

By: Representative Scott (80th)

To: Judiciary A

HOUSE BILL NO. 64

1 AN ACT TO ESTABLISH AN ALTERNATIVE PUNISHMENT FOR A VIOLATION
2 OF THE IMPLIED CONSENT LAW FOR PERSONS UNDER AGE; TO PROVIDE THAT
3 SUCH ALTERNATIVE PUNISHMENT MAY BE IMPOSED IN THE DISCRETION OF
4 THE COURT; TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972, IN
5 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
6 PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. (1) Any person under twenty-one (21) years of
9 age who is convicted of violating subsection (1) of Section
10 63-11-30, in the discretion of the court, may be punished under
11 the provisions of Section 63-11-30 or under this section.

12 (2) Upon conviction of any person under twenty-one (21)
13 years of age for a first offense under Section 63-11-30(1), such
14 person shall have their driver's license suspended for one (1)
15 year, shall perform two hundred (200) hours of community service
16 and the parent or guardian of such person shall pay a fine not to
17 exceed Two Hundred Fifty Dollars (\$250.00).

18 (3) Upon conviction of any person under twenty-one (21)
19 years of age for a second or subsequent offense under Section
20 63-11-30(1), such person shall have their driver's license
21 suspended until he reaches twenty-one (21) years of age, shall
22 perform four hundred (400) hours of community service and the
23 parent or guardian of such person shall pay a fine of not less
24 than Two Hundred Fifty Dollars (\$250.00) nor more than Five
25 Hundred Dollars (\$500.00).

26 SECTION 2. Section 63-11-30, Mississippi Code of 1972, is
27 amended as follows:

28 63-11-30. (1) It is unlawful for any person to drive or
29 otherwise operate a vehicle within this state who (a) is under the

30 influence of intoxicating liquor; (b) is under the influence of
31 any other substance which has impaired such person's ability to
32 operate a motor vehicle; (c) has an alcohol concentration of ten
33 one-hundredths percent (.10%) or more for persons who are above
34 the legal age to purchase alcoholic beverages under state law, or
35 two one-hundredths percent (.02%) or more for persons who are
36 below the legal age to purchase alcoholic beverages under state
37 law, in the person's blood based upon grams of alcohol per one
38 hundred (100) milliliters of blood or grams of alcohol per two
39 hundred ten (210) liters of breath as shown by a chemical analysis
40 of such person's breath, blood or urine administered as authorized
41 by this chapter; (d) is under the influence of any drug or
42 controlled substance, the possession of which is unlawful under
43 the Mississippi Controlled Substances Law; or (e) has an alcohol
44 concentration of four one-hundredths percent (.04%) or more in the
45 person's blood, based upon grams of alcohol per one hundred (100)
46 milliliters of blood or grams of alcohol per two hundred ten (210)
47 liters of breath as shown by a chemical analysis of such person's
48 blood, breath or urine, administered as authorized by this chapter
49 for persons operating a commercial motor vehicle.

50 (2) (a) Except as otherwise provided in subsection (3) of
51 this section or Section 1 of House Bill No. _____, 1999 Regular
52 Session, upon conviction of any person for the first offense of
53 violating subsection (1) of this section where chemical tests
54 provided for under Section 63-11-5 were given, or where chemical
55 test results are not available, such person shall be fined not
56 less than Two Hundred Fifty Dollars (\$250.00) nor more than One
57 Thousand Dollars (\$1,000.00), or imprisoned for not more than
58 forty-eight (48) hours in jail or both; and the court shall order
59 such person to attend and complete an alcohol safety education
60 program as provided in Section 63-11-32. The court may substitute
61 attendance at a victim impact panel instead of forty-eight (48)
62 hours in jail. In addition, the Department of Public Safety, the
63 Commissioner of Public Safety or his duly authorized agent shall,

64 after conviction and upon receipt of the court abstract, suspend
65 the driver's license and driving privileges of such person for a
66 period of not less than ninety (90) days and until such person
67 attends and successfully completes an alcohol safety education
68 program as herein provided; provided, however, in no event shall
69 such period of suspension exceed one (1) year. Commercial driving
70 privileges shall be suspended as provided in Section 63-1-83.

