

By: Reeves

To: Judiciary A

## HOUSE BILL NO. 878

1 AN ACT TO BRING FORWARD SECTIONS 63-11-1, 63-11-3, 63-11-5,  
2 63-11-7, 63-11-8, 63-11-9, 63-11-11, 63-11-13, 63-11-15, 63-11-17,  
3 63-11-19, 63-11-21, 63-11-23, 63-11-25, 63-11-26, 63-11-27,  
4 63-11-30, 63-11-32, 63-11-37, 63-11-39, 63-11-40, 63-11-41,  
5 63-11-45, 63-11-47, 63-11-49, 63-11-51 AND 63-11-53, MISSISSIPPI  
6 CODE OF 1972, WHICH PROVIDE THE IMPLIED CONSENT LAW FOR PURPOSES  
7 OF AMENDMENT AND REVISION; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 63-11-1, Mississippi Code of 1972, is  
10 brought forward as follows:[BD1]

11 63-11-1. This chapter may be cited as the Mississippi  
12 Implied Consent Law.

13 SECTION 2. Section 63-11-3, Mississippi Code of 1972, is  
14 brought forward as follows:[BD2]

15 63-11-3. The following words and phrases shall have the  
16 meaning ascribed herein, unless the context clearly indicates  
17 otherwise:

18 (a) "Driving privilege" or "privilege" means both the  
19 driver's license of those licensed in Mississippi and the driving  
20 privilege of unlicensed residents and the privilege of  
21 nonresidents, licensed or not, the purpose of this section being  
22 to make unlicensed and nonresident drivers subject to the same  
23 penalties as licensed residents.

24 (b) "Community service" means work, projects or  
25 services for the benefit of the community assigned, supervised and  
26 recorded by appropriate public officials.

27 (c) "Chemical test" means an analysis of a person's  
28 blood, breath, urine or other bodily substance for the

29 determination of the presence of alcohol or any other substance  
30 which may impair a person's mental or physical ability.

31 (d) "Refusal to take breath, urine and/or blood test"  
32 means an individual declining to take a chemical test, and/or the  
33 failure to provide an adequate breath sample as required by the  
34 Implied Consent Law when requested by a law enforcement officer.

35 (e) "Alcohol concentration" means either grams of  
36 alcohol per one hundred (100) milliliters of blood or grams of  
37 alcohol per two hundred ten (210) liters of breath.

38 (f) "Qualified person to withdraw blood" means any  
39 person who has been trained to withdraw blood in the course of  
40 their employment duties including but not limited to laboratory  
41 personnel, phlebotomist, emergency medical personnel, nurses and  
42 doctors.

43 (g) "Victim impact panel" means a two-hour seminar in  
44 which victims of DUI accidents relate their experiences following  
45 the accident to persons convicted under the Implied Consent Law.  
46 Paneling programs shall be based on a model developed by Mothers  
47 Against Drunk Driving (MADD) victim panel or equivalent program  
48 approved by the court.

49 (h) "Booked" means the administrative step taken after  
50 the arrested person is brought to the police station, which  
51 involves entry of the person's name, the crime for which the  
52 arrest was made, and other relevant facts on the police docket,  
53 and which may also include photographing, fingerprinting, and the  
54 like.

55 SECTION 3. Section 63-11-5, Mississippi Code of 1972, is  
56 brought forward as follows:[BD3]

57 63-11-5. (1) Any person who operates a motor vehicle upon  
58 the public highways, public roads and streets of this state shall  
59 be deemed to have given his consent, subject to the provisions of  
60 this chapter, to a chemical test or tests of his breath for the  
61 purpose of determining alcohol concentration. A person shall give  
62 his consent to a chemical test or tests of his breath, blood or  
63 urine for the purpose of determining the presence in his body of  
64 any other substance which would impair a person's ability to  
65 operate a motor vehicle. The test or tests shall be administered

66 at the direction of any highway patrol officer, any sheriff or his  
67 duly commissioned deputies, any police officer in any incorporated  
68 municipality, any national park ranger, any officer of a  
69 state-supported institution of higher learning campus police force  
70 if such officer is exercising this authority in regard to a  
71 violation that occurred on campus property, or any security  
72 officer appointed and commissioned pursuant to the Pearl River  
73 Valley Water Supply District Security Officer Law of 1978 if such  
74 officer is exercising this authority in regard to a violation that  
75 occurred within the limits of the Pearl River Valley Water Supply  
76 District, when such officer has reasonable grounds and probable  
77 cause to believe that the person was driving or had under his  
78 actual physical control a motor vehicle upon the public streets or  
79 highways of this state while under the influence of intoxicating  
80 liquor or any other substance which had impaired such person's  
81 ability to operate a motor vehicle. No such test shall be  
82 administered by any person who has not met all the educational and  
83 training requirements of the appropriate course of study  
84 prescribed by the Board on Law Enforcement Officers Standards and  
85 Training; provided, however, that sheriffs and elected chiefs of  
86 police shall be exempt from such educational and training  
87 requirement. No such tests shall be given by any officer or any  
88 agency to any person within fifteen (15) minutes of consumption of  
89 any substance by mouth.

90 (2) If the officer has reasonable grounds and probable cause  
91 to believe such person to have been driving a motor vehicle upon  
92 the public highways, public roads, and streets of this state while  
93 under the influence of intoxicating liquor, such officer shall  
94 inform such person that his failure to submit to such chemical  
95 test or tests of his breath shall result in the suspension of his  
96 privilege to operate a motor vehicle upon the public streets and  
97 highways of this state for a period of ninety (90) days in the  
98 event such person has not previously been convicted of a violation

99 of Section 63-11-30, or, for a period of one (1) year in the event  
100 of any previous conviction of such person under Section 63-11-30.

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

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

108 (5) The Commissioner of Public Safety and the State Crime  
109 Laboratory created pursuant to Section 45-1-17 are hereby  
110 authorized from and after the passage of this section to adopt  
111 procedures, rules and regulations, applicable to the Implied  
112 Consent Law.

