

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

4 ENGROSSED  
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7 A BILL  
8

9 TO BE ENTITLED  
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11 AN ACT  
12

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

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 32-5A-191, 32-5A-191.4,  
23 32-5A-301, and 32-5A-304, Code of Alabama 1975, are amended to  
24 read as follows:

25 "§32-5A-191.

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

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

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

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

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

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

1 person's arrest, conviction, or adjudication of or finding of  
2 delinquency based on this subsection.

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

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

21                   "(2) A person shall not drive or be in actual  
22 physical control of a commercial motor vehicle, as defined in  
23 49 CFR Part 383.5 of the Federal Motor Carrier Safety  
24 Regulations as adopted pursuant to Section 32-9A-2, if there  
25 is 0.04 percent or greater by weight of alcohol in his or her  
26 blood. Notwithstanding the other provisions of this section,  
27 the commercial driver's license or commercial driving

1 privilege of a person convicted of violating this subdivision  
2 shall be disqualified for the period provided in accordance  
3 with 49 CFR Part 383.51, as applicable, and the person's  
4 regular driver's license or privilege to drive a regular motor  
5 vehicle shall be governed by the remainder of this section if  
6 the person is guilty of a violation of another provision of  
7 this section.

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

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

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

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

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

7                         "(f) On a second conviction within a five-year  
8 period, a person convicted of violating this section shall be  
9 punished by a fine of not less than one thousand one hundred  
10 dollars (\$1,100) nor more than five thousand one hundred  
11 dollars (\$5,100) and by imprisonment, which may include hard  
12 labor in the county or municipal jail for not more than one  
13 year. The sentence shall include a mandatory sentence, which  
14 is not subject to suspension or probation, of imprisonment in  
15 the county or municipal jail for not less than five days or  
16 community service for not less than 30 days. 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 one year and the offender shall be required to have an  
20 ignition interlock device installed and operating on the  
21 designated motor vehicle driven by the offender for a period  
22 of two years from the date of issuance of a driver's license  
23 indicating that the person's driving privileges are subject to  
24 the condition of the installation and use of a certified  
25 ignition interlock device on a motor vehicle. After a minimum  
26 of 45 days of the license revocation or suspension pursuant to  
27 Section 32-5A-304, Section 32-5A-191, or both, is completed,

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

13                   "(g) On a third conviction, a person convicted of  
14                   violating this section shall be punished by a fine of not less  
15                   than two thousand one hundred dollars (\$2,100) nor more than  
16                   ten thousand one hundred dollars (\$10,100) and by  
17                   imprisonment, which may include hard labor, in the county or  
18                   municipal jail for not less than 60 days nor more than one  
19                   year, to include a minimum of 60 days which shall be served in  
20                   the county or municipal jail and cannot be probated or  
21                   suspended. In addition, the Director of Public Safety shall  
22                   revoke the driving privilege or driver's license of the person  
23                   convicted for a period of three years and the offender shall  
24                   be required to have an ignition interlock device installed and  
25                   operating on the designated motor vehicle driven by the  
26                   offender for a period of three years from the date of issuance  
27                   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 180 days of the license revocation or suspension pursuant to Section 32-5A-304, 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 three 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 driver license revocation period, suspension period, 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.

"(h) On a fourth or subsequent conviction, a person convicted of violating this section shall be guilty of a Class C felony and punished by a fine of not less than four thousand one hundred dollars (\$4,100) nor more than ten thousand one hundred dollars (\$10,100) and by imprisonment of not less than one year and one day nor more than 10 years. Any term of imprisonment may include hard labor for the county or state, and where imprisonment does not exceed three years confinement may be in the county jail. Where imprisonment does not exceed one year and one day, confinement shall be in the county jail.

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

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

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

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

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

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

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

1       Public Safety shall not reissue a driver's license to a person  
2       convicted under this section without receiving proof that the  
3       defendant has successfully completed the required program.

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

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

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

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

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

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

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

1 (a) (1) or, in the case of a person who is under the age of 21  
2 years, subsection (b) hereof.

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

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

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

22                 "(r) Any person convicted of driving under the  
23 influence of alcohol, or a controlled substance, or both, or  
24 any substance which impairs the mental or physical faculties  
25 in violation of this section, a municipal ordinance adopting  
26 this section, or a similar law from another state or territory  
27 or a municipality of another state or territory more than once

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

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

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

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

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

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

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

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

"(u)(t)(1) Any person who is required to comply with the ignition interlock provisions of this section as a condition of restoration or reinstatement of his or her

1                   driver's license, shall only operate the designated vehicle  
2                   equipped with a functioning ignition interlock device for the  
3                   period of time consistent with the offense for which he or she  
4                   was convicted as provided for in this section.

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

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

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

26                  "(2) The defendant shall provide proof of  
27                  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. 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 under 19 years of age and who are adjudicated in juvenile court, unless specifically ordered otherwise by the court.

1                   "§32-5A-191.4.

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

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

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

26                  "(d) The Department of Forensic Sciences may adopt  
27                  in whole or relevant part the guidelines, rules, regulations,

1 studies, or independent laboratory tests performed or relied  
2 upon by other states, their agencies, or commissions.

