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(92nd)

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 878

1 AN ACT TO AMEND SECTIONS 63-11-23 AND 63-11-30, MISSISSIPPI
2 CODE OF 1972, TO REVISE THE SUSPENSION OF LICENSES IN IMPLIED
3 CONSENT VIOLATIONS; TO REVISE IMPLIED CONSENT PENALTIES; TO CREATE
4 SECTION 63-11-55, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE
5 POSSESSION OF AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE BY A PERSON
6 OPERATING A MOTOR VEHICLE UPON THE PUBLIC HIGHWAYS, PUBLIC ROADS
7 AND STREETS OF THIS STATE; TO PROVIDE FOR THE USE OF IGNITION
8 INTERLOCK DEVICES IN DUI CONVICTIONS; TO PROVIDE PENALTIES FOR
9 VIOLATIONS REGARDING THE USE OF IGNITION INTERLOCK DEVICES; AND
10 FOR RELATED PURPOSES.

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

12 SECTION 1. Section 63-11-23, Mississippi Code of 1972, is
13 amended as follows:

14 63-11-23. (1) The Commissioner of Public Safety, or his
15 authorized agent, shall review the sworn report by a law
16 enforcement officer as provided in Section 63-11-21. If upon such
17 review the Commissioner of Public Safety, or his authorized agent,
18 finds (a) that the law enforcement officer had reasonable grounds
19 and probable cause to believe the person had been driving a motor
20 vehicle upon the public highways, public roads and streets of this
21 state while under the influence of intoxicating liquor or any
22 other substance which may impair a person's mental or physical
23 ability; (b) that he refused to submit to the test upon request of
24 the officer; and (c) that the person was informed that his license
25 and/or driving privileges would be suspended or denied if he
26 refused to submit to the chemical test, then the Commissioner of
27 Public Safety, or his authorized agent, shall give notice to the
28 licensee that his license or permit to drive, or any nonresident
29 operating privilege, shall be suspended thirty (30) days after the
30 date of such notice for a period of ninety (90) days in the event

31 such person has not previously been convicted of a violation of
32 Section 63-11-30, or, for a period of one (1) year in the event of
33 any previous conviction of such person under Section 63-11-30. In
34 the event the commissioner or his authorized agent determines that
35 the license should not be suspended, he shall return the license
36 or permit to the licensee.

37 The notice of suspension shall be in writing and given in the
38 manner provided in Section 63-1-52(2)(a).

39 (2) If the chemical testing of a person's breath indicates
40 the blood alcohol concentration was ten one-hundredths percent
41 (.10%) or more for persons who are above the legal age to purchase
42 alcoholic beverages under state law, or two one-hundredths percent
43 (.02%) or more for persons who are below the legal age to purchase
44 alcoholic beverages under state law, based upon grams of alcohol
45 per one hundred (100) milliliters of blood or grams of alcohol per
46 two hundred ten (210) liters of breath as shown by a chemical
47 analysis of such person's blood, or breath, or urine, the
48 arresting officer shall seize the license and give the driver a
49 receipt for his license on forms prescribed by the Commissioner of
50 Public Safety and shall promptly forward the license together with
51 a sworn report to the Commissioner of Public Safety. The receipt
52 given a person as provided herein shall be valid as a permit to
53 operate a motor vehicle for a period of thirty (30) days in order
54 that the defendant be processed through the court having original
55 jurisdiction and a final disposition had; provided, however, that
56 if the defendant makes a written request directed to the trial
57 judge requesting that a trial be held on the matter within such
58 thirty-day period * * *. The fact that the defendant has the
59 right to request a trial shall not extend the permit to operate a
60 motor vehicle beyond the thirty (30) days. If a receipt or permit
61 to drive issued pursuant to the provisions of this subsection
62 expires without a trial having been requested as provided for in
63 this subsection, then the Commissioner of Public Safety or his
64 authorized agent shall suspend the license or permit to drive or
65 any nonresident operating privilege for the applicable period of
66 time as provided for in subsection (1) of this section.