113 SECTION 4. Section 63-11-7, Mississippi Code of 1972, is  
114 brought forward as follows:[BD4]

115 63-11-7. If any person be unconscious or dead as a result of  
116 an accident, or unconscious at the time of arrest or apprehension  
117 or when the test is to be administered, or is otherwise in a  
118 condition rendering him incapable of refusal, such person shall be  
119 subjected to a blood test for the purpose of determining the  
120 alcoholic content of his blood as provided in this chapter, if the  
121 arresting officer has reasonable grounds to believe the person to  
122 have been driving a motor vehicle upon the public highways, public  
123 roads and streets of this state while under the influence of  
124 intoxicating liquor. The results of such test or tests, however,  
125 shall not be used in evidence against such person in any court or  
126 before any regulatory body without the consent of the person so  
127 tested, or, if deceased, such person's legal representative.  
128 However, refusal of release of evidence so obtained by such  
129 officer or agency will in criminal actions against such person  
130 result in the suspension of his or her driver's license for a  
131 period of ninety (90) days as provided in this chapter for

132 conscious and capable persons who have refused to submit to such  
133 test. Blood may only be withdrawn under the provisions of Section  
134 63-11-9. It is the intent of this chapter that blood samples  
135 taken under this section shall be used exclusively for statistical  
136 evaluation of accident causes with safeguards established to  
137 protect the identity of such victims and to extend the rights of  
138 privileged communications to those engaged in taking, handling and  
139 evaluating such statistical evidence.

140 SECTION 5. Section 63-11-8, Mississippi Code of 1972, is  
141 brought forward as follows:[BD5]

142 63-11-8. (1) The operator of any motor vehicle involved in  
143 an accident that results in a death shall be tested for the  
144 purpose of determining the alcohol content or drug content of such  
145 operator's blood, breath or urine. Any blood withdrawal required  
146 by this section shall be administered by any qualified person and  
147 shall be administered within two (2) hours after such accident, if  
148 possible. The exact time of the accident, to the extent possible,  
149 and the exact time of the blood withdrawal shall be recorded.

150 (2) If any investigating law enforcement officer has  
151 reasonable grounds to believe that a person is the operator of a  
152 motor vehicle involved in an accident that has resulted in a  
153 death, it shall be such officer's duty to see that a chemical test  
154 is administered as required by this section.

155 (3) The results of a test administered pursuant to this  
156 section may be used as evidence in any court or administrative  
157 hearing without the consent of the person so tested.

158 (4) No person may refuse to submit to a chemical test  
159 required under the provisions of this section.

160 (5) Analysis of blood or urine to determine alcohol or drug  
161 content pursuant to this section shall be conducted by the  
162 Mississippi Crime Laboratory or a laboratory whose methods and  
163 procedures have been approved by the Mississippi Crime Laboratory.

164 SECTION 6. Section 63-11-9, Mississippi Code of 1972, is

165 brought forward as follows:[BD6]

166           63-11-9. Under Section 63-11-7, any qualified person acting  
167 at the request of a law enforcement officer may withdraw blood for  
168 the purpose of determining the alcoholic content therein. This  
169 limitation shall not apply to the taking of breath or urine  
170 specimens.

171           SECTION 7. Section 63-11-11, Mississippi Code of 1972, is  
172 brought forward as follows:[BD7]

173           63-11-11. If the test given under the provisions of this  
174 chapter is a chemical test of urine, the person tested shall be  
175 given such privacy in the taking of the urine specimen as will  
176 insure the accuracy of the specimen and, at the same time,  
177 maintain the dignity of the individual involved.

178           SECTION 8. Section 63-11-13, Mississippi Code of 1972, is  
179 brought forward as follows:[BD8]

180           63-11-13. The person tested may, at his own expense, have a  
181 physician, registered nurse, clinical laboratory technologist or  
182 clinical laboratory technician or any other qualified person of  
183 his choosing administer a test, approved by the State Crime  
184 Laboratory created pursuant to Section 45-1-17, in addition to any  
185 other test, for the purpose of determining the amount of alcohol  
186 in his blood at the time alleged as shown by chemical analysis of  
187 his blood, breath or urine. The failure or inability to obtain an  
188 additional test by such arrested person shall not preclude the  
189 admissibility in evidence of the test taken at the direction of a  
190 law enforcement officer.

191           SECTION 9. Section 63-11-15, Mississippi Code of 1972, is  
192 brought forward as follows:[BD9]

193           63-11-15. Upon the written request of the person tested, or  
194 his attorney, full information concerning the test taken at the  
195 direction of the law enforcement officer shall be made available  
196 to him or to his attorney.

197           SECTION 10. Section 63-11-17, Mississippi Code of 1972, is

198 brought forward as follows:[BD10]

199           63-11-17. No qualified person, hospital, clinic or funeral  
200 home shall incur any civil or criminal liability as the result of  
201 the proper administration of a test or chemical analysis of a  
202 person's breath, blood or urine when requested in writing by a law  
203 enforcement officer to administer such a test or perform such  
204 chemical analysis.

205           SECTION 11. Section 63-11-19, Mississippi Code of 1972, is  
206 brought forward as follows:[BD11]

207           63-11-19. A chemical analysis of the person's breath, blood  
208 or urine, to be considered valid under the provisions of this  
209 section, shall have been performed according to methods approved  
210 by the State Crime Laboratory created pursuant to Section 45-1-17  
211 and the Commissioner of Public Safety and performed by an  
212 individual possessing a valid permit issued by the State Crime  
213 Laboratory for making such analysis. The State Crime Laboratory  
214 and the Commissioner of Public Safety are authorized to approve  
215 satisfactory techniques or methods, to ascertain the  
216 qualifications and competence of individuals to conduct such  
217 analyses, and to issue permits which shall be subject to  
218 termination or revocation at the discretion of the State Crime  
219 Laboratory. The State Crime Laboratory shall not approve the  
220 permit required herein for any law enforcement officer other than  
221 a member of the State Highway Patrol, a sheriff or his deputies, a  
222 city policeman, an officer of a state-supported institution of  
223 higher learning campus police force, a security officer appointed  
224 and commissioned pursuant to the Pearl River Valley Water Supply  
225 District Security Officer Law of 1978, a national park ranger, a  
226 national park ranger technician, a military policeman stationed at  
227 a United States military base located within this state other than  
228 a military policeman of the Army or Air National Guard or of  
229 Reserve Units of the Army, Air Force, Navy or Marine Corps, a  
230 marine law enforcement officer employed by the Department of

231 Marine Resources, or a conservation officer employed by the  
232 Mississippi Department of Wildlife, Fisheries and Parks. The  
233 permit given a conservation officer or a marine law enforcement  
234 officer shall authorize such officer to administer tests only for  
235 violations of Sections 59-23-1 through 59-23-7.

236 The State Crime Laboratory shall make periodic, but not less  
237 frequently than quarterly, tests of the methods, machines or  
238 devices used in making chemical analysis of a person's breath as  
239 shall be necessary to ensure the accuracy thereof, and shall issue  
240 its certificate to verify the accuracy of the same.

