

By: Representative Scott (80th)

To: Judiciary A

## HOUSE BILL NO. 208

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE PERSONS CONVICTED UNDER THE IMPLIED CONSENT LAW TO  
3 ATTEND AN ALCOHOL AND/OR DRUG PROGRAM APPROVED BY THE DEPARTMENT  
4 OF MENTAL HEALTH; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 63-11-30, Mississippi Code of 1972, is  
7 amended as follows:

8 63-11-30. (1) It is unlawful for any person to drive or  
9 otherwise operate a vehicle within this state who (a) is under the  
10 influence of intoxicating liquor; (b) is under the influence of  
11 any other substance which has impaired such person's ability to  
12 operate a motor vehicle; (c) has an alcohol concentration of ten  
13 one-hundredths percent (.10%) or more for persons who are above  
14 the legal age to purchase alcoholic beverages under state law, or  
15 two one-hundredths percent (.02%) or more for persons who are  
16 below the legal age to purchase alcoholic beverages under state  
17 law, in the person's blood based upon grams of alcohol per one  
18 hundred (100) milliliters of blood or grams of alcohol per two  
19 hundred ten (210) liters of breath as shown by a chemical analysis  
20 of such person's breath, blood or urine administered as authorized  
21 by this chapter; (d) is under the influence of any drug or  
22 controlled substance, the possession of which is unlawful under  
23 the Mississippi Controlled Substances Law; or (e) has an alcohol  
24 concentration of four one-hundredths percent (.04%) or more in the  
25 person's blood, based upon grams of alcohol per one hundred (100)  
26 milliliters of blood or grams of alcohol per two hundred ten (210)  
27 liters of breath as shown by a chemical analysis of such person's  
28 blood, breath or urine, administered as authorized by this chapter

29 for persons operating a commercial motor vehicle.

30 (2) (a) Except as otherwise provided in subsection (3),  
31 upon conviction of any person for the first offense of violating  
32 subsection (1) of this section where chemical tests provided for  
33 under Section 63-11-5 were given, or where chemical test results  
34 are not available, such person shall be fined not less than Two  
35 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
36 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
37 hours in jail or both; and the court shall order such person to  
38 attend and complete an alcohol safety education program as  
39 provided in Section 63-11-32 and to enter and complete an alcohol  
40 and/or drug abuse program approved by the Department of Mental  
41 Health. The court may substitute attendance at a victim impact  
42 panel instead of forty-eight (48) hours in jail. In addition, the  
43 Department of Public Safety, the Commissioner of Public Safety or  
44 his duly authorized agent shall, after conviction and upon receipt  
45 of the court abstract, suspend the driver's license and driving  
46 privileges of such person for a period of not less than ninety  
47 (90) days and until such person attends and successfully completes  
48 an alcohol safety education program as herein provided; provided,  
49 however, in no event shall such period of suspension exceed one  
50 (1) year. Commercial driving privileges shall be suspended as  
51 provided in Section 63-1-83.

52 The circuit court having jurisdiction in the county in which  
53 the conviction was had or the circuit court of the person's county  
54 of residence may reduce the suspension of driving privileges under  
55 Section 63-11-30(2)(a) if the denial of which would constitute a  
56 hardship on the offender, except that no court may issue such an  
57 order reducing the suspension of driving privileges under this  
58 subsection until thirty (30) days have elapsed from the effective  
59 date of the suspension. Hardships shall only apply to first  
60 offenses under Section 63-11-30(1), and shall not apply to second,  
61 third or subsequent convictions of any person violating subsection  
62 (1) of this section. A reduction of suspension on the basis of  
63 hardship shall not be available to any person who refused to  
64 submit to a chemical test upon the request of a law enforcement  
65 officer as provided in Section 63-11-5. When the petition is  
66 filed, such person shall pay to the circuit clerk of the court

67 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
68 shall be deposited into the State General Fund to the credit of a  
69 special fund hereby created in the State Treasury to be used for  
70 alcohol or drug abuse treatment and education, upon appropriation  
71 by the Legislature. This fee shall be in addition to any other  
72 court costs or fees required for the filing of petitions.

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

81 The order entered under the provisions of this subsection  
82 shall contain the specific grounds upon which hardship was  
83 determined, and shall order the petitioner to attend and complete  
84 an alcohol safety education program as provided in Section  
85 63-11-32. A certified copy of such order shall be delivered to  
86 the Commissioner of Public Safety by the clerk of the court within  
87 five (5) days of the entry of the order. The certified copy of  
88 such order shall contain information which will identify the  
89 petitioner, including, but not limited to, the name, mailing  
90 address, street address, Social Security number and driver's  
91 license number of the petitioner.

