

By: Chaney, King

To: Judiciary

## SENATE BILL NO. 2737

1 AN ACT TO REQUIRE VEHICLE IMPOUNDMENT, IMMOBILIZATION OR USE  
2 OF AN IGNITION INTERLOCK SYSTEM IN DUI CONVICTION; TO PROVIDE FOR  
3 THE ADMINISTRATION OF THE USE OF SUCH DEVICES; TO PROVIDE  
4 PENALTIES FOR VIOLATION; TO AMEND SECTION 63-11-30, MISSISSIPPI  
5 CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT AND TO MAKE  
6 TECHNICAL CHANGES; AND FOR RELATED PURPOSES.

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

8 SECTION 1. (1) (a) In addition to the penalties authorized  
9 for any second or subsequent convictions of Section 63-11-30, the  
10 court shall order the impoundment of all vehicles registered to  
11 the person for a minimum period of thirty (30) days up to the  
12 entire length of license suspension to occur during the driver  
13 license suspension period, or the immobilization of all vehicles  
14 registered to the person for a minimum period of thirty (30) days  
15 up to the entire length of license suspension to occur during the  
16 driver license suspension period, or the installation of an  
17 ignition interlock system on all vehicles registered to the person  
18 for a minimum period of six (6) months to occur after the person's  
19 driver's license has been reinstated.

20 (i) The cost associated with impoundment,  
21 immobilization or ignition interlock shall be paid by the person  
22 convicted.

23 (ii) A person may not tamper with, or in any way  
24 attempt to circumvent the immobilization or impoundment of  
25 vehicles ordered by the court. A violation of this paragraph is a  
26 misdemeanor and upon conviction the violator shall be fined an  
27 amount not less than Two Hundred Fifty Dollars (\$250.00) nor more  
28 than One Thousand Dollars (\$1,000.00) or imprisoned for not more

29 than one (1) year or both. These penalties shall not apply if:

30 (A) The starting of a motor vehicle equipped  
31 with an ignition interlock device is done for the purpose of  
32 safety or mechanical repair of the device or the vehicle, if the  
33 person subject to the court order does not operate the vehicle; or

34 (B) The court finds that a person is required  
35 to operate a motor vehicle in the course and scope of the person's  
36 employment. If the vehicle is owned by the person's employer, the  
37 person may operate that vehicle during regular working hours for  
38 the purposes of employment without installation of an ignition  
39 interlock device if the employer has been notified of such driving  
40 privilege restriction and if proof of that notification is kept  
41 with the vehicle at all times. This employment exemption does not  
42 apply if the business entity that owns the vehicle is owned or  
43 controlled by the person who is prohibited from operating a motor  
44 vehicle not equipped with an ignition interlock device.

45 (b) As a condition of receiving hardship driving  
46 privileges, or when a court orders a person to operate only a  
47 motor vehicle which is equipped with a functioning ignition  
48 interlock device, the court shall establish a specific calibration  
49 setting no lower than two one-hundredths percent (.02%) nor more  
50 than four one-hundredths percent (.04%) blood alcohol  
51 concentration at which the ignition interlock device will prevent  
52 the motor vehicle from being started. For the purpose of this  
53 section, "ignition interlock device" means a device which connects  
54 a motor vehicle ignition system to a breath-alcohol analyzer and  
55 prevents a motor vehicle ignition from starting if the driver's  
56 blood alcohol level exceeds the calibrated setting on the device.

57 (c) Upon ordering vehicle immobilization, impoundment  
58 or use of an ignition interlock device, the court shall:

59 (i) State on the record the requirement for and  
60 the period of use of the device, and so notify the Department of  
61 Public Safety;

62 (ii) Direct that the records of the department  
63 reflect:

64 (A) That the person may not operate a motor  
65 vehicle that is not equipped with an ignition interlock device;

66 and

67 (B) Whether the court has expressly permitted  
68 the person to operate a motor vehicle without an ignition  
69 interlock device under paragraph (h)(ii) of this section.

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

76 (iv) Require proof of the installation of the  
77 device and periodic reporting by the person for verification of  
78 the proper operation of the device;

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

83 (vi) Require the person to pay the reasonable cost  
84 of leasing or buying, monitoring, and maintaining the device, and  
85 may establish a payment schedule therefore.

86 (d) A person prohibited under this section from  
87 operating a motor vehicle that is not equipped with an ignition  
88 interlock device may not solicit or have another person attempt to  
89 start or start a motor vehicle equipped with such a device.  
90 Except as provided in paragraph (h) of this section, a violation  
91 of this paragraph is a misdemeanor and upon conviction a violator  
92 shall be fined not less than Two Hundred Fifty Dollars (\$250.00)  
93 nor more than One Thousand Dollars (\$1,000.00) or imprisoned for  
94 not more than one (1) year, or both.

