

By: Representative Wallace

To: Judiciary A

HOUSE BILL NO. 1098

1 AN ACT TO AMEND SECTION 63-11-5, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE ADMINISTRATION OF A PRELIMINARY CHEMICAL BREATH TEST; TO
3 AUTHORIZE AN ARREST BASED ON THE RESULTS OF SUCH TEST; TO PROVIDE
4 THAT SUCH RESULTS SHALL BE ADMISSIBLE IN DEFENSE TO A CHALLENGE TO
5 THE VALIDITY OF AN ARREST; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 63-11-5, Mississippi Code of 1972, is
8 amended as follows:

9 63-11-5. (1) Any person who operates a motor vehicle upon
10 the public highways, public roads and streets of this state shall
11 be deemed to have given his consent, subject to the provisions of
12 this chapter, to a chemical test or tests of his breath for the
13 purpose of determining alcohol concentration. A person shall give
14 his consent to a chemical test or tests of his breath, blood or
15 urine for the purpose of determining the presence in his body of
16 any other substance which would impair a person's ability to
17 operate a motor vehicle. The test or tests shall be administered
18 at the direction of any highway patrol officer, any sheriff or his
19 duly commissioned deputies, any police officer in any incorporated
20 municipality, any national park ranger, any officer of a
21 state-supported institution of higher learning campus police force
22 if such officer is exercising this authority in regard to a
23 violation that occurred on campus property, or any security
24 officer appointed and commissioned pursuant to the Pearl River
25 Valley Water Supply District Security Officer Law of 1978 if such
26 officer is exercising this authority in regard to a violation that
27 occurred within the limits of the Pearl River Valley Water Supply

28 District, when such officer has reasonable grounds and probable
29 cause to believe that the person was driving or had under his
30 actual physical control a motor vehicle upon the public streets or
31 highways of this state while under the influence of intoxicating
32 liquor or any other substance which had impaired such person's
33 ability to operate a motor vehicle. No such test shall be
34 administered by any person who has not met all the educational and
35 training requirements of the appropriate course of study
36 prescribed by the Board on Law Enforcement Officers Standards and
37 Training; provided, however, that sheriffs and elected chiefs of
38 police shall be exempt from such educational and training
39 requirement. No such tests shall be given by any officer or any
40 agency to any person within fifteen (15) minutes of consumption of
41 any substance by mouth.

42 (2) If the officer has reasonable grounds and probable cause
43 to believe such person to have been driving a motor vehicle upon
44 the public highways, public roads, and streets of this state while
45 under the influence of intoxicating liquor, such officer shall
46 inform such person that his failure to submit to such chemical
47 test or tests of his breath shall result in the suspension of his
48 privilege to operate a motor vehicle upon the public streets and
49 highways of this state for a period of ninety (90) days in the
50 event such person has not previously been convicted of a violation
51 of Section 63-11-30, or, for a period of one (1) year in the event
52 of any previous conviction of such person under Section 63-11-30.

53 The officer may also require the person to submit to a
54 preliminary chemical breath analysis by means of a portable breath
55 tester at the site of the incident.

56 (a) The officer may arrest a person based in whole or
57 in part upon the results of a preliminary chemical breath
58 analysis.

59 (b) The results of a preliminary chemical breath
60 analysis shall be admissible into evidence solely to assist the
61 court or hearing officer in determining a challenge to the
62 validity of an arrest. This paragraph (b) does not limit the
63 introduction of other competent evidence offered to establish the
64 validity of an arrest. Failure to give a preliminary test shall

65 in no way affect the prosecution of an offense under this chapter.

66 (c) A person who submits to a preliminary chemical
67 breath analysis shall remain subject to the requirement to submit
68 to a chemical test as defined in Section 63-11-3.

69 (d) Refusal to submit to a preliminary chemical breath
70 analysis upon an officer's lawful request shall result in the
71 suspension of the person's privilege to operate a motor vehicle
72 upon the public streets and highways of this state for a period of
73 forty-five (45) days, such suspension to run consecutively to and
74 not concurrently with any other driver's license suspension
75 arising out of the same or another incident.

76 (3) The traffic ticket, citation or affidavit issued to a
77 person arrested for a violation of this chapter shall conform to
78 the requirements of Section 63-9-21(3)(b).

79 (4) Any person arrested under the provisions of this chapter
80 shall be informed that he has the right to telephone for the
81 purpose of requesting legal or medical assistance immediately
82 after being booked for a violation under this chapter.

83 (5) The Commissioner of Public Safety and the State Crime
84 Laboratory created pursuant to Section 45-1-17 are hereby
85 authorized from and after the passage of this section to adopt
86 procedures, rules and regulations, applicable to the Implied
87 Consent Law.

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