241 SECTION 12. Section 63-11-21, Mississippi Code of 1972, is  
242 brought forward as follows:[BD12]

243 63-11-21. If a person refuses upon the request of a law  
244 enforcement officer to submit to a chemical test of his breath  
245 designated by the law enforcement agency as provided in Section  
246 63-11-5, none shall be given, but the officer shall at that point  
247 demand the driver's license of the person, who shall deliver his  
248 driver's license into the hands of the officer. If a person  
249 refuses to submit to a chemical test under the provisions of this  
250 chapter, the person shall be informed by the law enforcement  
251 officer that the refusal to submit to the test shall subject him  
252 to arrest and punishment consistent with the penalties prescribed  
253 in Section 63-11-30 for persons submitting to the test. The  
254 officer shall give the driver a receipt for his license on forms  
255 prescribed and furnished by the Commissioner of Public Safety.  
256 The officer shall forward the driver's license together with a  
257 sworn report to the Commissioner of Public Safety stating that he  
258 had reasonable grounds and probable cause to believe the person  
259 had been driving a motor vehicle upon the public highways, public  
260 roads and streets of this state while under the influence of  
261 intoxicating liquor, or any other substance which may impair a  
262 person's mental or physical ability, stating such grounds, and  
263 that the person had refused to submit to the chemical test of his



264 breath upon request of the law enforcement officer.

265 SECTION 13. Section 63-11-23, Mississippi Code of 1972, is  
266 brought forward as follows:[BD13]

267 63-11-23. (1) The Commissioner of Public Safety, or his  
268 authorized agent, shall review the sworn report by a law  
269 enforcement officer as provided in Section 63-11-21. If upon such  
270 review the Commissioner of Public Safety, or his authorized agent,  
271 finds (a) that the law enforcement officer had reasonable grounds  
272 and probable cause to believe the person had been driving a motor  
273 vehicle upon the public highways, public roads and streets of this  
274 state while under the influence of intoxicating liquor or any  
275 other substance which may impair a person's mental or physical  
276 ability; (b) that he refused to submit to the test upon request of  
277 the officer; and (c) that the person was informed that his license  
278 and/or driving privileges would be suspended or denied if he  
279 refused to submit to the chemical test, then the Commissioner of  
280 Public Safety, or his authorized agent, shall give notice to the  
281 licensee that his license or permit to drive, or any nonresident  
282 operating privilege, shall be suspended thirty (30) days after the  
283 date of such notice for a period of ninety (90) days in the event  
284 such person has not previously been convicted of a violation of  
285 Section 63-11-30, or, for a period of one (1) year in the event of  
286 any previous conviction of such person under Section 63-11-30. In  
287 the event the commissioner or his authorized agent determines that  
288 the license should not be suspended, he shall return the license  
289 or permit to the licensee.

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

292 (2) If the chemical testing of a person's breath indicates  
293 the blood alcohol concentration was ten one-hundredths percent  
294 (.10%) or more for persons who are above the legal age to purchase  
295 alcoholic beverages under state law, or two one-hundredths percent  
296 (.02%) or more for persons who are below the legal age to purchase

297 alcoholic beverages under state law, based upon grams of alcohol  
298 per one hundred (100) milliliters of blood or grams of alcohol per  
299 two hundred ten (210) liters of breath as shown by a chemical  
300 analysis of such person's blood, or breath, or urine, the  
301 arresting officer shall seize the license and give the driver a  
302 receipt for his license on forms prescribed by the Commissioner of  
303 Public Safety and shall promptly forward the license together with  
304 a sworn report to the Commissioner of Public Safety. The receipt  
305 given a person as provided herein shall be valid as a permit to  
306 operate a motor vehicle for a period of thirty (30) days in order  
307 that the defendant be processed through the court having original  
308 jurisdiction and a final disposition had; provided, however, that  
309 if the defendant makes a written request directed to the trial  
310 judge requesting that a trial be held on the matter within such  
311 thirty-day period and such defendant is not afforded a trial  
312 within such period, then the Commissioner of Public Safety shall  
313 issue such defendant a permit to drive that shall be valid for an  
314 additional thirty (30) days. If the defendant makes a written  
315 request to the trial judge requesting that a trial be held on the  
316 matter prior to the expiration of such permit to drive and such  
317 defendant is not afforded a trial within such period, then the  
318 Commissioner of Public Safety shall issue such defendant a permit  
319 to drive for an additional thirty (30) days. In no event shall a  
320 defendant be permitted to drive under the provisions of this  
321 subsection for more than ninety (90) days after the initial  
322 seizure of such defendant's license. The fact that the defendant  
323 has the right to request a trial and the effect of a denial of  
324 such request shall be plainly stated on the face of any receipt or  
325 permit to drive issued such defendant. If a receipt or permit to  
326 drive issued pursuant to the provisions of this subsection expires  
327 without a trial having been requested as provided for in this  
328 subsection, then the Commissioner of Public Safety or his  
329 authorized agent shall suspend the license or permit to drive or

330 any nonresident operating privilege for the applicable period of  
331 time as provided for in subsection (1) of this section.

332 (3) If the person is a resident without a license or permit  
333 to operate a motor vehicle in this state, the Commissioner of  
334 Public Safety, or his authorized agent, shall deny to the person  
335 the issuance of a license or permit for a period of one (1) year  
336 beginning thirty (30) days after the date of notice of such  
337 suspension.

338 (4) It shall be the duty of the county prosecuting attorney,  
339 an attorney employed under the provisions of Section 19-3-49, or  
340 in the event there is no such prosecuting attorney for the county,  
341 the duty of the district attorney to represent the state in any  
342 hearing held under the provisions of Section 63-11-25, under the  
343 provisions of Section 63-11-37(2) or under the provisions of  
344 Section 63-11-30(2)(a).

345 SECTION 14. Section 63-11-25, Mississippi Code of 1972, is  
346 brought forward as follows:[BD14]

347 63-11-25. If the forfeiture, suspension or denial of  
348 issuance is sustained by the Commissioner of Public Safety, or his  
349 duly authorized agent pursuant to subsection (1) of Section  
350 63-11-23, upon such hearing, the person aggrieved may file within  
351 ten (10) days after the rendition of such decision a petition in  
352 the circuit or county court having original jurisdiction of the  
353 violation for review of such decision and such hearing upon review  
354 shall proceed as a trial de novo before the court without a jury.

355 Provided further, that no such party shall be allowed to exercise  
356 the driving privilege while any such appeal is pending.

357 SECTION 15. Section 63-11-26, Mississippi Code of 1972, is  
358 brought forward as follows:[BD15]

359 63-11-26. When the Commissioner of Public Safety, or his  
360 authorized agent, shall suspend the driver's license or permit to  
361 drive of a person or shall deny the issuance of a license or  
362 permit to a person as provided in Section 63-11-30, the person

363 shall not be entitled to any judicial review of or appeal from the  
364 actions of the commissioner. A final conviction under said  
365 section shall finally adjudicate the privilege of such convicted  
366 person to operate a motor vehicle upon the public highways, public  
367 roads and streets of this state.