71 The circuit court having jurisdiction in the county in which
72 the conviction was had or the circuit court of the person's county
73 of residence may reduce the suspension of driving privileges under
74 Section 63-11-30(2)(a) if the denial of which would constitute a
75 hardship on the offender, except that no court may issue such an
76 order reducing the suspension of driving privileges under this
77 subsection until thirty (30) days have elapsed from the effective
78 date of the suspension. Hardships shall only apply to first
79 offenses under Section 63-11-30(1), and shall not apply to second,
80 third or subsequent convictions of any person violating subsection
81 (1) of this section. A reduction of suspension on the basis of
82 hardship shall not be available to any person who refused to
83 submit to a chemical test upon the request of a law enforcement
84 officer as provided in Section 63-11-5. When the petition is
85 filed, such person shall pay to the circuit clerk of the court
86 where the petition is filed a fee of Fifty Dollars (\$50.00), which
87 shall be deposited into the State General Fund to the credit of a
88 special fund hereby created in the State Treasury to be used for
89 alcohol or drug abuse treatment and education, upon appropriation
90 by the Legislature. This fee shall be in addition to any other
91 court costs or fees required for the filing of petitions.

92 The petition filed under the provisions of this subsection
93 shall contain the specific facts which the petitioner alleges to
94 constitute a hardship and the driver's license number of the
95 petitioner. A hearing may be held on any petition filed under
96 this subsection only after ten (10) days' prior written notice to
97 the Commissioner of Public Safety, or his designated agent, or the

98 attorney designated to represent the state. At such hearing, the
99 court may enter an order reducing the period of suspension.

100 The order entered under the provisions of this subsection
101 shall contain the specific grounds upon which hardship was
102 determined, and shall order the petitioner to attend and complete
103 an alcohol safety education program as provided in Section
104 63-11-32. A certified copy of such order shall be delivered to
105 the Commissioner of Public Safety by the clerk of the court within
106 five (5) days of the entry of the order. The certified copy of
107 such order shall contain information which will identify the
108 petitioner, including, but not limited to, the name, mailing
109 address, street address, Social Security number and driver's
110 license number of the petitioner.

111 At any time following at least thirty (30) days of suspension
112 for a first offense violation of this section, the court may grant
113 the person hardship driving privileges upon written petition of
114 the defendant, if it finds reasonable cause to believe that
115 revocation would hinder the person's ability to:

- 116 (i) Continue his employment;
- 117 (ii) Continue attending school or an educational
118 institution; or
- 119 (iii) Obtain necessary medical care.

120 Proof of the hardship shall be established by clear and
121 convincing evidence which shall be supported by independent
122 documentation.

123 (b) Except as otherwise provided in subsection (3) of
124 this section or Section 1 of House Bill No. _____, 1999 Regular
125 Session, upon any second conviction of any person violating
126 subsection (1) of this section, the offenses being committed
127 within a period of five (5) years, such person shall be fined not
128 less than Six Hundred Dollars (\$600.00) nor more than One Thousand
129 Five Hundred Dollars (\$1,500.00) and shall be imprisoned not less
130 than ten (10) days nor more than one (1) year and sentenced to
131 community service work for not less than ten (10) days nor more

132 than one (1) year. Except as may otherwise be provided by
133 paragraph (e) of this subsection, the Commissioner of Public
134 Safety shall suspend the driver's license of such person for two
135 (2) years. Suspension of a commercial driver's license shall be
136 governed by Section 63-1-83. Upon any second conviction as
137 described in this paragraph, the court shall ascertain whether the
138 defendant is married, and if the defendant is married shall obtain
139 the name and address of the defendant's spouse; the clerk of the
140 court shall submit this information to the Department of Public
141 Safety. Further, the commissioner shall notify in writing, by
142 certified mail, return receipt requested, the owner of the vehicle
143 and the spouse, if any, of the person convicted of the second
144 violation of the possibility of forfeiture of the vehicle if such
145 person is convicted of a third violation of subsection (1) of this
146 section. The owner of the vehicle and the spouse shall be
147 considered notified under this paragraph if the notice is
148 deposited in the United States mail and any claim that the notice
149 was not in fact received by the addressee shall not affect a
150 subsequent forfeiture proceeding.