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

- 97 (i) Continue his employment;
- 98 (ii) Continue attending school or an educational  
99 institution; or
- 100 (iii) Obtain necessary medical care.

101 Proof of the hardship shall be established by clear and  
102 convincing evidence which shall be supported by independent  
103 documentation.

104 (b) Except as otherwise provided in subsection (3),  
105 upon any second conviction of any person violating subsection (1)  
106 of this section, the offenses being committed within a period of  
107 five (5) years, such person shall be fined not less than Six  
108 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
109 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)  
110 days nor more than one (1) year and sentenced to community service  
111 work for not less than ten (10) days nor more than one (1) year.  
112 Except as may otherwise be provided by paragraph (e) of this  
113 subsection, the Commissioner of Public Safety shall suspend the  
114 driver's license of such person for two (2) years. Suspension of  
115 a commercial driver's license shall be governed by Section  
116 63-1-83. Upon any second conviction as described in this  
117 paragraph, the court shall ascertain whether the defendant is  
118 married, and if the defendant is married shall obtain the name and  
119 address of the defendant's spouse; the clerk of the court shall  
120 submit this information to the Department of Public Safety.  
121 Further, the commissioner shall notify in writing, by certified  
122 mail, return receipt requested, the owner of the vehicle and the  
123 spouse, if any, of the person convicted of the second violation of  
124 the possibility of forfeiture of the vehicle if such person is  
125 convicted of a third violation of subsection (1) of this section.

126 The owner of the vehicle and the spouse shall be considered  
127 notified under this paragraph if the notice is deposited in the  
128 United States mail and any claim that the notice was not in fact  
129 received by the addressee shall not affect a subsequent forfeiture  
130 proceeding.

131 (c) Except as otherwise provided in subsection (3), for  
132 any third or subsequent conviction of any person violating  
133 subsection (1) of this section, the offenses being committed  
134 within a period of five (5) years, such person shall be guilty of

135 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
136 nor more than Five Thousand Dollars (\$5,000.00) and shall be  
137 imprisoned not less than one (1) year nor more than five (5) years  
138 in the State Penitentiary. The law enforcement agency shall seize  
139 the vehicle operated by any person charged with a third or  
140 subsequent violation of subsection (1) of this section, if such  
141 convicted person was driving the vehicle at the time the offense  
142 was committed. Such vehicle may be forfeited in the manner  
143 provided by Sections 63-11-49 through 63-11-53. Except as may  
144 otherwise be provided by paragraph (e) of this subsection, the  
145 Commissioner of Public Safety shall suspend the driver's license  
146 of such person for five (5) years. The suspension of a commercial  
147 driver's license shall be governed by Section 63-1-83.

148 (d) Except as otherwise provided in subsection (3), any  
149 person convicted of a second violation of subsection (1) of this  
150 section shall enter an alcohol and/or drug abuse program approved  
151 by the Department of Mental Health and may have the period that  
152 his driver's license is suspended reduced if such person receives  
153 an in-depth diagnostic assessment, and as a result of such  
154 assessment is determined to be in need of treatment of his alcohol  
155 and/or drug abuse problem and successfully completes treatment of  
156 his alcohol and/or drug abuse problem at a program site certified  
157 by the Department of Mental Health. Such person shall be eligible  
158 for reinstatement of his driving privileges upon the successful  
159 completion of such treatment after a period of one (1) year after  
160 such person's driver's license is suspended. Each person who  
161 receives a diagnostic assessment shall pay a fee representing the  
162 cost of such assessment. Each person who participates in a  
163 treatment program shall pay a fee representing the cost of such  
164 treatment.

165 (e) Except as otherwise provided in subsection (3), any  
166 person convicted of a third or subsequent violation of subsection  
167 (1) of this section shall enter an alcohol and/or drug abuse  
168 program approved by the Department of Mental Health for treatment

169 of such person's alcohol and/or drug abuse problem. If such  
170 person successfully completes such treatment, such person shall be  
171 eligible for reinstatement of his driving privileges after a  
172 period of three (3) years after such person's driver's license is  
173 suspended.