67 (3) If the person is a resident without a license or permit

68 to operate a motor vehicle in this state, the Commissioner of
69 Public Safety, or his authorized agent, shall deny to the person
70 the issuance of a license or permit for a period of one (1) year
71 beginning thirty (30) days after the date of notice of such
72 suspension.

73 (4) It shall be the duty of the county prosecuting attorney,
74 an attorney employed under the provisions of Section 19-3-49, or
75 in the event there is no such prosecuting attorney for the county,
76 the duty of the district attorney to represent the state in any
77 hearing held under the provisions of Section 63-11-25, under the
78 provisions of Section 63-11-37(2) or under the provisions of
79 Section 63-11-30(2)(a).

80 SECTION 2. Section 63-11-30, Mississippi Code of 1972, is
81 amended as follows:

82 63-11-30. (1) It is unlawful for any person to drive or
83 otherwise operate a vehicle within this state who (a) is under the
84 influence of intoxicating liquor; (b) is under the influence of
85 any other substance which has impaired such person's ability to
86 operate a motor vehicle; (c) has an alcohol concentration of ten
87 one-hundredths percent (.10%) or more for persons who are above
88 the legal age to purchase alcoholic beverages under state law, or
89 two one-hundredths percent (.02%) or more for persons who are
90 below the legal age to purchase alcoholic beverages under state
91 law, in the person's blood based upon grams of alcohol per one
92 hundred (100) milliliters of blood or grams of alcohol per two
93 hundred ten (210) liters of breath as shown by a chemical analysis
94 of such person's breath, blood or urine administered as authorized
95 by this chapter; (d) is under the influence of any drug or
96 controlled substance, the possession of which is unlawful under
97 the Mississippi Controlled Substances Law; or (e) has an alcohol
98 concentration of four one-hundredths percent (.04%) or more in the
99 person's blood, based upon grams of alcohol per one hundred (100)
100 milliliters of blood or grams of alcohol per two hundred ten (210)

101 liters of breath as shown by a chemical analysis of such person's
102 blood, breath or urine, administered as authorized by this chapter
103 for persons operating a commercial motor vehicle.

104 (2) (a) Except as otherwise provided in subsection (3),
105 upon conviction of any person for the first offense of violating
106 subsection (1) of this section where chemical tests provided for
107 under Section 63-11-5 were given, or where chemical test results
108 are not available, such person shall be fined not less than Two
109 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
110 (\$1,000.00), or imprisoned for not more than forty-eight (48)
111 hours in jail or both; and the court shall order such person to
112 attend and complete an alcohol safety education program as
113 provided in Section 63-11-32. The court may substitute attendance
114 at a victim impact panel instead of forty-eight (48) hours in
115 jail. In addition, the Department of Public Safety, the
116 Commissioner of Public Safety or his duly authorized agent shall,
117 after conviction and upon receipt of the court abstract, suspend
118 the driver's license and driving privileges of such person for a
119 period of not less than ninety (90) days and until such person
120 attends and successfully completes an alcohol safety education
121 program as herein provided; provided, however, in no event shall
122 such period of suspension exceed one (1) year. Commercial driving
123 privileges shall be suspended as provided in Section 63-1-83.

124 The circuit court having jurisdiction in the county in which
125 the conviction was had or the circuit court of the person's county
126 of residence may reduce the suspension of driving privileges under
127 Section 63-11-30(2)(a) if the denial of which would constitute a
128 hardship on the offender, except that no court may issue such an
129 order reducing the suspension of driving privileges under this
130 subsection until thirty (30) days have elapsed from the effective
131 date of the suspension. Hardships shall only apply to first
132 offenses under Section 63-11-30(1), and shall not apply to second,
133 third or subsequent convictions of any person violating subsection

134 (1) of this section. A reduction of suspension on the basis of
135 hardship shall not be available to any person who refused to
136 submit to a chemical test upon the request of a law enforcement
137 officer as provided in Section 63-11-5. When the petition is
138 filed, such person shall pay to the circuit clerk of the court
139 where the petition is filed a fee of Fifty Dollars (\$50.00), which
140 shall be deposited into the State General Fund to the credit of a
141 special fund hereby created in the State Treasury to be used for
142 alcohol or drug abuse treatment and education, upon appropriation
143 by the Legislature. This fee shall be in addition to any other
144 court costs or fees required for the filing of petitions.