151 (c) Except as otherwise provided in subsection (3) of
152 this section or Section 1 of House Bill No. _____, 1999 Regular
153 Session, for any third or subsequent conviction of any person
154 violating subsection (1) of this section, the offenses being
155 committed within a period of five (5) years, such person shall be
156 guilty of a felony and fined not less than Two Thousand Dollars
157 (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00) and
158 shall be imprisoned not less than one (1) year nor more than five
159 (5) years in the State Penitentiary. The law enforcement agency
160 shall seize the vehicle operated by any person charged with a
161 third or subsequent violation of subsection (1) of this section,
162 if such convicted person was driving the vehicle at the time the
163 offense was committed. Such vehicle may be forfeited in the
164 manner provided by Sections 63-11-49 through 63-11-53. Except as
165 may otherwise be provided by paragraph (e) of this subsection, the

166 Commissioner of Public Safety shall suspend the driver's license
167 of such person for five (5) years. The suspension of a commercial
168 driver's license shall be governed by Section 63-1-83.

169 (d) Except as otherwise provided in subsection (3) of
170 this section or Section 1 of House Bill No. _____, 1999 Regular
171 Session, any person convicted of a second violation of subsection
172 (1) of this section, may have the period that his driver's license
173 is suspended reduced if such person receives an in-depth
174 diagnostic assessment, and as a result of such assessment is
175 determined to be in need of treatment of his alcohol and/or drug
176 abuse problem and successfully completes treatment of his alcohol
177 and/or drug abuse problem at a program site certified by the
178 Department of Mental Health. Such person shall be eligible for
179 reinstatement of his driving privileges upon the successful
180 completion of such treatment after a period of one (1) year after
181 such person's driver's license is suspended. Each person who
182 receives a diagnostic assessment shall pay a fee representing the
183 cost of such assessment. Each person who participates in a
184 treatment program shall pay a fee representing the cost of such
185 treatment.

186 (e) Except as otherwise provided in subsection (3) of
187 this section or Section 1 of House Bill No. _____, 1999 Regular
188 Session, any person convicted of a third or subsequent violation
189 of subsection (1) of this section may enter an alcohol and/or drug
190 abuse program approved by the Department of Mental Health for
191 treatment of such person's alcohol and/or drug abuse problem. If
192 such person successfully completes such treatment, such person
193 shall be eligible for reinstatement of his driving privileges
194 after a period of three (3) years after such person's driver's
195 license is suspended.

196 (3) (a) This subsection shall be known and may be cited as
197 Zero Tolerance for Minors. The provisions of this subsection
198 shall apply only when a person under the age of twenty-one (21)
199 years has a blood alcohol concentration two one-hundredths percent

200 (.02%) or more, but lower than eight one-hundredths percent
201 (.08%). If such person's blood alcohol concentration is eight
202 one-hundredths percent (.08%) or more, the provisions of
203 subsection (2) shall apply.

204 (b) Except as provided in Section 1 of House Bill No. ,
205 1999 Regular Session, upon conviction of any person under the age
206 of twenty-one (21) years for the first offense of violating
207 subsection (1) of this section where chemical tests provided for
208 under Section 63-11-5 were given, or where chemical test results
209 are not available, such person shall have his driver's license
210 suspended for ninety (90) days and shall be fined Two Hundred
211 Fifty Dollars (\$250.00); and the court shall order such person to
212 attend and complete an alcohol safety education program as
213 provided in Section 63-11-32. The court may also require
214 attendance at a victim impact panel.

215 The circuit court having jurisdiction in the county in which
216 the conviction was had or the circuit court of the person's county
217 of residence may reduce the suspension of driving privileges under
218 Section 63-11-30(2)(a) if the denial of which would constitute a
219 hardship on the offender, except that no court may issue such an
220 order reducing the suspension of driving privileges under this
221 subsection until thirty (30) days have elapsed from the effective
222 date of the suspension. Hardships shall only apply to first
223 offenses under Section 63-11-30(1), and shall not apply to second,
224 third or subsequent convictions of any person violating subsection
225 (1) of this section. A reduction of suspension on the basis of
226 hardship shall not be available to any person who refused to
227 submit to a chemical test upon the request of a law enforcement
228 officer as provided in Section 63-11-5. When the petition is
229 filed, such person shall pay to the circuit clerk of the court
230 where the petition is filed a fee of Fifty Dollars (\$50.00), which
231 shall be deposited into the State General Fund to the credit of a
232 special fund hereby created in the State Treasury to be used for
233 alcohol or drug abuse treatment and education, upon appropriation

234 by the Legislature. This fee shall be in addition to any other
235 court costs or fees required for the filing of petitions.

