(k)~~(m) No person shall intentionally attempt to  
19        tamper with, defeat, or circumvent the operation of an  
20        ignition interlock device.

21            "~~(l)~~(n) Any person convicted of a violation of this  
22        section other than subsection ~~(h)~~ (j) shall be punished by  
23        imprisonment for not more than six months or a fine of not  
24        more than five hundred dollars (\$500), or both.

25            "§32-5A-301.

26            "(a) A law enforcement officer who arrests any  
27        person for a violation of Section 32-5A-191 shall within five

1 days after the day of arrest, excluding weekends and state  
2 holidays, hand deliver, or mail, or submit electronically to  
3 the department a sworn report of all information relevant to  
4 the enforcement action, including information which adequately  
5 identifies the arrested person, a statement of the officer's  
6 grounds for belief that the person violated Section 32-5A-191,  
7 a sworn report of the results of any chemical test which was  
8 conducted, a statement if the person refused to submit to a  
9 test, and a copy of the citation or complaint filed with the  
10 court.

11 "(b) The report required by this section shall be  
12 made on forms supplied by the department or in a manner  
13 specified by regulations of the department.

14 "(c) The department shall not take action on any  
15 report not sworn to and not mailed and postmarked or received  
16 by the department within five days after the day of arrest,  
17 excluding weekends and state holidays, and the driver license  
18 of the person shall be returned.

19 "§32-5A-304.

20 "(a) A driving privilege suspension shall become  
21 effective 45 days after the person has received a notice of  
22 intended suspension as provided in Section 32-5A-303, or is  
23 deemed to have received a notice of suspension by mail as  
24 provided in Section 32-5A-302 if no notice of intended  
25 suspension was served.

26 "(b) The period of driving privilege suspension  
27 under this section shall be as follows:

1                         "(1) Ninety days if the driving record of a person  
2 shows no prior alcohol or drug-related enforcement contacts  
3 during the immediately preceding five years.

4                         "(2) One year if the driving record of a person  
5 shows one prior alcohol or drug-related enforcement contact  
6 during the immediately preceding five years.

7                         "(3) Three years if the driving record of a person  
8 shows two or three alcohol or drug-related enforcement  
9 contacts during the immediately preceding five years.

10                         "(4) Five years if the driving record of a person  
11 shows four or more alcohol or drug-related enforcement  
12 contacts during the immediately preceding five years.

13                         "(5) For purposes of this section, "alcohol or  
14 drug-related enforcement contacts" shall include any  
15 suspension all suspensions under this article, any suspension  
16 or revocation entered in this or any other state for a refusal  
17 to submit to chemical testing under an implied consent law,  
18 and any conviction in this or any other state for a violation  
19 which involves driving a motor vehicle while having an  
20 unlawful percent of alcohol in the blood, or while under the  
21 influence of alcohol or drugs, or alcohol and drugs except  
22 that no more than one alcohol or drug-related contact on any  
23 one DUI arrest may be considered by the department in  
24 determining the period of suspension.

25                         "(c) If a license is suspended under this section  
26 for having .08 or more by weight of alcohol in the blood of  
27 the person and the person is also convicted on criminal

charges arising out of the same occurrence for a violation of Section 32-5A-191, the suspension under this section shall be imposed, but no period of suspension or revocation shall be imposed giving credit for suspension time served toward the duration of suspension or revocation required under Section 32-5A-191. If a license is suspended under this section for having .08 or more by weight of alcohol in the blood of the person and the criminal charge against the person for violation of Section 32-5A-191 is dismissed, nolle prossed, or the person is acquitted of the charge, the director shall rescind the suspension order and remove the administrative suspension from the person's driving record."

Section 2. (a) The amendatory language in Section 1 of this act to Section 32-5A-191, Code of Alabama 1975, authorizing the Department of Public Safety to stay a driver's license suspension or revocation upon compliance with the ignition interlock requirement shall apply retroactively if any of the following occurs:

(1) The offender files an appeal with the court of jurisdiction requesting all prior suspensions or revocation, or both, be stayed upon compliance with the ignition interlock requirement;

(2) The offender wins appeal with the court of jurisdiction relating to this section;

(3) The court of jurisdiction notifies the Department Public Safety that the offender is eligible to have the driver's license stayed;

- (4) The Department of Public Safety issues an ignition interlock restricted driver's license; and
- (5) The offender remains in compliance of ignition interlock requirements.

(b) The remainder of the driver license revocation, suspension, or both, shall be commuted upon the successful completion of the period of time in which the ignition interlock device is mandated to be installed and operational.

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.