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

153 The order entered under the provisions of this subsection
154 shall contain the specific grounds upon which hardship was
155 determined, and shall order the petitioner to attend and complete
156 an alcohol safety education program as provided in Section
157 63-11-32. A certified copy of such order shall be delivered to
158 the Commissioner of Public Safety by the clerk of the court within
159 five (5) days of the entry of the order. The certified copy of
160 such order shall contain information which will identify the
161 petitioner, including, but not limited to, the name, mailing
162 address, street address, social security number and driver's
163 license number of the petitioner.

164 At any time following at least thirty (30) days of suspension
165 for a first offense violation of this section, the court may grant
166 the person hardship driving privileges upon written petition of

167 the defendant, if it finds reasonable cause to believe that
168 revocation would hinder the person's ability to:

- 169 (i) Continue his employment;
- 170 (ii) Continue attending school or an educational
171 institution; or
- 172 (iii) Obtain necessary medical care.

173 Proof of the hardship shall be established by clear and
174 convincing evidence which shall be supported by independent
175 documentation.

176 (b) Except as otherwise provided in subsection (3),
177 upon any second conviction of any person violating subsection (1)
178 of this section, the offenses being committed within a period of
179 five (5) years, such person shall be fined not less than Six
180 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
181 Dollars (\$1,500.00), shall be imprisoned not less than ten (10)
182 days nor more than one (1) year and sentenced to community service
183 work for not less than ten (10) days nor more than one (1) year
184 and the court shall require one (1) of the following: (i) the
185 motor vehicle of the offender shall be impounded for one (1) year;
186 (ii) the tag of the offender's motor vehicle shall be forfeited
187 for one (1) year; or (iii) an ignition interlock device shall be
188 installed on each of such person's motor vehicles for one (1) year
189 after the period of time has expired for the suspension of such
190 person's driver's license. Except as may otherwise be provided by
191 paragraph (d) of this subsection, the Commissioner of Public
192 Safety shall suspend the driver's license of such person for two
193 (2) years. Suspension of a commercial driver's license shall be
194 governed by Section 63-1-83. Upon any second conviction as
195 described in this paragraph, the court shall ascertain whether the
196 defendant is married, and if the defendant is married shall obtain
197 the name and address of the defendant's spouse; the clerk of the
198 court shall submit this information to the Department of Public
199 Safety. Further, the commissioner shall notify in writing, by

200 certified mail, return receipt requested, the owner of the vehicle
201 and the spouse, if any, of the person convicted of the second
202 violation of the possibility of forfeiture of the vehicle if such
203 person is convicted of a third violation of subsection (1) of this
204 section. The owner of the vehicle and the spouse shall be
205 considered notified under this paragraph if the notice is
206 deposited in the United States mail and any claim that the notice
207 was not in fact received by the addressee shall not affect a
208 subsequent forfeiture proceeding.

209 (c) Except as otherwise provided in subsection (3), for
210 any third or subsequent conviction of any person violating
211 subsection (1) of this section, the offenses being committed
212 within a period of five (5) years, such person shall be guilty of
213 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
214 nor more than Five Thousand Dollars (\$5,000.00), shall be
215 imprisoned not less than one (1) year nor more than five (5) years
216 in the State Penitentiary and the court shall require one (1) of
217 the following: (i) the motor vehicle of the offender shall be
218 impounded for two (2) years; (ii) the tag of the offender's motor
219 vehicle shall be forfeited for two (2) years; or (iii) an ignition
220 interlock device shall be installed on each of such person's motor
221 vehicles for two (2) years after the period of time has expired
222 for the suspension of such person's driver's license. The law
223 enforcement agency shall seize the vehicle operated by any person
224 charged with a third or subsequent violation of subsection (1) of
225 this section, if such convicted person was driving the vehicle at
226 the time the offense was committed. Such vehicle may be forfeited
227 in the manner provided by Sections 63-11-49 through 63-11-53.
228 Except as may otherwise be provided by paragraph (e) of this
229 subsection, the Commissioner of Public Safety shall suspend the
230 driver's license of such person for five (5) years. The
231 suspension of a commercial driver's license shall be governed by
232 Section 63-1-83.