368 SECTION 16. Section 63-11-27, Mississippi Code of 1972, is  
369 brought forward as follows:[BD16]

370 63-11-27. When it has been finally determined under the  
371 procedures of Sections 63-11-21 to 63-11-25, that a nonresident's  
372 privilege to operate a motor vehicle in this state has been  
373 suspended, the commissioner, or his duly authorized agent, shall  
374 give information in writing of the action taken to the motor  
375 vehicle administrator of the state of the person's residence and  
376 of any state in which he has a license.

377 SECTION 17. Section 63-11-30, Mississippi Code of 1972, is  
378 brought forward as follows:[BD17]

379 63-11-30. (1) It is unlawful for any person to drive or  
380 otherwise operate a vehicle within this state who (a) is under the  
381 influence of intoxicating liquor; (b) is under the influence of  
382 any other substance which has impaired such person's ability to  
383 operate a motor vehicle; (c) has an alcohol concentration of ten  
384 one-hundredths percent (.10%) or more for persons who are above  
385 the legal age to purchase alcoholic beverages under state law, or  
386 two one-hundredths percent (.02%) or more for persons who are  
387 below the legal age to purchase alcoholic beverages under state  
388 law, in the person's blood based upon grams of alcohol per one  
389 hundred (100) milliliters of blood or grams of alcohol per two  
390 hundred ten (210) liters of breath as shown by a chemical analysis  
391 of such person's breath, blood or urine administered as authorized  
392 by this chapter; (d) is under the influence of any drug or  
393 controlled substance, the possession of which is unlawful under  
394 the Mississippi Controlled Substances Law; or (e) has an alcohol  
395 concentration of four one-hundredths percent (.04%) or more in the

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

401 (2) (a) Except as otherwise provided in subsection (3),  
402 upon conviction of any person for the first offense of violating  
403 subsection (1) of this section where chemical tests provided for  
404 under Section 63-11-5 were given, or where chemical test results  
405 are not available, such person shall be fined not less than Two  
406 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
407 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
408 hours in jail or both; and the court shall order such person to  
409 attend and complete an alcohol safety education program as  
410 provided in Section 63-11-32. The court may substitute attendance  
411 at a victim impact panel instead of forty-eight (48) hours in  
412 jail. In addition, the Department of Public Safety, the  
413 Commissioner of Public Safety or his duly authorized agent shall,  
414 after conviction and upon receipt of the court abstract, suspend  
415 the driver's license and driving privileges of such person for a  
416 period of not less than ninety (90) days and until such person  
417 attends and successfully completes an alcohol safety education  
418 program as herein provided; provided, however, in no event shall  
419 such period of suspension exceed one (1) year. Commercial driving  
420 privileges shall be suspended as provided in Section 63-1-83.

421 The circuit court having jurisdiction in the county in which  
422 the conviction was had or the circuit court of the person's county  
423 of residence may reduce the suspension of driving privileges under  
424 Section 63-11-30(2)(a) if the denial of which would constitute a  
425 hardship on the offender, except that no court may issue such an  
426 order reducing the suspension of driving privileges under this  
427 subsection until thirty (30) days have elapsed from the effective  
428 date of the suspension. Hardships shall only apply to first

429 offenses under Section 63-11-30(1), and shall not apply to second,  
430 third or subsequent convictions of any person violating subsection  
431 (1) of this section. A reduction of suspension on the basis of  
432 hardship shall not be available to any person who refused to  
433 submit to a chemical test upon the request of a law enforcement  
434 officer as provided in Section 63-11-5. When the petition is  
435 filed, such person shall pay to the circuit clerk of the court  
436 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
437 shall be deposited into the State General Fund to the credit of a  
438 special fund hereby created in the State Treasury to be used for  
439 alcohol or drug abuse treatment and education, upon appropriation  
440 by the Legislature. This fee shall be in addition to any other  
441 court costs or fees required for the filing of petitions.

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

450 The order entered under the provisions of this subsection  
451 shall contain the specific grounds upon which hardship was  
452 determined, and shall order the petitioner to attend and complete  
453 an alcohol safety education program as provided in Section  
454 63-11-32. A certified copy of such order shall be delivered to  
455 the Commissioner of Public Safety by the clerk of the court within  
456 five (5) days of the entry of the order. The certified copy of  
457 such order shall contain information which will identify the  
458 petitioner, including, but not limited to, the name, mailing  
459 address, street address, Social Security number and driver's  
460 license number of the petitioner.

461 At any time following at least thirty (30) days of suspension

462 for a first offense violation of this section, the court may grant  
463 the person hardship driving privileges upon written petition of  
464 the defendant, if it finds reasonable cause to believe that  
465 revocation would hinder the person's ability to:

- 466 (i) Continue his employment;
- 467 (ii) Continue attending school or an educational  
468 institution; or
- 469 (iii) Obtain necessary medical care.

470 Proof of the hardship shall be established by clear and  
471 convincing evidence which shall be supported by independent  
472 documentation.

473 (b) Except as otherwise provided in subsection (3),  
474 upon any second conviction of any person violating subsection (1)  
475 of this section, the offenses being committed within a period of  
476 five (5) years, such person shall be fined not less than Six  
477 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
478 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)  
479 days nor more than one (1) year and sentenced to community service  
480 work for not less than ten (10) days nor more than one (1) year.  
481 *Except as may otherwise be provided by paragraph (e) of this*  
482 *subsection, the Commissioner of Public Safety shall suspend the*  
483 *driver's license of such person for two (2) years. Suspension of*  
484 *a commercial driver's license shall be governed by Section*  
485 *63-1-83. Upon any second conviction as described in this*  
486 *paragraph, the court shall ascertain whether the defendant is*  
487 *married, and if the defendant is married shall obtain the name and*  
488 *address of the defendant's spouse; the clerk of the court shall*  
489 *submit this information to the Department of Public Safety.*  
490 Further, the commissioner shall notify in writing, by certified  
491 mail, return receipt requested, the owner of the vehicle and the  
492 spouse, if any, of the person convicted of the second violation of  
493 the possibility of forfeiture of the vehicle if such person is  
494 convicted of a third violation of subsection (1) of this section.

495 The owner of the vehicle and the spouse shall be considered  
496 notified under this paragraph if the notice is deposited in the  
497 United States mail and any claim that the notice was not in fact  
498 received by the addressee shall not affect a subsequent forfeiture  
499 proceeding.

