

By: Representative Davis

To: Judiciary A; Ways and
Means

HOUSE BILL NO. 645

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A PERSON CONVICTED FOR A THIRD OR SUBSEQUENT
3 OFFENSE OF DRIVING UNDER THE INFLUENCE SHALL BE REQUIRED TO OBTAIN
4 A DISTINCTIVE LICENSE TAG WHICH CLEARLY IDENTIFIES SUCH PERSON TO
5 LAW ENFORCEMENT OFFICERS AND SHALL BE REQUIRED TO DISPLAY SUCH TAG
6 FOR A PERIOD OF THREE YEARS ON EACH MOTOR VEHICLE REGISTERED IN
7 HIS NAME; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION
8 27-19-56.9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE STATE
9 TAX COMMISSION SHALL DESIGN AND ISSUE THROUGH THE COUNTY TAX
10 COLLECTORS THE DISTINCTIVE TAGS REQUIRED BY THIS ACT, AND TO
11 PRESCRIBE THE MANNER AND PROCEDURE BY WHICH SUCH TAGS SHALL BE
12 ISSUED; AND FOR RELATED PURPOSES.

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

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

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

33 person's blood, based upon grams of alcohol per one hundred (100)
34 milliliters of blood or grams of alcohol per two hundred ten (210)
35 liters of breath as shown by a chemical analysis of such person's
36 blood, breath or urine, administered as authorized by this chapter
37 for persons operating a commercial motor vehicle.

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

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

71 officer as provided in Section 63-11-5. When the petition is
72 filed, such person shall pay to the circuit clerk of the court
73 where the petition is filed a fee of Fifty Dollars (\$50.00), which
74 shall be deposited into the State General Fund to the credit of a
75 special fund hereby created in the State Treasury to be used for
76 alcohol or drug abuse treatment and education, upon appropriation
77 by the Legislature. This fee shall be in addition to any other
78 court costs or fees required for the filing of petitions.

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

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

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

- 103 (i) Continue his employment;
- 104 (ii) Continue attending school or an educational

105 institution; or

106 (iii) Obtain necessary medical care.

107 Proof of the hardship shall be established by clear and
108 convincing evidence which shall be supported by independent
109 documentation.

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

127 Further, the commissioner shall notify in writing, by certified
128 mail, return receipt requested, the owner of the vehicle and the
129 spouse, if any, of the person convicted of the second violation of
130 the possibility of forfeiture of the vehicle if such person is
131 convicted of a third violation of subsection (1) of this section.

132 The owner of the vehicle and the spouse shall be considered
133 notified under this paragraph if the notice is deposited in the
134 United States mail and any claim that the notice was not in fact
135 received by the addressee shall not affect a subsequent forfeiture
136 proceeding.

137 (c) (i) Except as otherwise provided in subsection
138 (3), for any third or subsequent conviction of any person

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

154 (ii) In addition to any other penalties imposed
155 under the provisions of this section, any person convicted of
156 violating subsection (1) of this section and sentenced under the
157 provisions of subparagraph (2)(c)(i) of this section shall be
158 ordered by the sentencing court to obtain a distinctive license
159 tag under the provisions of Section 27-19-56.9 which contains a
160 distinctive letter or number preceding all other letters and
161 numbers for the purpose of providing clear recognition to law
162 enforcement officers that the vehicle is registered in the name of
163 a person who has been convicted of a third or subsequent offense
164 of driving under the influence. The court shall order such person
165 to display such tag, in the manner as required by law, on each
166 private carrier of passengers, each pickup truck and all other
167 noncommercial motor vehicles registered in his name, for a period
168 of three (3) years from the date the tag is purchased. A person
169 has seven (7) days, from the date of entry of the order of the
170 court, exclusive of Sundays and holidays, to obtain the
171 distinctive license tag. Any person who violates such order of
172 the court, upon conviction, is guilty of a misdemeanor and shall

173 be punished by a fine of not less than One Hundred Dollars
174 (\$100.00) nor more than Two Hundred Dollars (\$200.00), or by
175 imprisonment in the county jail for not more than six (6) months,
176 or by both such fine and imprisonment. The court may not suspend
177 or suspend the execution of, in whole or in part, the penalties
178 required by this subparagraph (ii).

179 (d) Except as otherwise provided in subsection (3), any
180 person convicted of a second violation of subsection (1) of this
181 section, may have the period that his driver's license is
182 suspended reduced if such person receives an in-depth diagnostic
183 assessment, and as a result of such assessment is determined to be
184 in need of treatment of his alcohol and/or drug abuse problem and
185 successfully completes treatment of his alcohol and/or drug abuse
186 problem at a program site certified by the Department of Mental
187 Health. Such person shall be eligible for reinstatement of his
188 driving privileges upon the successful completion of such
189 treatment after a period of one (1) year after such person's
190 driver's license is suspended. Each person who receives a
191 diagnostic assessment shall pay a fee representing the cost of
192 such assessment. Each person who participates in a treatment
193 program shall pay a fee representing the cost of such treatment.