233 (d) Except as otherwise provided in subsection (3), any
234 person convicted of a second violation of subsection (1) of this
235 section shall receive an in-depth diagnostic assessment, and if as
236 a result of such assessment is determined to be in need of
237 treatment of his alcohol and/or drug abuse problem, such person
238 shall successfully complete treatment of his alcohol and/or drug
239 abuse problem at a program site certified by the Department of
240 Mental Health. Such person shall be eligible for reinstatement of
241 his driving privileges upon the successful completion of such
242 treatment after a period of one (1) year after such person's
243 driver's license is suspended. Each person who receives a
244 diagnostic assessment shall pay a fee representing the cost of
245 such assessment. Each person who participates in a treatment
246 program shall pay a fee representing the cost of such treatment.

247 (e) Except as otherwise provided in subsection (3), any
248 person convicted of a third or subsequent violation of subsection
249 (1) of this section shall receive an in-depth diagnostic
250 assessment, and if as a result of such assessment is determined to
251 be in need of treatment of his alcohol and/or drug abuse problem,
252 such person shall enter an alcohol and/or drug abuse program
253 approved by the Department of Mental Health for treatment of such
254 person's alcohol and/or drug abuse problem. If such person
255 successfully completes such treatment, such person shall be
256 eligible for reinstatement of his driving privileges after a
257 period of three (3) years after such person's driver's license is
258 suspended.

259 (f) The minimum penalties provided by this section
260 shall not be suspended or reduced by the court and no prosecutor
261 shall offer a suspension or reduction as part of a plea bargain.

262 (g) The Department of Public Safety shall promulgate
263 rules and regulations for the use of interlock ignition devices as
264 provided in Section 4 of this act and consistent with the
265 provisions therein. Such rules and regulations shall provide for

266 the calibration of such devices and shall provide that the cost of
267 the use of such systems shall be borne by the offender. The
268 Department of Public Safety shall approve which vendors of such
269 devices shall be used to furnish such systems.

270 (3) (a) This subsection shall be known and may be cited as
271 Zero Tolerance for Minors. The provisions of this subsection
272 shall apply only when a person under the age of twenty-one (21)
273 years has a blood alcohol concentration two one-hundredths percent
274 (.02%) or more, but lower than eight one-hundredths percent
275 (.08%). If such person's blood alcohol concentration is eight
276 one-hundredths percent (.08%) or more, the provisions of
277 subsection (2) shall apply.

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

288 The circuit court having jurisdiction in the county in which
289 the conviction was had or the circuit court of the person's county
290 of residence may reduce the suspension of driving privileges under
291 Section 63-11-30(2)(a) if the denial of which would constitute a
292 hardship on the offender, except that no court may issue such an
293 order reducing the suspension of driving privileges under this
294 subsection until thirty (30) days have elapsed from the effective
295 date of the suspension. Hardships shall only apply to first
296 offenses under Section 63-11-30(1), and shall not apply to second,
297 third or subsequent convictions of any person violating subsection
298 (1) of this section. A reduction of suspension on the basis of

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

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

317 The order entered under the provisions of this subsection
318 shall contain the specific grounds upon which hardship was
319 determined, and shall order the petitioner to attend and complete
320 an alcohol safety education program as provided in Section
321 63-11-32. A certified copy of such order shall be delivered to
322 the Commissioner of Public Safety by the clerk of the court within
323 five (5) days of the entry of the order. The certified copy of
324 such order shall contain information which will identify the
325 petitioner, including, but not limited to, the name, mailing
326 address, street address, Social Security number and driver's
327 license number of the petitioner.