500 (c) Except as otherwise provided in subsection (3), for  
501 any third or subsequent conviction of any person violating  
502 subsection (1) of this section, the offenses being committed  
503 within a period of five (5) years, such person shall be guilty of  
504 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
505 nor more than Five Thousand Dollars (\$5,000.00) and shall be  
506 imprisoned not less than one (1) year nor more than five (5) years  
507 in the State Penitentiary. The law enforcement agency shall seize  
508 the vehicle operated by any person charged with a third or  
509 subsequent violation of subsection (1) of this section, if such  
510 convicted person was driving the vehicle at the time the offense  
511 was committed. Such vehicle may be forfeited in the manner  
512 provided by Sections 63-11-49 through 63-11-53. Except as may  
513 otherwise be provided by paragraph (e) of this subsection, the  
514 Commissioner of Public Safety shall suspend the driver's license  
515 of such person for five (5) years. The suspension of a commercial  
516 driver's license shall be governed by Section 63-1-83.

517 (d) Except as otherwise provided in subsection (3), any  
518 person convicted of a second violation of subsection (1) of this  
519 section, may have the period that his driver's license is  
520 suspended reduced if such person receives an in-depth diagnostic  
521 assessment, and as a result of such assessment is determined to be  
522 in need of treatment of his alcohol and/or drug abuse problem and  
523 successfully completes treatment of his alcohol and/or drug abuse  
524 problem at a program site certified by the Department of Mental  
525 Health. Such person shall be eligible for reinstatement of his  
526 driving privileges upon the successful completion of such  
527 treatment after a period of one (1) year after such person's



528 driver's license is suspended. Each person who receives a  
529 diagnostic assessment shall pay a fee representing the cost of  
530 such assessment. Each person who participates in a treatment  
531 program shall pay a fee representing the cost of such treatment.

532 (e) Except as otherwise provided in subsection (3), any  
533 person convicted of a third or subsequent violation of subsection  
534 (1) of this section may enter an alcohol and/or drug abuse program  
535 approved by the Department of Mental Health for treatment of such  
536 person's alcohol and/or drug abuse problem. If such person  
537 successfully completes such treatment, such person shall be  
538 eligible for reinstatement of his driving privileges after a  
539 period of three (3) years after such person's driver's license is  
540 suspended.

541 (3) (a) This subsection shall be known and may be cited as  
542 Zero Tolerance for Minors. The provisions of this subsection  
543 shall apply only when a person under the age of twenty-one (21)  
544 years has a blood alcohol concentration two one-hundredths percent  
545 (.02%) or more, but lower than eight one-hundredths percent  
546 (.08%). If such person's blood alcohol concentration is eight  
547 one-hundredths percent (.08%) or more, the provisions of  
548 subsection (2) shall apply.

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

559 The circuit court having jurisdiction in the county in which  
560 the conviction was had or the circuit court of the person's county

561 of residence may reduce the suspension of driving privileges under  
562 Section 63-11-30(2)(a) if the denial of which would constitute a  
563 hardship on the offender, except that no court may issue such an  
564 order reducing the suspension of driving privileges under this  
565 subsection until thirty (30) days have elapsed from the effective  
566 date of the suspension. Hardships shall only apply to first  
567 offenses under Section 63-11-30(1), and shall not apply to second,  
568 third or subsequent convictions of any person violating subsection  
569 (1) of this section. A reduction of suspension on the basis of  
570 hardship shall not be available to any person who refused to  
571 submit to a chemical test upon the request of a law enforcement  
572 officer as provided in Section 63-11-5. When the petition is  
573 filed, such person shall pay to the circuit clerk of the court  
574 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
575 shall be deposited into the State General Fund to the credit of a  
576 special fund hereby created in the State Treasury to be used for  
577 alcohol or drug abuse treatment and education, upon appropriation  
578 by the Legislature. This fee shall be in addition to any other  
579 court costs or fees required for the filing of petitions.

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

588 The order entered under the provisions of this subsection  
589 shall contain the specific grounds upon which hardship was  
590 determined, and shall order the petitioner to attend and complete  
591 an alcohol safety education program as provided in Section  
592 63-11-32. A certified copy of such order shall be delivered to  
593 the Commissioner of Public Safety by the clerk of the court within

594 five (5) days of the entry of the order. The certified copy of  
595 such order shall contain information which will identify the  
596 petitioner, including, but not limited to, the name, mailing  
597 address, street address, Social Security number and driver's  
598 license number of the petitioner.

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

- 604 (i) Continue his employment;
- 605 (ii) Continue attending school or an educational  
606 institution; or
- 607 (iii) Obtain necessary medical care.

608 Proof of the hardship shall be established by clear and  
609 convincing evidence which shall be supported by independent  
610 documentation.

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

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

624 (e) Any person under the age of twenty-one (21) years  
625 convicted of a second violation of subsection (1) of this section,  
626 may have the period that his driver's license is suspended reduced

627 if such person receives an in-depth diagnostic assessment, and as  
628 a result of such assessment is determined to be in need of  
629 treatment of his alcohol and/or drug abuse problem and  
630 successfully completes treatment of his alcohol and/or drug abuse  
631 problem at a program site certified by the Department of Mental  
632 Health. Such person shall be eligible for reinstatement of his  
633 driving privileges upon the successful completion of such  
634 treatment after a period of six (6) months after such person's  
635 driver's license is suspended. Each person who receives a  
636 diagnostic assessment shall pay a fee representing the cost of  
637 such assessment. Each person who participates in a treatment  
638 program shall pay a fee representing the cost of such treatment.

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

644 (g) The court shall have the discretion to rule that a  
645 first offense of this subsection by a person under the age of  
646 twenty-one (21) years shall be nonadjudicated. Such person shall  
647 be eligible for nonadjudication only once. The Department of  
648 Public Safety shall maintain a confidential registry of all cases  
649 which are nonadjudicated as provided in this paragraph. A judge  
650 who rules that a case is nonadjudicated shall forward such ruling  
651 to the Department of Public Safety. Judges and prosecutors  
652 involved in implied consent violations shall have access to the  
653 confidential registry for the purpose of determining  
654 nonadjudication eligibility. A record of a person who has been  
655 nonadjudicated shall be maintained for five (5) years or until  
656 such person reaches the age of twenty-one (21) years. Any person  
657 whose confidential record has been disclosed in violation of this  
658 paragraph shall have a civil cause of action against the person  
659 and/or agency responsible for such disclosure.