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

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

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

25                   "(f)(h) In the absence of negligence, wantonness, or  
26 willful misconduct, no person or employer or agent of a person  
27 who installs an ignition interlock device pursuant to Section

1 32-5A-191 shall be liable for any occurrence related to the  
2 device, including, but not limited to, occurrences resulting  
3 from or related to a malfunction of the device or use of,  
4 misuse of, or failure to use the device or the vehicle in  
5 which the device was installed.

6 "¶(i)(1) When the court imposes the use of an  
7 ignition interlock device as required by Section 32-5A-191,  
8 the court shall require that the person provide proof of  
9 installation of a device to the court or a probation officer  
10 within 30 days of the date the defendant becomes eligible to  
11 receive an ignition interlock-restricted license from the  
12 Department of Public Safety. If the person fails to provide  
13 proof of installation within that period, absent a finding by  
14 the court of good cause for that failure which is entered into  
15 the court record, the court ~~shall~~ may revoke the person's  
16 probation where applicable after a petition to revoke  
17 probation has been filed and the defendant has been given  
18 notice and an opportunity to be heard on the petition. The  
19 court in which the defendant is convicted shall notify the  
20 department that the defendant is restricted to the operation  
21 of a motor vehicle only when an approved ignition interlock  
22 device is installed and properly operating. Nothing in this  
23 subsection shall permit a person who does not own a vehicle or  
24 otherwise have an ignition interlock device installed on a  
25 motor vehicle to operate a motor vehicle without an approved  
26 ignition interlock device installed and properly operating.

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

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

25                         "(4) Any offender granted indigency status for the  
26 purpose of ignition interlock shall pay one-half of the costs  
27 associated with installing and maintaining an interlock device

1                   for a period of no more than two years at which time the  
2                   offender shall pay the full remaining cost for any sentence  
3                   left for ignition interlock. This section shall not affect any  
4                   fees associated with the driver's license of the defendant.

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

10                   "b. The Alabama Ignition Interlock Indigent Fund is  
11                   created in the State Treasury. The fund shall be administered  
12                   by the Department of Public Safety. All of the money in the  
13                   fund shall be used to reimburse ignition interlock device  
14                   providers who have installed devices in vehicles of indigent  
15                   persons pursuant to court orders issued under this section. No  
16                   provider shall be reimbursed for an interlock device installed  
17                   without the completed affidavit of substantial hardship and  
18                   the subsequent order of the court granting indigency status.  
19                   Payments to interlock device providers pursuant to this  
20                   subdivision shall be made every three months. If the amount of  
21                   money in the fund at the time payments are made is not  
22                   sufficient to pay all requests for reimbursement submitted  
23                   during that three-month period, the Comptroller shall make  
24                   payments on a pro rata basis and those payments shall be  
25                   considered payment in full for the requests submitted. At the  
26                   end of each fiscal year, all monies above ~~one hundred thousand~~  
27                   dollars (\$100,000) five hundred thousand dollars (\$500,000)

1 remaining in the Alabama Interlock Indigent Fund shall be  
2 divided as follows:

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

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

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

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

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

19                  The defendant shall still serve all license suspension or  
20 revocation, or both, during this period. Any monies paid  
21 pursuant to this subdivision shall be paid to the court clerk  
22 and shall be deposited in the Alabama Impaired Driving  
23 Prevention and Enforcement Fund in the State Treasury to be  
24 used by the Department of Public Safety for impaired driving  
25 education and enforcement.

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

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

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

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

22                         "(2) A violation of subsection (h) (j) on the first  
23 offense is a Class A misdemeanor and punishable as provided by  
24 law. In addition, the time the defendant is required to use an  
25 ignition interlock device shall be extended by six months.  
26 Upon second conviction of a violation of subsection (h) (j),  
27 the sentence shall include a mandatory sentence, which is not

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

11                 ~~"(j)"~~(1) No person shall blow into an ignition  
12 interlock device or start a motor vehicle equipped with the  
13 device for the purpose of providing an operable motor vehicle  
14 to a person who is prohibited from operating a motor vehicle  
15 without an ignition interlock device.

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

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

23                 "§32-5A-301.

24                 "(a) A law enforcement officer who arrests any  
25 person for a violation of Section 32-5A-191 shall within five  
26 days after the day of arrest, excluding weekends and state  
27 holidays, hand deliver, or mail, or submit electronically to

1 the department a sworn report of all information relevant to  
2 the enforcement action, including information which adequately  
3 identifies the arrested person, a statement of the officer's  
4 grounds for belief that the person violated Section 32-5A-191,  
5 ~~a sworn report~~ of the results of any chemical test which was  
6 conducted, a statement if the person refused to submit to a  
7 test, and a copy of the citation or complaint filed with the  
8 court.

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

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

17 "§32-5A-304.

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

24 "(b) The period of driving privilege suspension  
25 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.

1  
2  
3 Senate

4 Read for the first time and referred to the Senate  
5 committee on Commerce, Transportation, and Utili-  
6 ties..... 06-FEB-14  
7  
8 Read for the second time and placed on the calen-  
9 dar..... 12-FEB-14  
10  
11 Read for the third time and passed as amended .... 20-FEB-14

12 Yeas 32  
13 Nays 0

14  
15  
16 Patrick Harris  
17 Secretary  
18