236 The petition filed under the provisions of this subsection
237 shall contain the specific facts which the petitioner alleges to
238 constitute a hardship and the driver's license number of the
239 petitioner. A hearing may be held on any petition filed under
240 this subsection only after ten (10) days' prior written notice to
241 the Commissioner of Public Safety, or his designated agent, or the
242 attorney designated to represent the state. At such hearing, the
243 court may enter an order reducing the period of suspension.

244 The order entered under the provisions of this subsection
245 shall contain the specific grounds upon which hardship was
246 determined, and shall order the petitioner to attend and complete
247 an alcohol safety education program as provided in Section
248 63-11-32. A certified copy of such order shall be delivered to
249 the Commissioner of Public Safety by the clerk of the court within
250 five (5) days of the entry of the order. The certified copy of
251 such order shall contain information which will identify the
252 petitioner, including, but not limited to, the name, mailing
253 address, street address, Social Security number and driver's
254 license number of the petitioner.

255 At any time following at least thirty (30) days of suspension
256 for a first offense violation of this section, the court may grant
257 the person hardship driving privileges upon written petition of
258 the defendant, if it finds reasonable cause to believe that
259 revocation would hinder the person's ability to:

- 260 (i) Continue his employment;
- 261 (ii) Continue attending school or an educational
262 institution; or
- 263 (iii) Obtain necessary medical care.

264 Proof of the hardship shall be established by clear and
265 convincing evidence which shall be supported by independent
266 documentation.

267 (c) Except as otherwise provided in Section 1 of House

268 Bill No. _____, 1999 Regular Session, upon any second conviction of
269 any person under the age of twenty-one (21) years violating
270 subsection (1) of this section, the offenses being committed
271 within a period of five (5) years, such person shall be fined not
272 more than Five Hundred Dollars (\$500.00) and shall have his
273 driver's license suspended for one (1) year.

274 (d) Except as otherwise provided in Section 1 of House
275 Bill No. _____, 1999 Regular Session, for any third or subsequent
276 conviction of any person under the age of twenty-one (21) years
277 violating subsection (1) of this section, the offenses being
278 committed within a period of five (5) years, such person shall be
279 fined not more than One Thousand Dollars (\$1,000.00) and shall
280 have his driver's license suspended until he reaches the age of
281 twenty-one (21) or for two (2) years, whichever is longer.

282 (e) Any person under the age of twenty-one (21) years
283 convicted of a second violation of subsection (1) of this section,
284 may have the period that his driver's license is suspended reduced
285 if such person receives an in-depth diagnostic assessment, and as
286 a result of such assessment is determined to be in need of
287 treatment of his alcohol and/or drug abuse problem and
288 successfully completes treatment of his alcohol and/or drug abuse
289 problem at a program site certified by the Department of Mental
290 Health. Such person shall be eligible for reinstatement of his
291 driving privileges upon the successful completion of such
292 treatment after a period of six (6) months after such person's
293 driver's license is suspended. Each person who receives a
294 diagnostic assessment shall pay a fee representing the cost of
295 such assessment. Each person who participates in a treatment
296 program shall pay a fee representing the cost of such treatment.

297 (f) Any person under the age of twenty-one (21) years
298 convicted of a third or subsequent violation of subsection (1) of
299 this section shall complete treatment of an alcohol and/or drug
300 abuse program at a site certified by the Department of Mental
301 Health.