660           (4) Every person convicted of operating a vehicle while  
661 under the influence of intoxicating liquor or any other substance  
662 which has impaired such person's ability to operate a motor  
663 vehicle where the person (a) refused a law enforcement officer's  
664 request to submit to a chemical test of his breath as provided in  
665 this chapter, or (b) was unconscious at the time of a chemical  
666 test and refused to consent to the introduction of the results of  
667 such test in any prosecution, shall be punished consistent with  
668 the penalties prescribed herein for persons submitting to the  
669 test, except that there shall be an additional suspension of  
670 driving privileges as follows:

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

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

685           (6) Upon conviction of any violation of subsection (1) of  
686 this section, the trial judge shall sign in the place provided on  
687 the traffic ticket, citation or affidavit stating that the person  
688 arrested either employed an attorney or waived his right to an  
689 attorney after having been properly advised. If the person  
690 arrested employed an attorney, the name, address and telephone  
691 number of the attorney shall be written on the ticket, citation or  
692 affidavit. The judge shall cause a copy of the traffic ticket,

693 citation or affidavit, and any other pertinent documents  
694 concerning the conviction, to be sent to the Commissioner of  
695 Public Safety. A copy of the traffic ticket, citation or  
696 affidavit and any other pertinent documents, having been attested  
697 as true and correct by the Commissioner of Public Safety, or his  
698 designee, shall be sufficient proof of the conviction for purposes  
699 of determining the enhanced penalty for any subsequent convictions  
700 of violations of subsection (1) of this section.

701 (7) Convictions in other states of violations for driving or  
702 operating a vehicle while under the influence of an intoxicating  
703 liquor or while under the influence of any other substance that  
704 has impaired the person's ability to operate a motor vehicle  
705 occurring after July 1, 1992, shall be counted for the purposes of  
706 determining if a violation of subsection (1) of this section is a  
707 first, second, third or subsequent offense and the penalty that  
708 shall be imposed upon conviction for a violation of subsection (1)  
709 of this section.

710 (8) For the purposes of determining how to impose the  
711 sentence for a second, third or subsequent conviction under this  
712 section, the indictment shall not be required to enumerate  
713 previous convictions. It shall only be necessary that the  
714 indictment state the number of times that the defendant has been  
715 convicted and sentenced within the past five (5) years under this  
716 section to determine if an enhanced penalty shall be imposed. The  
717 amount of fine and imprisonment imposed in previous convictions  
718 shall not be considered in calculating offenses to determine a  
719 second, third or subsequent offense of this section.

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

724 (10) Suspension of driving privileges for any person  
725 convicted of violations of Section 63-11-30(1) shall run

726 consecutively.

727 SECTION 18. Section 63-11-32, Mississippi Code of 1972, is  
728 brought forward as follows:[BD18]

729 63-11-32. (1) The State Department of Public Safety in  
730 conjunction with the Governor's Highway Safety Program, the State  
731 Board of Health, or any other state agency or institution shall  
732 develop and implement a driver improvement program for persons  
733 identified as first offenders convicted of driving while under the  
734 influence of intoxicating liquor or another substance which had  
735 impaired such person's ability to operate a motor vehicle,  
736 including provision for referral to rehabilitation facilities.

737 (2) The program shall consist of a minimum of ten (10) hours  
738 of instruction. Each person who participates shall pay a nominal  
739 fee to defray a portion of the cost of the program.

740 (3) Such assessments as are collected under subsection (2)  
741 of Section 99-19-73 shall be deposited in a special fund hereby  
742 created in the State Treasury and designated the "Mississippi  
743 Alcohol Safety Education Program Fund." Monies deposited in such  
744 fund shall be expended by the Board of Trustees of State  
745 Institutions of Higher Learning as authorized and appropriated by  
746 the Legislature to defray the costs of the Mississippi Alcohol  
747 Safety Education Program operated pursuant to the provisions of  
748 this section. Any revenue in the fund which is not encumbered at  
749 the end of the fiscal year shall lapse to the General Fund.

750 (4) Such assessments as are collected under subsection (2)  
751 of Section 99-19-73 shall be deposited in a special fund hereby  
752 created in the State Treasury and designated the "Federal-State  
753 Alcohol Program Fund." Monies deposited in such fund shall be  
754 expended by the Department of Public Safety as authorized and  
755 appropriated by the Legislature to defray the costs of alcohol and  
756 traffic safety programs. Any revenue in the fund which is not  
757 encumbered at the end of the fiscal year shall lapse to the  
758 General Fund.

759           (5) Such assessments as are collected under subsection (2)  
760 of Section 99-19-73 shall be deposited in a special fund hereby  
761 created in the State Treasury and designated the "Mississippi  
762 Crime Laboratory Implied Consent Law Fund." Monies deposited in  
763 such fund shall be expended by the Department of Public Safety as  
764 authorized and appropriated by the Legislature to defray the costs  
765 of equipment replacement and operational support of the  
766 Mississippi Crime Laboratory relating to enforcement of the  
767 Implied Consent Law. Any revenue in the fund which is not  
768 encumbered at the end of the fiscal year shall not lapse to the  
769 General Fund but shall remain in the fund.

770           SECTION 19. Section 63-11-37, Mississippi Code of 1972, is  
771 brought forward as follows:[BD19]

772           63-11-37. It shall be the duty of the trial judge, upon  
773 conviction of any person under Section 63-11-30, to mail a true  
774 and correct copy of the traffic ticket, citation or affidavit  
775 evidencing the arrest that resulted in the conviction and a copy  
776 of the abstract of the court record within five (5) days to the  
777 Commissioner of Public Safety at Jackson, Mississippi. The trial  
778 judge in municipal and justice courts shall show on the docket and  
779 the trial judge in courts of record shall show on the minutes:

780           (a) Whether or not a chemical test was given and the  
781 results of the test;

782           (b) Where conviction was based in whole or in part on  
783 the results of such a test.

784           The abstract of the court record shall show the date of the  
785 conviction, the results of the test if there was one and the  
786 penalty so that a record of same may be made by the Department of  
787 Public Safety.

788           For the purposes of Section 63-11-30, a bond forfeiture shall  
789 operate as and be considered as a conviction.

790           SECTION 20. Section 63-11-39, Mississippi Code of 1972, is  
791 brought forward as follows:[BD20]



792           63-11-39. The court having jurisdiction or the prosecutor  
793 shall not reduce any charge under this chapter to a lesser charge.

794           SECTION 21. Section 63-11-40, Mississippi Code of 1972, is  
795 brought forward as follows:[BD21]

796           63-11-40. Any person whose driver's license, or driving  
797 privilege has been cancelled, suspended or revoked under the  
798 provisions of this chapter and who drives any motor vehicle upon  
799 the highways, streets or public roads of this state, while such  
800 license or privilege is cancelled, suspended or revoked, shall be  
801 guilty of a misdemeanor and upon conviction shall be punished by  
802 imprisonment for not less than forty-eight (48) hours nor more  
803 than six (6) months, and fined not less than Two Hundred Dollars  
804 (\$200.00) nor more than Five Hundred Dollars (\$500.00).