328 At any time following at least thirty (30) days of suspension
329 for a first offense violation of this section, the court may grant
330 the person hardship driving privileges upon written petition of
331 the defendant, if it finds reasonable cause to believe that

332 revocation would hinder the person's ability to:

333 (i) Continue his employment;

334 (ii) Continue attending school or an educational
335 institution; or

336 (iii) Obtain necessary medical care.

337 Proof of the hardship shall be established by clear and
338 convincing evidence which shall be supported by independent
339 documentation.

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

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

353 (e) Any person under the age of twenty-one (21) years
354 convicted of a second violation of subsection (1) of this section,
355 may have the period that his driver's license is suspended reduced
356 if such person receives an in-depth diagnostic assessment, and as
357 a result of such assessment is determined to be in need of
358 treatment of his alcohol and/or drug abuse problem and
359 successfully completes treatment of his alcohol and/or drug abuse
360 problem at a program site certified by the Department of Mental
361 Health. Such person shall be eligible for reinstatement of his
362 driving privileges upon the successful completion of such
363 treatment after a period of six (6) months after such person's
364 driver's license is suspended. Each person who receives a

365 diagnostic assessment shall pay a fee representing the cost of
366 such assessment. Each person who participates in a treatment
367 program shall pay a fee representing the cost of such treatment.

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

373 (g) The court shall have the discretion to rule that a
374 first offense of this subsection by a person under the age of
375 twenty-one (21) years shall be nonadjudicated. Such person shall
376 be eligible for nonadjudication only once. The Department of
377 Public Safety shall maintain a confidential registry of all cases
378 which are nonadjudicated as provided in this paragraph. A judge
379 who rules that a case is nonadjudicated shall forward such ruling
380 to the Department of Public Safety. Judges and prosecutors
381 involved in implied consent violations shall have access to the
382 confidential registry for the purpose of determining
383 nonadjudication eligibility. A record of a person who has been
384 nonadjudicated shall be maintained for five (5) years or until
385 such person reaches the age of twenty-one (21) years. Any person
386 whose confidential record has been disclosed in violation of this
387 paragraph shall have a civil cause of action against the person
388 and/or agency responsible for such disclosure.

389 (4) In addition to the other penalties provided in this
390 section, every person refusing a law enforcement officer's request
391 to submit to a chemical test of his breath as provided in this
392 chapter, or who was unconscious at the time of a chemical test and
393 refused to consent to the introduction of the results of such test
394 in any prosecution, shall suffer an additional suspension of
395 driving privileges as follows:

396 The Commissioner of Public Safety or his authorized agent
397 shall suspend the driver's license or permit to drive or deny the

398 issuance of a license or permit to such person as provided for
399 first, second and third or subsequent offenders in subsection (2)
400 of this section. Such suspension shall be in addition to any
401 suspension imposed pursuant to subsection (1) of Section 63-11-23.

402 The minimum suspension imposed under this subsection shall not be
403 reduced and no prosecutor is authorized to offer a reduction of
404 such suspension as part of a plea bargain.

405 (5) Every person who operates any motor vehicle in violation
406 of the provisions of subsection (1) of this section and who in a
407 negligent manner causes the death of another or mutilates,
408 disfigures, permanently disables or destroys the tongue, eye, lip,
409 nose or any other limb, organ or member of another shall, upon
410 conviction, be guilty of a felony and shall be committed to the
411 custody of the State Department of Corrections for a period of
412 time of not less than five (5) years and not to exceed twenty-five
413 (25) years.

414 (6) Upon conviction of any violation of subsection (1) of
415 this section, the trial judge shall sign in the place provided on
416 the traffic ticket, citation or affidavit stating that the person
417 arrested either employed an attorney or waived his right to an
418 attorney after having been properly advised. If the person
419 arrested employed an attorney, the name, address and telephone
420 number of the attorney shall be written on the ticket, citation or
421 affidavit. The judge shall cause a copy of the traffic ticket,
422 citation or affidavit, and any other pertinent documents
423 concerning the conviction, to be sent to the Commissioner of
424 Public Safety. A copy of the traffic ticket, citation or
425 affidavit and any other pertinent documents, having been attested
426 as true and correct by the Commissioner of Public Safety, or his
427 designee, shall be sufficient proof of the conviction for purposes
428 of determining the enhanced penalty for any subsequent convictions
429 of violations of subsection (1) of this section.

