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STATE OF ALABAMA  
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Honorable Hugh B. McCall, Director  
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301 South Ripley Street  
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Driving Under Influence – Public Safety,  
Department of – Traffic Regulations –  
Penalties – Legislation

Act 2011-621 did not repeal all previous provisions of section 32-5A-191 of the Code of Alabama, including the provisions added to it by Act 2011-613.

The Director of the Department of Public Safety cannot impose an additional period of suspension or revocation under section 32-5A-191 of the Code after having imposed a suspension related to the same occurrence under section 32-5A-304.

Dear Colonel McCall:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

Did Act 2011-621 repeal all previous provisions of section 32-5A-191 of the Code, including the provisions of Act 2011-613?

FACTS AND ANALYSIS

Your first request asks whether Act 2011-621 repealed all previous provisions of section 32-5A-191, including the provisions added to it by Act 2011-613. Section 32-5A-191 makes it a criminal violation to drive under the influence of alcohol or controlled substances. ALA. CODE § 32-5A-191 (Supp. 2011).

Act 2011-613 amended section 32-5A-191 by making minor editorial changes and adding language concerning ignition interlock devices. Act 2011-621 amended section 32-5A-191 by making some minor editorial changes, by enhancing the punishment for persons violating the statute with a blood-alcohol level of 0.15 percent or more, and by enhancing the punishment for persons found to be violating the statute with a child under the age of 14 years present in the vehicle. 2011 Ala. Acts No. 2011-621.

Neither Act 2011-613 nor Act 2011-621 stated that it was repealing section 32-5A-191 in whole. *See* 2011 Ala. Acts No. 2011-613 & 2011 Ala. Acts No. 2011-621. Both acts were amendments "to read as follows." *Id.*

Generally speaking, where a statute is amended 'so as to read as follows,' the amendatory act becomes a substitute for the original, which then ceases to have the force and effect of an independent enactment; but this does not mean that the original is abrogated for all purposes, or that everything in the later statute is to be regarded as first enacted therein. On the contrary, the better and prevailing rule is that so much of the original as is repeated in the later statute without substantial change is affirmed and continued in force without interruption; that so much of the act as is omitted is repealed; and that any substantial change in other portions of the original act, as also any matter which is entirely new, is operative as new legislation.

*Allgood v. Sloss-Sheffield Steel & Iron Co.*, 196 Ala. 500, 501, 71 So. 724, 724-25 (1916). Therefore, neither of the 2011 acts repealed the language of section 32-5A-191 that the 2011 acts left unchanged.

As you mentioned in your request, Act 2011-621 was signed into law by Governor Robert Bentley 23 minutes after Act 2011-613. 2011 Ala. Acts No. 2011-613 & 2011 Ala. Acts No. 2011-621. The changes made to section 32-5A-191 by Act 2011-613 were not mentioned in Act 2011-621. *See id.*

Fortunately, the Legislature has provided a remedy to this circumstance by giving the Code Commissioner the editorial function of incorporating more than one amendatory act into a Code section in a manner that makes the Code section intelligible when the Code section has been amended more than once in the same legislative session by acts not in substantive conflict. ALA. CODE § 29-7-8(a)(11) (2003).

The two acts are not in substantive conflict. *See* 2011 Ala. Acts No. 2011-613 & 2011 Ala. Acts No. 2011-621. The Code Commissioner may make the changes prescribed by both acts and adjust the letters of the subsections as necessary to reflect the amendatory language. Therefore, Act 2011-621 did not repeal Act 2011-613, nor did it repeal the language in section 32-5A-191 that remained unchanged from previous legislative sessions.

### CONCLUSION

Act 2011-621 did not repeal all previous provisions of section 32-5A-191, including the provisions added to it by Act 2011-613.

### QUESTION 2

If a person's driver's license is suspended for ninety days under section 32-5A-304 of the Code for having a blood-alcohol level of 0.08 or more, can the Director of Public Safety also impose the one-year revocation provided under Act 2011-621 if the person is convicted of DUI and his or her blood-alcohol level was 0.15 or more?

### FACTS AND ANALYSIS

Your second request asks whether, under Act 2011-621, the Director of Public Safety can impose a one-year revocation on the driver's license of a person who has been found guilty of driving under the influence with a blood-alcohol level of 0.15 percent or more after the Director has already administratively suspended that person's driver's license for ninety days in relation to the same occurrence under section 32-5A-304 for having a blood-alcohol level of 0.08 percent or more.

Act 2011-621 amended section 32-5A-191 so that the statute now instructs the Director of Public Safety to revoke, for one year, the driver's license of a person who has been found guilty of driving under the influence with a blood-alcohol level of 0.15 or more. ALA. CODE § 32-5A-191(i) (Supp. 2011).

Sections 32-5A-300 through 32-5A-308 of the Code, however, instruct the Director of Public Safety to suspend a person's driver's license administratively after an arrest for a violation of section 32-5A-191 based on a report of the arresting officer properly establishing that the person was in actual control of a

vehicle with a blood-alcohol level of 0.08 percent or more. ALA. CODE §§ 32-5A-300 to 32-5A-308 (1999).

Under the administrative suspension statutes, the arrested person's driver's license is to be suspended for ninety days when his or her driving record "shows no prior alcohol or drug-related contacts during the immediately preceding five years." ALA. CODE § 32-5A-304(b)(1) (1999). Those administrative suspension statutes do not provide for an additional suspension or revocation period when the person's blood-alcohol level is 0.15 percent or more. Rather, section 32-5A-304(c) states as follows:

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 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 under Section 32-5A-191.

ALA. CODE § 32-5A-304(c) (1999).

Principles of statutory construction instruct courts to "interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous." *Ex parte Pratt*, 815 So. 2d 532, 535 (Ala. 2001) (citations omitted). Section 32-5A-304(c) is not ambiguous in saying that the Director of the Department of Public Safety is not to impose an additional period of suspension or revocation under section 32-5A-191 after having imposed a suspension related to the same occurrence under section 32-5A-304.

"It is an ingrained principle of statutory construction that '[t]he Legislature is presumed to be aware of existing law and judicial interpretation when it adopts a statute.'" *Ex parte Fontaine Trailer Co.*, 854 So. 2d 71, 83 (Ala. 2003), quoting *Carson v. City of Prichard*, 709 So. 2d 1199, 1206 (Ala. 1998). The Legislature did not amend or repeal section 32-5A-304 by Act 2011-621. See 2011 Ala. Acts No. 2011-621.

Under the principles of statutory construction, it must be assumed that the Legislature intended all of the provisions of section 32-5A-304 to remain intact and be enforced. Therefore, without further legislation, the Director of the Department of Public Safety cannot impose an additional period of suspension or revocation under section 32-5A-191 after having imposed a suspension related to the same occurrence under section 32-5A-304.

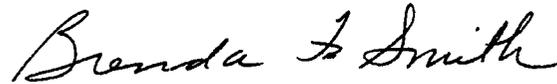
CONCLUSION

The Director of the Department of Public Safety cannot impose an additional period of suspension or revocation under section 32-5A-191 after having imposed a suspension related to the same occurrence under section 32-5A-304.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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