805           The Commissioner of Public Safety shall suspend the driver's  
806 license or driving privilege of any person convicted under the  
807 provisions of this section for an additional six (6) months. Such  
808 suspension shall begin at the end of the original cancellation,  
809 suspension or revocation and run consecutively.

810           SECTION 22. Section 63-11-41, Mississippi Code of 1972, is  
811 brought forward as follows:[BD22]

812           63-11-41. If a person under arrest refuses to submit to a  
813 chemical test under the provisions of this chapter, evidence of  
814 refusal shall be admissible in any criminal action under this  
815 chapter.

816           SECTION 23. Section 63-11-45, Mississippi Code of 1972, is  
817 brought forward as follows:[BD23]

818           63-11-45. No coverage otherwise afforded under any policy of  
819 insurance shall be denied on the ground that any person has  
820 refused any test provided for by this chapter nor on the basis of  
821 the results of any such test. Any provision to such effect in any  
822 insurance policy hereinafter issued shall be void.

823           SECTION 24. Section 63-11-47, Mississippi Code of 1972, is  
824 brought forward as follows:[BD24]

825           63-11-47. The Commissioner of Public Safety, acting in  
826 concert with the State Crime Laboratory created pursuant to  
827 Section 45-1-17, is hereby expressly authorized and directed to  
828 determine the equipment and supplies which are adequate and  
829 necessary from both a medical and law enforcement standpoint for  
830 administration of this chapter. The Commissioner of Public  
831 Safety, upon receiving such recommendation from the State Crime  
832 Laboratory, shall recommend an equipment standard for such  
833 equipment to the State Fiscal Management Board. The State Fiscal  
834 Management Board, using such a uniform standard for said  
835 equipment, shall advertise its intention of purchasing said  
836 equipment by one (1) publication in at least one (1) newspaper  
837 having general circulation in the State of Mississippi at least  
838 ten (10) days before the purchase of such equipment and supplies,  
839 and the advertisement shall clearly and distinctly describe the  
840 articles to be purchased, and shall receive sealed bids thereon  
841 which shall be opened in public at a time and place to be  
842 specified in the advertisement.

843           The State Fiscal Management Board shall accept the lowest and  
844 best bid for said equipment and supplies; in its discretion, it  
845 may reject any and all bids submitted. The lowest and best bid  
846 for said equipment and supplies accepted by the State Fiscal  
847 Management Board shall be the state-approved price of said  
848 equipment for purchase by the state, county and city governments.

849           Title to all such testing equipment in the state purchased  
850 hereunder shall remain in the Commissioner of Public Safety  
851 regardless of what entity pays the purchase price.

852           The state, counties and municipalities may purchase in the  
853 name of the Commissioner of Public Safety such equipment and  
854 supplies from other vendors of said equipment and supplies  
855 necessary to implement this chapter, provided they purchase of the  
856 same quality and standard as certified to the State Fiscal  
857 Management Board and approved by the department. However, such

858 equipment and supplies shall not be purchased by the state,  
859 counties and municipalities unless it is at a price equivalent to  
860 or lower than that approved by the State Fiscal Management Board,  
861 pursuant to the bid procedure as outlined herein.

862 SECTION 25. Section 63-11-49, Mississippi Code of 1972, is  
863 brought forward as follows:[BD25]

864 63-11-49. (1) When a vehicle is seized under Section  
865 63-11-30(2)(c) or (d), the arresting officer shall impound the  
866 vehicle and the vehicle shall be held as evidence until a court of  
867 competent jurisdiction makes a final disposition of the case and  
868 the vehicle may be forfeited by the administrative forfeiture  
869 procedures provided for in this section upon final disposition as  
870 provided in Section 63-11-30(2)(c).

871 (2) The attorney for the law enforcement agency shall  
872 provide notice of intention to forfeit the seized vehicle  
873 administratively, by certified mail, return receipt requested, to  
874 all persons who are required to be notified pursuant to Section  
875 63-11-51.

876 (3) In the event that notice of intention to forfeit the  
877 seized vehicle administratively cannot be given as provided in  
878 subsection (2) of this section because of refusal, failure to  
879 claim, insufficient address or any other reason, the attorney for  
880 the law enforcement agency shall provide notice by publication in  
881 a newspaper of general circulation in the county in which the  
882 seizure occurred for once a week for three (3) consecutive weeks.

883 (4) Notice pursuant to subsections (2) and (3) of this  
884 section shall include the following information:

885 (a) A description of the vehicle;

886 (b) The approximate value of the vehicle;

887 (c) The date and place of the seizure;

888 (d) The connection between the vehicle and the  
889 violation of Section 63-11-30;

890 (e) The instructions for filing a request for judicial

891 review; and

892 (f) A statement that the vehicle will be forfeited to  
893 the law enforcement agency if a request for judicial review is not  
894 timely filed.

895 (5) In the event that a spouse of the owner of the seized  
896 vehicle makes a showing to the department that the seized vehicle  
897 is the only source of transportation for the spouse, the chief law  
898 enforcement officer shall declare that the vehicle is thereby  
899 forfeited to such spouse. A written declaration of forfeiture of  
900 a vehicle pursuant to this subsection shall be sufficient cause  
901 for the title to the vehicle to be transferred to the spouse. The  
902 provisions of this subsection shall apply only to one (1)  
903 forfeiture per vehicle; if the vehicle is the subject of a  
904 subsequent forfeiture proceeding by virtue of a subsequent  
905 conviction of either spouse, the spouse to whom the vehicle was  
906 forfeited pursuant to the first forfeiture proceeding may not  
907 utilize the remedy provided herein in another forfeiture  
908 proceeding.

909 (6) Persons claiming an interest in the seized vehicle may  
910 initiate judicial review of the seizure and proposed forfeiture by  
911 filing a request for judicial review with the attorney for the  
912 law enforcement agency within thirty (30) days after receipt of  
913 the certified letter or within thirty (30) days after the first  
914 publication of notice, whichever is applicable.

915 (7) If no request for judicial review is timely filed, the  
916 attorney for the law enforcement agency shall prepare a written  
917 declaration of forfeiture of the subject vehicle and the forfeited  
918 vehicle shall be disposed of in accordance with the provisions of  
919 Section 63-11-51.

920 (8) Upon receipt of a timely request for judicial review,  
921 the attorney for the law enforcement agency shall promptly file a  
922 petition for forfeiture and proceed as provided in Section  
923 63-11-51.