430 (7) Convictions in other states of violations for driving or

431 operating a vehicle while under the influence of an intoxicating
432 liquor or while under the influence of any other substance that
433 has impaired the person's ability to operate a motor vehicle
434 occurring after July 1, 1992, shall be counted for the purposes of
435 determining if a violation of subsection (1) of this section is a
436 first, second, third or subsequent offense and the penalty that
437 shall be imposed upon conviction for a violation of subsection (1)
438 of this section.

439 (8) For the purposes of determining how to impose the
440 sentence for a second, third or subsequent conviction under this
441 section, the indictment shall not be required to enumerate
442 previous convictions. It shall only be necessary that the
443 indictment state the number of times that the defendant has been
444 convicted and sentenced within the past five (5) years under this
445 section to determine if an enhanced penalty shall be imposed. The
446 amount of fine and imprisonment imposed in previous convictions
447 shall not be considered in calculating offenses to determine a
448 second, third or subsequent offense of this section.

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

453 (10) Suspension of driving privileges for any person
454 convicted of violations of Section 63-11-30(1) shall run
455 consecutively.

456 SECTION 3. The following shall be codified as Section
457 63-11-55, Mississippi Code of 1972:

458 63-11-55. (1) The following words and phrases shall have
459 the meaning ascribed herein:

460 (a) "Open container" means any glass, metal, plastic or
461 other container which contains or contained alcoholic beverage as
462 defined in Section 67-1-5, Mississippi Code of 1972, or light wine
463 or beer as defined in Section 67-3-1, Mississippi Code of 1972,

464 and which has been opened or punctured or cut in such a way that
465 the contents may be consumed by any person or has been constructed
466 in such a way that the contents may be consumed by any person
467 without opening or puncturing or cutting it.

468 (b) An open container shall be considered to be in the
469 possession of the operator of a vehicle if the bottle, can or
470 other container is in the passenger area of the motor vehicle.

471 (c) "Motor vehicle" means a vehicle driven or drawn by
472 mechanical power and manufactured primarily for use on public
473 highways, but does not include a vehicle operated solely on a rail
474 or rails.

475 (d) "Passenger area" means the area designed to seat
476 the driver and passengers while the motor vehicle is in operation
477 and any area that is readily accessible to the driver or a
478 passenger while in their seating positions, including the glove
479 compartment.

480 (e) "Public highway or right-of-way" means the entire
481 width between the right-of-way boundary lines of every way
482 publicly maintained when any part thereof is open to the use of
483 the public for purposes of vehicular travel.

484 (2) It shall be unlawful for a person to possess an open
485 container or to consume an alcoholic beverage within the passenger
486 area of a motor vehicle while operating or occupying the motor
487 vehicle on any public road, highway or highway right-of-way in
488 this state.

489 (3) Nothing in this section shall prohibit the possession of
490 an open alcohol container or any open alcoholic beverage in the
491 following situations:

492 (a) By a passenger in the living quarters of a parked
493 and nonmoving house coach or house trailer;

494 (b) By an individual strictly a passenger, not the
495 driver, in the passenger area of a motor vehicle designed,
496 maintained or used primarily for the transportation of persons for

497 compensation (such as buses, taxis or limousines);

498 (c) When the open container is located behind the last
499 upright seat of a motor vehicle not equipped with a trunk;

500 (d) When the open container is located in an area not
501 normally occupied by the driver or passengers in a motor vehicle
502 not equipped with a trunk; or

503 (e) When the open container is located in a locked
504 glove compartment.

505 (4) Any person who violates the provisions of this section
506 shall be guilty of a misdemeanor and shall be fined not less than
507 One Hundred Dollars (\$100.00) and not more than Two Hundred
508 Dollars (\$200.00).

509 (5) A county or municipality shall not adopt an ordinance
510 that imposes more stringent restrictions on the possession of
511 alcoholic beverages in vehicles than those imposed by this
512 section, and any such ordinance adopted by a county or
513 municipality before the effective date of this act shall be void
514 and unenforceable.