302 (g) The court shall have the discretion to rule that a
303 first offense of this subsection by a person under the age of
304 twenty-one (21) years shall be nonadjudicated. Such person shall
305 be eligible for nonadjudication only once. The Department of
306 Public Safety shall maintain a confidential registry of all cases
307 which are nonadjudicated as provided in this paragraph. A judge
308 who rules that a case is nonadjudicated shall forward such ruling
309 to the Department of Public Safety. Judges and prosecutors
310 involved in implied consent violations shall have access to the
311 confidential registry for the purpose of determining
312 nonadjudication eligibility. A record of a person who has been
313 nonadjudicated shall be maintained for five (5) years or until
314 such person reaches the age of twenty-one (21) years. Any person
315 whose confidential record has been disclosed in violation of this
316 paragraph shall have a civil cause of action against the person
317 and/or agency responsible for such disclosure.

318 (4) Every person convicted of operating a vehicle while
319 under the influence of intoxicating liquor or any other substance
320 which has impaired such person's ability to operate a motor
321 vehicle where the person (a) refused a law enforcement officer's
322 request to submit to a chemical test of his breath as provided in
323 this chapter, or (b) was unconscious at the time of a chemical
324 test and refused to consent to the introduction of the results of
325 such test in any prosecution, shall be punished consistent with
326 the penalties prescribed herein for persons submitting to the
327 test, except that there shall be an additional suspension of
328 driving privileges as follows:

329 The Commissioner of Public Safety or his authorized agent
330 shall suspend the driver's license or permit to drive or deny the
331 issuance of a license or permit to such person as provided for
332 first, second and third or subsequent offenders in subsection (2)
333 of this section. Such suspension shall be in addition to any
334 suspension imposed pursuant to subsection (1) of Section 63-11-23.

335 (5) Every person who operates any motor vehicle in violation

336 of the provisions of subsection (1) of this section and who in a
337 negligent manner causes the death of another or mutilates,
338 disfigures, permanently disables or destroys the tongue, eye, lip,
339 nose or any other limb, organ or member of another shall, upon
340 conviction, be guilty of a felony and shall be committed to the
341 custody of the State Department of Corrections for a period of
342 time not to exceed twenty-five (25) years.

343 (6) Upon conviction of any violation of subsection (1) of
344 this section, the trial judge shall sign in the place provided on
345 the traffic ticket, citation or affidavit stating that the person
346 arrested either employed an attorney or waived his right to an
347 attorney after having been properly advised. If the person
348 arrested employed an attorney, the name, address and telephone
349 number of the attorney shall be written on the ticket, citation or
350 affidavit. The judge shall cause a copy of the traffic ticket,
351 citation or affidavit, and any other pertinent documents
352 concerning the conviction, to be sent to the Commissioner of
353 Public Safety. A copy of the traffic ticket, citation or
354 affidavit and any other pertinent documents, having been attested
355 as true and correct by the Commissioner of Public Safety, or his
356 designee, shall be sufficient proof of the conviction for purposes
357 of determining the enhanced penalty for any subsequent convictions
358 of violations of subsection (1) of this section.

359 (7) Convictions in other states of violations for driving or
360 operating a vehicle while under the influence of an intoxicating
361 liquor or while under the influence of any other substance that
362 has impaired the person's ability to operate a motor vehicle
363 occurring after July 1, 1992, shall be counted for the purposes of
364 determining if a violation of subsection (1) of this section is a
365 first, second, third or subsequent offense and the penalty that
366 shall be imposed upon conviction for a violation of subsection (1)
367 of this section.

368 (8) For the purposes of determining how to impose the
369 sentence for a second, third or subsequent conviction under this

370 section, the indictment shall not be required to enumerate
371 previous convictions. It shall only be necessary that the
372 indictment state the number of times that the defendant has been
373 convicted and sentenced within the past five (5) years under this
374 section to determine if an enhanced penalty shall be imposed. The
375 amount of fine and imprisonment imposed in previous convictions
376 shall not be considered in calculating offenses to determine a
377 second, third or subsequent offense of this section.

378 (9) Any person under the legal age to obtain a license to
379 operate a motor vehicle convicted under this section shall not be
380 eligible to receive such license until the person reaches the age
381 of eighteen (18) years.

382 (10) Suspension of driving privileges for any person
383 convicted of violations of Section 63-11-30(1) shall run
384 consecutively.

385 SECTION 3. Section 1 of this act shall be codified as a
386 separate code section in Chapter 11 of Title 63, Mississippi Code
387 of 1972.

388 SECTION 4. This act shall take effect and be in force from
389 and after July 1, 1999.