

By: Senator(s) Furniss

To: Judiciary

SENATE BILL NO. 2449

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT PLEA BARGAINS WHEN A PERSON ALLEGEDLY CAUSES DEATH IN
3 A NEGLIGENT MANNER WHEN DRIVING UNDER THE INFLUENCE; AND FOR
4 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. The court may substitute attendance
40 at a victim impact panel instead of forty-eight (48) hours in
41 jail. In addition, the Department of Public Safety, the
42 Commissioner of Public Safety or his duly authorized agent shall,
43 after conviction and upon receipt of the court abstract, suspend
44 the driver's license and driving privileges of such person for a
45 period of not less than ninety (90) days and until such person
46 attends and successfully completes an alcohol safety education
47 program as herein provided; provided, however, in no event shall
48 such period of suspension exceed one (1) year. Commercial driving
49 privileges shall be suspended as provided in Section 63-1-83.

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

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

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

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

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

- 95 (i) Continue his employment;
- 96 (ii) Continue attending school or an educational
97 institution; or

98 (iii) Obtain necessary medical care.

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

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

119 Further, the commissioner shall notify in writing, by certified
120 mail, return receipt requested, the owner of the vehicle and the
121 spouse, if any, of the person convicted of the second violation of
122 the possibility of forfeiture of the vehicle if such person is
123 convicted of a third violation of subsection (1) of this section.

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

129 (c) Except as otherwise provided in subsection (3), for
130 any third or subsequent conviction of any person violating

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

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

161 (e) Except as otherwise provided in subsection (3), any
162 person convicted of a third or subsequent violation of subsection
163 (1) of this section may enter an alcohol and/or drug abuse program

164 approved by the Department of Mental Health for treatment of such
165 person's alcohol and/or drug abuse problem. If such person
166 successfully completes such treatment, such person shall be
167 eligible for reinstatement of his driving privileges after a
168 period of three (3) years after such person's driver's license is
169 suspended.

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

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

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

197 third or subsequent convictions of any person violating subsection
198 (1) of this section. A reduction of suspension on the basis of
199 hardship shall not be available to any person who refused to
200 submit to a chemical test upon the request of a law enforcement
201 officer as provided in Section 63-11-5. When the petition is
202 filed, such person shall pay to the circuit clerk of the court
203 where the petition is filed a fee of Fifty Dollars (\$50.00), which
204 shall be deposited into the State General Fund to the credit of a
205 special fund hereby created in the State Treasury to be used for
206 alcohol or drug abuse treatment and education, upon appropriation
207 by the Legislature. This fee shall be in addition to any other
208 court costs or fees required for the filing of petitions.

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

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

228 At any time following at least thirty (30) days of suspension
229 for a first offense violation of this section, the court may grant

230 the person hardship driving privileges upon written petition of
231 the defendant, if it finds reasonable cause to believe that
232 revocation would hinder the person's ability to:

- 233 (i) Continue his employment;
- 234 (ii) Continue attending school or an educational
235 institution; or
- 236 (iii) Obtain necessary medical care.

237 Proof of the hardship shall be established by clear and
238 convincing evidence which shall be supported by independent
239 documentation.

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

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

253 (e) Any person under the age of twenty-one (21) years
254 convicted of a second violation of subsection (1) of this section,
255 may have the period that his driver's license is suspended reduced
256 if such person receives an in-depth diagnostic assessment, and as
257 a result of such assessment is determined to be in need of
258 treatment of his alcohol and/or drug abuse problem and
259 successfully completes treatment of his alcohol and/or drug abuse
260 problem at a program site certified by the Department of Mental
261 Health. Such person shall be eligible for reinstatement of his
262 driving privileges upon the successful completion of such

263 treatment after a period of six (6) months after such person's
264 driver's license is suspended. Each person who receives a
265 diagnostic assessment shall pay a fee representing the cost of
266 such assessment. Each person who participates in a treatment
267 program shall pay a fee representing the cost of such treatment.

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

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

289 (4) Every person convicted of operating a vehicle while
290 under the influence of intoxicating liquor or any other substance
291 which has impaired such person's ability to operate a motor
292 vehicle where the person (a) refused a law enforcement officer's
293 request to submit to a chemical test of his breath as provided in
294 this chapter, or (b) was unconscious at the time of a chemical
295 test and refused to consent to the introduction of the results of

296 such test in any prosecution, shall be punished consistent with
297 the penalties prescribed herein for persons submitting to the
298 test, except that there shall be an additional suspension of
299 driving privileges as follows:

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

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

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

329 of violations of subsection (1) of this section.

330 (7) Convictions in other states of violations for driving or
331 operating a vehicle while under the influence of an intoxicating
332 liquor or while under the influence of any other substance that
333 has impaired the person's ability to operate a motor vehicle
334 occurring after July 1, 1992, shall be counted for the purposes of
335 determining if a violation of subsection (1) of this section is a
336 first, second, third or subsequent offense and the penalty that
337 shall be imposed upon conviction for a violation of subsection (1)
338 of this section.

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

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

353 (10) Suspension of driving privileges for any person
354 convicted of violations of Section 63-11-30(1) shall run
355 consecutively.

356 (11) In cases where a person allegedly operates a motor
357 vehicle in violation of the provisions of subsection (1) and
358 allegedly causes the death of another in a negligent manner, the
359 party or the prosecutor shall not, under any circumstances, engage
360 in discussion for the purpose of agreeing to exchange concessions
361 by the prosecutor for the party's admission to the crime.

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