174 (3) (a) This subsection shall be known and may be cited as  
175 Zero Tolerance for Minors. The provisions of this subsection  
176 shall apply only when a person under the age of twenty-one (21)  
177 years has a blood alcohol concentration two one-hundredths percent  
178 (.02%) or more, but lower than eight one-hundredths percent  
179 (.08%). If such person's blood alcohol concentration is eight  
180 one-hundredths percent (.08%) or more, the provisions of  
181 subsection (2) shall apply.

182 (b) Upon conviction of any person under the age of  
183 twenty-one (21) years for the first offense of violating  
184 subsection (1) of this section where chemical tests provided for  
185 under Section 63-11-5 were given, or where chemical test results  
186 are not available, such person shall have his driver's license  
187 suspended for ninety (90) days and shall be fined Two Hundred  
188 Fifty Dollars (\$250.00); and the court shall order such person to  
189 attend and complete an alcohol safety education program as  
190 provided in Section 63-11-32. The court may also require  
191 attendance at a victim impact panel.

192 The circuit court having jurisdiction in the county in which  
193 the conviction was had or the circuit court of the person's county  
194 of residence may reduce the suspension of driving privileges under  
195 Section 63-11-30(2)(a) if the denial of which would constitute a  
196 hardship on the offender, except that no court may issue such an  
197 order reducing the suspension of driving privileges under this  
198 subsection until thirty (30) days have elapsed from the effective  
199 date of the suspension. Hardships shall only apply to first  
200 offenses under Section 63-11-30(1), and shall not apply to second,  
201 third or subsequent convictions of any person violating subsection  
202 (1) of this section. A reduction of suspension on the basis of

203 hardship shall not be available to any person who refused to  
204 submit to a chemical test upon the request of a law enforcement  
205 officer as provided in Section 63-11-5. When the petition is  
206 filed, such person shall pay to the circuit clerk of the court  
207 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
208 shall be deposited into the State General Fund to the credit of a  
209 special fund hereby created in the State Treasury to be used for  
210 alcohol or drug abuse treatment and education, upon appropriation  
211 by the Legislature. This fee shall be in addition to any other  
212 court costs or fees required for the filing of petitions.

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

221         The order entered under the provisions of this subsection  
222 shall contain the specific grounds upon which hardship was  
223 determined, and shall order the petitioner to attend and complete  
224 an alcohol safety education program as provided in Section  
225 63-11-32. A certified copy of such order shall be delivered to  
226 the Commissioner of Public Safety by the clerk of the court within  
227 five (5) days of the entry of the order. The certified copy of  
228 such order shall contain information which will identify the  
229 petitioner, including, but not limited to, the name, mailing  
230 address, street address, Social Security number and driver's  
231 license number of the petitioner.

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

- 237 (i) Continue his employment;  
238 (ii) Continue attending school or an educational  
239 institution; or  
240 (iii) Obtain necessary medical care.

241 Proof of the hardship shall be established by clear and  
242 convincing evidence which shall be supported by independent  
243 documentation.

244 (c) Upon any second conviction of any person under the  
245 age of twenty-one (21) years violating subsection (1) of this  
246 section, the offenses being committed within a period of five (5)  
247 years, such person shall be fined not more than Five Hundred  
248 Dollars (\$500.00) and shall have his driver's license suspended  
249 for one (1) year.

250 (d) For any third or subsequent conviction of any  
251 person under the age of twenty-one (21) years violating subsection  
252 (1) of this section, the offenses being committed within a period  
253 of five (5) years, such person shall be fined not more than One  
254 Thousand Dollars (\$1,000.00) and shall have his driver's license  
255 suspended until he reaches the age of twenty-one (21) or for two  
256 (2) years, whichever is longer.

257 (e) Any person under the age of twenty-one (21) years  
258 convicted of a second violation of subsection (1) of this section,  
259 shall have the period that his driver's license is suspended  
260 reduced if such person receives an in-depth diagnostic assessment,  
261 and as a result of such assessment is determined to be in need of  
262 treatment of his alcohol and/or drug abuse problem and  
263 successfully completes treatment of his alcohol and/or drug abuse  
264 problem at a program site certified by the Department of Mental  
265 Health. Such person shall be eligible for reinstatement of his  
266 driving privileges upon the successful completion of such  
267 treatment after a period of six (6) months after such person's  
268 driver's license is suspended. Each person who receives a  
269 diagnostic assessment shall pay a fee representing the cost of  
270 such assessment. Each person who participates in a treatment

271 program shall pay a fee representing the cost of such treatment.