924 SECTION 26. Section 63-11-51, Mississippi Code of 1972, is  
925 brought forward as follows:[BD26]

926 63-11-51. (1) Except as otherwise provided in Section  
927 63-11-49, when a vehicle is seized under Section 63-11-30(2)(c) or  
928 (d), proceedings under this section shall be instituted promptly  
929 upon final conviction.

930 (2) A petition for forfeiture shall be filed promptly in the  
931 name of the State of Mississippi, the county or the municipality  
932 and may be filed in the county in which the seizure is made, the  
933 county in which the criminal prosecution is brought or the county  
934 in which the owner of the seized vehicle is found. Forfeiture  
935 proceedings may be brought in the circuit court or the county  
936 court if a county court exists in the county and the value of the  
937 seized vehicle is within the jurisdictional limits of the county  
938 court as set forth in Section 9-9-21. A copy of such petition  
939 shall be served upon the following persons by service of process  
940 in the same manner as in civil cases:

941 (a) The owner of the vehicle, if address is known;

942 (b) Any secured party who has registered his lien or  
943 filed a financing statement as provided by law, if the identity of  
944 such secured party can be ascertained by the law enforcement  
945 agency by making a good faith effort to ascertain the identity of  
946 such secured party as described in subsections (3), (4), (5), (6)  
947 and (7) of this section;

948 (c) Any other bona fide lienholder or secured party or  
949 other person holding an interest in the vehicle in the nature of a  
950 security interest of whom the law enforcement agency has actual  
951 knowledge;

952 (d) Any person in possession of the vehicle subject to  
953 forfeiture at the time that it was seized.

954 (3) If the vehicle is susceptible of titling under the  
955 Mississippi Motor Vehicle Title Law and if there is any reasonable  
956 cause to believe that the vehicle has been titled, the law

957 enforcement agency shall inquire of the State Tax Commission as to  
958 what the records of the State Tax Commission show regarding who is  
959 the record owner of the vehicle and who, if anyone, holds any lien  
960 or security interest which affects the vehicle.

961 (4) If the vehicle is not titled in the State of  
962 Mississippi, then the law enforcement agency shall attempt to  
963 ascertain the name and address of the person in whose name the  
964 vehicle is licensed, and if the vehicle is licensed in a state  
965 which has in effect a certificate of title law, the agency shall  
966 inquire of the appropriate agency of that state as to what the  
967 records of the agency show regarding who is the record owner of  
968 the vehicle and who, if anyone, holds any lien, security interest  
969 or other instrument in the nature of a security device which  
970 affects the vehicle.

971 (5) In the event the answer to an inquiry states that the  
972 record owner of the vehicle is any person other than the person  
973 who was in possession of it when it was seized, or states that any  
974 person holds any lien, encumbrance, security interest, other  
975 interest in the nature of a security interest, which affects the  
976 vehicle, the law enforcement agency shall cause any record owner  
977 and also any lienholder, secured party, other person who holds an  
978 interest in the vehicle in the nature of a security interest, to  
979 be named in the petition of forfeiture and to be served with  
980 process in the same manner as in civil cases.

981 (6) If the owner of the vehicle cannot be found and served  
982 with a copy of the petition of forfeiture, the law enforcement  
983 agency shall file with the clerk of the court in which the  
984 proceeding is pending an affidavit to such effect, whereupon the  
985 clerk of the court shall publish notice of the hearing addressed  
986 to "the Unknown Owner of . . .," filling in the blank space with a  
987 reasonably detailed description of the vehicle subject to  
988 forfeiture. Service by publication shall contain the other  
989 requisites prescribed in Section 11-33-41, and shall be served as

990 provided in Section 11-33-37 for publication of notice for  
991 attachments at law.

992 SECTION 27. Section 63-11-53, Mississippi Code of 1972, is  
993 brought forward as follows:[BD27]

994 63-11-53. (1) All money derived from the seizure and  
995 forfeiture of vehicles under Section 63-11-30(2)(c) and (d) and  
996 Sections 63-11-49 and 63-11-51 by the Mississippi Highway Safety  
997 Patrol shall be forwarded to the State Treasurer and deposited in  
998 a special fund which is hereby created for use by the Department  
999 of Public Safety upon appropriation by the Legislature.

1000 Unexpended amounts remaining in such special fund at the end of a  
1001 fiscal year shall not lapse into the State General Fund, and any  
1002 interest earned on amounts in such special fund shall be deposited  
1003 to the credit of the special fund. All other law enforcement  
1004 agencies shall establish a special fund which is to be used for  
1005 law enforcement purposes to purchase equipment for the law  
1006 enforcement agency, and any interest earned on the amount in such  
1007 special fund shall be deposited to the credit of the special fund.

1008 (2) Except as otherwise provided in subsection (3), all  
1009 vehicles that have been forfeited shall be sold at a public  
1010 auction for cash by the law enforcement agency, to the highest and  
1011 best bidder after advertising the sale for at least once each week  
1012 for three (3) consecutive weeks, the last notice to appear not  
1013 more than ten (10) days nor less than five (5) days prior to such  
1014 sale, in a newspaper having a general circulation in the county in  
1015 which the vehicle was seized. Such notices shall contain a  
1016 description of the vehicle to be sold and a statement of the time  
1017 and place of sale. It shall not be necessary to the validity of  
1018 such sale either to have the vehicle present at the place of sale  
1019 or to have the name of the owner thereof stated in such notice.  
1020 The proceeds of the sale shall be disposed of as follows:

1021 (a) To any bona fide lienholder, secured party, or  
1022 other party holding an interest in the vehicle in the nature of a

1023 security interest, to the extent of his interest; and

1024           (b) The balance, if any, remaining after deduction of  
1025 all storage, court costs and expenses of liquidation shall be  
1026 deposited in the manner described in subsection (1) of this  
1027 section.

1028           (3) The law enforcement agency may maintain, repair, use and  
1029 operate for official purposes all vehicles that have been  
1030 forfeited if the vehicles are free from any interest of a bona  
1031 fide lienholder, secured party or other party who holds an  
1032 interest in the nature of a security interest. The agency may  
1033 purchase the interest of a bona fide lienholder, secured party or  
1034 other party who holds an interest so that the vehicle can be  
1035 released for its use. If the vehicle is susceptible of titling  
1036 under the Mississippi Motor Vehicle Title Law, the agency shall be  
1037 deemed to be the purchaser, and the certificate of title shall be  
1038 issued to it as required by subsection (4) of this section.

1039           (4) The State Tax Commission shall issue a certificate of  
1040 title to any person who purchases vehicles under the provisions of  
1041 this section when a certificate of title is required under the  
1042 laws of this state.

1043           SECTION 28. This act shall take effect and be in force from  
1044 and after July 1, 2000.