515 SECTION 4. (1) (a) In addition to the penalties authorized
516 for violations of Section 63-11-30 and for second or subsequent
517 violations thereof, a court shall, upon finding a person guilty of
518 violating the provisions of Section 63-11-30, order the person to
519 operate only a motor vehicle which is equipped with a functioning
520 ignition interlock device. This restriction shall continue for a
521 period of time as provided under the provisions of Section
522 63-11-30. The court shall establish a specific calibration
523 setting no lower than point zero two (.02) nor more than point
524 zero five (.05) blood alcohol concentration at which the ignition
525 interlock device will prevent the motor vehicle from being started
526 and the period of time that the person shall be subject to the
527 restriction. For the purpose of this section, "ignition interlock
528 device" means a device which connects a motor vehicle ignition
529 system to a breath-alcohol analyzer and prevents a motor vehicle

530 ignition from starting if a driver's blood alcohol level exceeds
531 the calibrated setting on the device.

532 (b) Upon ordering the use of an ignition interlock
533 device, the court shall:

534 (i) State on the record the requirement for and
535 the period of use of the device, and so notify the Department of
536 Public Safety;

537 (ii) Direct that the records of the department
538 reflect:

539 1. That the person may not operate a motor
540 vehicle that is not equipped with an ignition interlock device;
541 and

542 2. Whether the court has expressly permitted
543 the person to operate a motor vehicle without an ignition
544 interlock device under paragraph (g)(ii);

545 (iii) Direct the department to attach or imprint a
546 notation on the driver's license of any person restricted under
547 this section stating that the person may operate only a motor
548 vehicle equipped with an ignition interlock device or, in lieu
549 thereof, require such person to have in his possession a copy of
550 the court order requiring such device;

551 (iv) Require proof of the installation of the
552 device and periodic reporting by the person for verification of
553 the proper operation of the device;

554 (v) Require the person to have the system
555 monitored for proper use and accuracy by an entity approved by the
556 department at least semiannually, or more frequently as the
557 circumstances may require;

558 (vi) Require the person to pay the reasonable cost
559 of leasing or buying, monitoring, and maintaining the device, and
560 may establish a payment schedule therefor; and may allow such fees
561 related to the ignition interlock that are paid by the offender to
562 be applied as a credit to any fines assessed against the offender

563 as a result of a conviction for the violation of this section
564 which resulted in the order for the ignition interlock device.

565 (c) A person prohibited under this section from
566 operating a motor vehicle that is not equipped with an ignition
567 interlock device may not solicit or have another person attempt to
568 start or start a motor vehicle equipped with such a device.
569 Except as provided in paragraph (g), a violation of this paragraph
570 is a misdemeanor and upon conviction a violator shall be fined an
571 amount not to exceed One Thousand Dollars (\$1,000.00) or
572 imprisoned for not more than one (1) year, or both.

573 (d) A person may not attempt to start or start a motor
574 vehicle equipped with an ignition interlock device for the purpose
575 of providing an operable motor vehicle to a person who is
576 prohibited under this section from operating a motor vehicle that
577 is not equipped with an ignition interlock device. Except as
578 provided in paragraph (g), a violation of this paragraph is a
579 misdemeanor and upon conviction the violator shall be fined an
580 amount not to exceed One Thousand Dollars (\$1,000.00) or
581 imprisoned for not more than one (1) year, or both.

582 (e) A person may not tamper with, or in any way attempt
583 to circumvent, the operation of an ignition interlock device that
584 has been installed in a motor vehicle. Except as provided in
585 paragraph (g), a violation of this paragraph is a misdemeanor and
586 upon conviction the violator shall be fined an amount not to
587 exceed One Thousand Dollars (\$1,000.00) or imprisoned for not more
588 than one (1) year, or both.