194 (e) Except as otherwise provided in subsection (3), any
195 person convicted of a third or subsequent violation of subsection
196 (1) of this section may enter an alcohol and/or drug abuse program
197 approved by the Department of Mental Health for treatment of such
198 person's alcohol and/or drug abuse problem. If such person
199 successfully completes such treatment, such person shall be
200 eligible for reinstatement of his driving privileges after a
201 period of three (3) years after such person's driver's license is
202 suspended.

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

207 (.02%) or more, but lower than eight one-hundredths percent
208 (.08%). If such person's blood alcohol concentration is eight
209 one-hundredths percent (.08%) or more, the provisions of
210 subsection (2) shall apply.

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

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

241 court costs or fees required for the filing of petitions.

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

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

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

- 266 (i) Continue his employment;
267 (ii) Continue attending school or an educational
268 institution; or
269 (iii) Obtain necessary medical care.

270 Proof of the hardship shall be established by clear and
271 convincing evidence which shall be supported by independent
272 documentation.

273 (c) Upon any second conviction of any person under the
274 age of twenty-one (21) years violating subsection (1) of this

275 section, the offenses being committed within a period of five (5)
276 years, such person shall be fined not more than Five Hundred
277 Dollars (\$500.00) and shall have his driver's license suspended
278 for one (1) year.

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

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

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

306 (g) The court shall have the discretion to rule that a
307 first offense of this subsection by a person under the age of
308 twenty-one (21) years shall be nonadjudicated. Such person shall

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

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

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

339 (5) Every person who operates any motor vehicle in violation
340 of the provisions of subsection (1) of this section and who in a
341 negligent manner causes the death of another or mutilates,
342 disfigures, permanently disables or destroys the tongue, eye, lip,

343 nose or any other limb, organ or member of another shall, upon
344 conviction, be guilty of a felony and shall be committed to the
345 custody of the State Department of Corrections for a period of
346 time not to exceed twenty-five (25) years.

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

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

372 (8) For the purposes of determining how to impose the
373 sentence for a second, third or subsequent conviction under this
374 section, the indictment shall not be required to enumerate
375 previous convictions. It shall only be necessary that the
376 indictment state the number of times that the defendant has been

377 convicted and sentenced within the past five (5) years under this
378 section to determine if an enhanced penalty shall be imposed. The
379 amount of fine and imprisonment imposed in previous convictions
380 shall not be considered in calculating offenses to determine a
381 second, third or subsequent offense of this section.

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

386 (10) Suspension of driving privileges for any person
387 convicted of violations of Section 63-11-30(1) shall run
388 consecutively.

389 SECTION 2. The following shall be codified as Section
390 27-19-56.9, Mississippi Code of 1972:

391 27-19-56.9. (1) The State Tax Commission, in cooperation
392 with the License Tag Commission, shall design and issue through
393 the offices of the county tax collectors distinctive motor vehicle
394 license tags for display upon motor vehicles registered in the
395 names of persons who have been ordered by a court to obtain and
396 display the tags provided for under Section 63-11-30(2)(c)(ii).
397 Each tag shall contain a distinctive letter or number preceding
398 all other letters and numbers for the purpose of providing clear
399 recognition to law enforcement officers that the vehicle is
400 registered in the name of a person who has been convicted and
401 sentenced as a third or subsequent offender under the Implied
402 Consent Law.

403 (2) The distinctive license tags described in subsection (1)
404 of this section shall be issued annually to the persons who are
405 required to obtain such license tags and such persons shall be
406 required to pay the road and bridge privilege taxes, ad valorem
407 taxes and registration fees as otherwise prescribed by law for
408 each vehicle upon which the license tag is to be displayed.
409 However, if a vehicle for which a person applies for such
410 distinctive license tag is currently registered in the person's

411 name and the tag issued for such vehicle has not expired, then
412 such person shall be required only to pay the fees required under
413 the provisions of Section 27-19-37 in order to be issued a
414 distinctive license tag under the provisions of this section, and
415 such distinctive license tag shall remain valid until the
416 expiration date of the tag replaced by the distinctive tag.

417 SECTION 3. Prosecutions, convictions and penalties for
418 violations that occurred before July 1, 1999, under laws amended
419 by this act, and suspensions or denials of drivers' licenses,
420 permits or privileges made pursuant to laws amended by this act,
421 shall not be affected or abated by the provisions of this act. In
422 addition, convictions that occurred before July 1, 1999, under
423 laws amended by this act shall be counted for the purposes of
424 determining the penalties which shall be imposed on any person
425 convicted for a second or subsequent offense under the provisions
426 of the laws amended by this act.

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