

By: Representative Janus

To: Judiciary A; Game and
Fish

HOUSE BILL NO. 128

1 AN ACT TO AMEND SECTION 59-23-5, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE DRAWING BLOOD OF UNCONSCIOUS PERSONS AND PERSONS
3 INVOLVED IN ACCIDENTS WHERE AN INJURY OCCURS UNDER THE ALCOHOL
4 BOATING SAFETY ACT; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 59-23-5, Mississippi Code of 1972, is
7 amended as follows:

8 59-23-5. (1) A person who operates a watercraft in waters
9 over which this state has jurisdiction shall be deemed to have
10 given consent to submit to a chemical test or test of his breath
11 for the purpose of determining the alcoholic content of his blood,
12 as a condition of operating the watercraft in this state.

13 (2) A law enforcement officer who has probable cause to
14 believe that a person has committed an offense under Sections 1
15 through 4 of this act shall offer the person the opportunity to
16 submit to a chemical test. It is not necessary for the law
17 enforcement officer to offer a chemical test to an unconscious
18 person. A law enforcement officer may have the blood of an
19 unconscious person or a person involved in an accident where an
20 injury or death occurs drawn for testing without the consent of a
21 judge if the law enforcement officer has probable cause to believe
22 that such person has committed an offense under this chapter. A
23 law enforcement officer may offer a person more than one (1)
24 chemical test under this section. However, all tests must be
25 administered within three (3) hours after the officer has probable
26 cause to believe the person violated Sections 1 through 4 of this
27 act. If a person refuses to submit to a chemical test under

28 Sections 1 through 4 of this act, the person shall be informed by
29 the law enforcement officer that the refusal to submit to the test
30 shall subject him to arrest and punishment consistent with the
31 penalties prescribed in Section 4 of this act for persons
32 submitting to the test, and that the court shall order the person
33 not to operate a watercraft for at least one (1) year.

34 (3) If the chemical test results in prima facie evidence
35 that the person is intoxicated, he shall immediately be arrested.

36 (4) (a) The law enforcement officer arresting a person
37 pursuant to the provisions of Sections 1 through 4 of this act
38 shall inform the person arrested that:

39 (i) The person arrested has the right to be
40 represented by legal counsel;

41 (ii) The person arrested may waive the right to be
42 represented by legal counsel; and

43 (iii) The charge for which the person is being
44 arrested may be used against him, upon conviction, for purposes of
45 receiving an enhanced penalty as provided in Section 59-23-7.

46 (b) The citation or affidavit which is issued to the
47 person arrested shall be uniform throughout all jurisdictions in
48 the State of Mississippi and shall contain a place for the
49 arresting official to sign, stating that he has advised the person
50 arrested of the information contained in paragraph (a) of this
51 subsection. The judge hearing the case or accepting the guilty
52 plea, as the case may be, shall sign in a place provided on the
53 citation or affidavit stating that the person arrested either
54 employed an attorney or waived his right to an attorney after
55 having been advised pursuant to paragraph (a) of this subsection.
56 If the person arrested employed an attorney, the name, address and
57 telephone number of the attorney shall be written on the citation
58 or affidavit.

59 (c) The Mississippi Department of Wildlife, Fisheries
60 and Parks shall prepare and furnish, no later than July 1, 1995,
61 to all jurisdictions in the State of Mississippi a uniform
62 citation form consistent with Sections 1 through 4 of this act,
63 which shall be used in all jurisdictions in the State of
64 Mississippi.

65 (d) The Mississippi Department of Wildlife, Fisheries
66 and Parks shall notify, by whatever means it deems appropriate,
67 all law enforcement officers who are authorized to enforce the
68 provisions of Sections 1 through 4 of this act of their obligation
69 to provide the information and execute the citation or affidavit,
70 as described in paragraphs (a) and (b) of this subsection.

71 SECTION 2. This act shall take effect and be in force from
72 and after July 1, 1999.