589 (f) A person may not knowingly provide a motor vehicle
590 not equipped with a functioning ignition interlock device to
591 another person who the provider of such vehicle knows or should
592 know is prohibited from operating a motor vehicle not equipped
593 with an ignition interlock device. Except as provided in
594 paragraph (g), a violation of this paragraph is a misdemeanor and
595 upon conviction the violator shall be fined an amount not to

596 exceed One Thousand Dollars (\$1,000.00) or imprisoned for not more
597 than one (1) year, or both.

598 (g) A person who violates the provisions of paragraphs
599 (c) through (f) commits a misdemeanor; provided, that penalty
600 shall not apply if:

601 (i) The starting of a motor vehicle, or the
602 request to start a motor vehicle, equipped with an ignition
603 interlock device is done for the purpose of safety or mechanical
604 repair of the device or the vehicle, and the person subject to the
605 court order does not operate the vehicle; or

606 (ii) The court finds that a person is required to
607 operate a motor vehicle in the course and scope of the person's
608 employment and if the vehicle is owned by the employer, the person
609 may operate that vehicle during regular working hours for the
610 purposes of employment without installation of an ignition
611 interlock device, if the employer has been notified of such
612 driving privilege restriction and if proof of that notification is
613 with the vehicle. This employment exemption does not apply,
614 however, if the business entity that owns the vehicle is owned or
615 controlled by the person who is prohibited from operating a motor
616 vehicle not equipped with an ignition interlock device.

617 (h) (i) In addition to the circumstances under which a
618 judge may order the use of an ignition interlock device set out in
619 subsection (1)(a), a judge may order that the vehicle owned or
620 operated by a person or a family member of such person who
621 committed a violation of Section 63-11-30, be equipped with an
622 ignition interlock device for all or a portion of the time the
623 driver's license of the operator of such vehicle is suspended or
624 restricted pursuant to this section, if:

625 1. The operator of the vehicle used to
626 violate Section 63-11-30, has at least one (1) prior conviction
627 for driving a motor vehicle when such person's privilege to do so
628 is cancelled, suspended or revoked as provided by Section

629 63-11-30; or

630 2. The driver's license of the operator of
631 such vehicle was cancelled, suspended or revoked at the time of
632 the violation of Section 63-11-30.

633 (ii) A judge ordering the use of an ignition
634 interlock device pursuant to this paragraph shall follow the same
635 procedures set out in subsection (1)(a) and (b), and the
636 provisions of paragraphs (c) through (g) shall apply to an
637 interlock device ordered pursuant to this paragraph.

638 (iii) The provisions of this paragraph shall not
639 apply if the vehicle used to commit the violation of Section
640 63-11-30, was, at the time of such violation, leased, rented or
641 stolen.

642 (i) (i) A person's second or subsequent violation of
643 Section 63-11-30 creates an inference that the provisions of
644 subsection (1)(a) are necessary to protect the public, and that
645 the court should order that such offender's motor vehicle be
646 equipped with a functioning interlock device as defined by such
647 subsection. To overcome such inference, the court must make an
648 affirmative finding on the record that there is sufficient cause
649 not to enter such an order and must state such cause on the
650 record. If the court determines that the inference has not been
651 overcome and orders use of an interlock device, it shall make a
652 further finding as to whether the offender's motor vehicle will be
653 equipped with the device:

654 1. For all or a portion of the time the
655 driver's license of such offender is suspended or restricted
656 pursuant to Section 63-11-30;

657 2. Only after such offender's driver's
658 license is no longer suspended or restricted pursuant to Section
659 63-11-30; or

660 3. A combination of 1. and 2. above.

661 (ii) All interlock devices ordered pursuant to

662 this subsection shall be of the type that records and stores the
663 driver's blood alcohol content at certain intervals for use by the
664 court as provided by law. No such device ordered pursuant to this
665 subsection shall be used that will or that may be set, modified or
666 adjusted to automatically turn the motor vehicle's engine off
667 after it has been started.

668 (iii) The provisions of this subsection shall
669 apply to any interlock device ordered pursuant to this paragraph.

670 (2) The provisions of this section are supplemental to the
671 provisions of Section 63-11-30.

672 SECTION 5. This act shall take effect and be in force from
673 and after July 1, 2000.