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

277 (g) The court shall have the discretion to rule that a  
278 first offense of this subsection by a person under the age of  
279 twenty-one (21) years shall be nonadjudicated. Such person shall  
280 be eligible for nonadjudication only once. The Department of  
281 Public Safety shall maintain a confidential registry of all cases  
282 which are nonadjudicated as provided in this paragraph. A judge  
283 who rules that a case is nonadjudicated shall forward such ruling  
284 to the Department of Public Safety. Judges and prosecutors  
285 involved in implied consent violations shall have access to the  
286 confidential registry for the purpose of determining  
287 nonadjudication eligibility. A record of a person who has been  
288 nonadjudicated shall be maintained for five (5) years or until  
289 such person reaches the age of twenty-one (21) years. Any person  
290 whose confidential record has been disclosed in violation of this  
291 paragraph shall have a civil cause of action against the person  
292 and/or agency responsible for such disclosure.

293 (4) Every person convicted of operating a vehicle while  
294 under the influence of intoxicating liquor or any other substance  
295 which has impaired such person's ability to operate a motor  
296 vehicle where the person (a) refused a law enforcement officer's  
297 request to submit to a chemical test of his breath as provided in  
298 this chapter, or (b) was unconscious at the time of a chemical  
299 test and refused to consent to the introduction of the results of  
300 such test in any prosecution, shall be punished consistent with  
301 the penalties prescribed herein for persons submitting to the  
302 test, except that there shall be an additional suspension of  
303 driving privileges as follows:

304 The Commissioner of Public Safety or his authorized agent

305 shall suspend the driver's license or permit to drive or deny the  
306 issuance of a license or permit to such person as provided for  
307 first, second and third or subsequent offenders in subsection (2)  
308 of this section. Such suspension shall be in addition to any  
309 suspension imposed pursuant to subsection (1) of Section 63-11-23.

310 (5) Every person who operates any motor vehicle in violation  
311 of the provisions of subsection (1) of this section and who in a  
312 negligent manner causes the death of another or mutilates,  
313 disfigures, permanently disables or destroys the tongue, eye, lip,  
314 nose or any other limb, organ or member of another shall, upon  
315 conviction, be guilty of a felony and shall be committed to the  
316 custody of the State Department of Corrections for a period of  
317 time not to exceed twenty-five (25) years.

318 (6) Upon conviction of any violation of subsection (1) of  
319 this section, the trial judge shall sign in the place provided on  
320 the traffic ticket, citation or affidavit stating that the person  
321 arrested either employed an attorney or waived his right to an  
322 attorney after having been properly advised. If the person  
323 arrested employed an attorney, the name, address and telephone  
324 number of the attorney shall be written on the ticket, citation or  
325 affidavit. The judge shall cause a copy of the traffic ticket,  
326 citation or affidavit, and any other pertinent documents  
327 concerning the conviction, to be sent to the Commissioner of  
328 Public Safety. A copy of the traffic ticket, citation or  
329 affidavit and any other pertinent documents, having been attested  
330 as true and correct by the Commissioner of Public Safety, or his  
331 designee, shall be sufficient proof of the conviction for purposes  
332 of determining the enhanced penalty for any subsequent convictions  
333 of violations of subsection (1) of this section.

334 (7) Convictions in other states of violations for driving or  
335 operating a vehicle while under the influence of an intoxicating  
336 liquor or while under the influence of any other substance that  
337 has impaired the person's ability to operate a motor vehicle  
338 occurring after July 1, 1992, shall be counted for the purposes of

339 determining if a violation of subsection (1) of this section is a  
340 first, second, third or subsequent offense and the penalty that  
341 shall be imposed upon conviction for a violation of subsection (1)  
342 of this section.

343 (8) For the purposes of determining how to impose the  
344 sentence for a second, third or subsequent conviction under this  
345 section, the indictment shall not be required to enumerate  
346 previous convictions. It shall only be necessary that the  
347 indictment state the number of times that the defendant has been  
348 convicted and sentenced within the past five (5) years under this  
349 section to determine if an enhanced penalty shall be imposed. The  
350 amount of fine and imprisonment imposed in previous convictions  
351 shall not be considered in calculating offenses to determine a  
352 second, third or subsequent offense of this section.

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

357 (10) Suspension of driving privileges for any person  
358 convicted of violations of Section 63-11-30(1) shall run  
359 consecutively.

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