95 (e) A person may not attempt to start or start a motor  
96 vehicle equipped with an ignition interlock device for the purpose  
97 of providing an operable motor vehicle to a person who is  
98 prohibited under this section from operating a motor vehicle that

99 is not equipped with an ignition interlock device. Except as  
100 provided in paragraph (h) of this section, a violation of this  
101 paragraph is a misdemeanor and upon conviction the violator shall  
102 be fined not less than Two Hundred Fifty Dollars (\$250.00) nor  
103 more than One Thousand Dollars (\$1,000.00) or imprisoned for not  
104 more than one (1) year, or both.

105 (f) A person may not tamper with, or in any way attempt  
106 to circumvent, the operation of an ignition interlock device that  
107 has been installed in a motor vehicle. Except as provided in  
108 paragraph (h) of this section, a violation of this paragraph is a  
109 misdemeanor and upon conviction the violator shall be fined an  
110 amount not less than Two Hundred Fifty Dollars (\$250.00) nor more  
111 than One Thousand Dollars (\$1,000.00) or imprisoned for not more  
112 than one (1) year, or both.

113 (g) A person may not knowingly provide a motor vehicle  
114 not equipped with a functioning ignition interlock device to  
115 another person who the provider of such vehicle knows or should  
116 know is prohibited from operating a motor vehicle not equipped  
117 with an ignition interlock device. Except as provided in  
118 paragraph (h) of this section, a violation of this paragraph is a  
119 misdemeanor and upon conviction the violator shall be fined an  
120 amount not less than Two Hundred Fifty Dollars (\$250.00) nor more  
121 than One Thousand Dollars (\$1,000.00) or imprisoned for not more  
122 than one (1) year, or both.

123 (h) A person shall not be in violation of paragraphs  
124 (d) through (g) of this section if:

125 (i) The starting of a motor vehicle equipped with  
126 an ignition interlock device is done for the purpose of safety or  
127 mechanical repair of the device or the vehicle, and the person  
128 subject to the court order does not operate the vehicle; or

129 (ii) The court finds that a person is required to  
130 operate a motor vehicle in the course and scope of the person's  
131 employment. If the vehicle is owned by the person's employer, the

132 person may operate that vehicle during regular working hours for  
133 the purposes of employment without installation of an ignition  
134 interlock device if the employer has been notified of such driving  
135 privilege restriction and if proof of that notification is kept  
136 with the vehicle at all times. This employment exemption does not  
137 apply if the business entity that owns the vehicle is owned or  
138 controlled by the person who is prohibited from operating the  
139 motor vehicle not equipped with an ignition interlock device.

140 (i) (i) In addition to the circumstances under which a  
141 judge may order the use of an ignition interlock device set out in  
142 subsection (1)(a) of this section, a judge may order that the  
143 vehicle owned or operated by a person or a family member of any  
144 person who committed a violation of Section 63-11-30, be equipped  
145 with an ignition interlock device for all or a portion of the time  
146 the driver's license of the operator of such vehicle is suspended  
147 or restricted pursuant to this section, if:

148 (A) The operator of the vehicle used to  
149 violate Section 63-11-30 has at least one (1) prior conviction for  
150 driving a motor vehicle when such person's privilege to do so is  
151 cancelled, suspended or revoked as provided by Section 63-11-30;  
152 or

153 (B) The driver's license of the operator of  
154 such vehicle was cancelled, suspended or revoked at the time of  
155 the violation of Section 63-11-30.

156 (ii) A judge ordering the use of an ignition  
157 interlock device pursuant to this paragraph (i) shall follow the  
158 same procedures set out in subsections (1)(a) and (b) of this  
159 section, and the provisions of paragraphs (1)(c) through (h) of  
160 this section shall apply to an interlock device ordered pursuant  
161 to this paragraph (i).

162 (iii) The provisions of this paragraph shall not  
163 apply if the vehicle used to commit the violation of Section  
164 63-11-30, was, at the time of such violation, rented or stolen.

165           (j) (i) A person's second or subsequent violation of  
166 Section 63-11-30 creates an inference that the provisions of  
167 subsection (1)(a) are necessary to protect the public, and that  
168 the court should order that such offender's motor vehicle be  
169 equipped with a functioning interlock device as defined by such  
170 subsection. To overcome such inference, the court must make an  
171 affirmative finding on the record that there is sufficient cause  
172 not to enter such an order and must state such cause on the  
173 record. If the court determines that the inference has not been  
174 overcome and orders use of an interlock device, it shall make a  
175 further finding as to whether the offender's motor vehicle will be  
176 equipped with the device for all or a portion of the time the  
177 driver's license of such offender is suspended or restricted  
178 pursuant to Section 63-11-30 or only after such offender's  
179 driver's license is no longer suspended or restricted pursuant to  
180 Section 63-11-30 or both.

181           (ii) All interlock devices ordered pursuant to  
182 this subsection (j) shall be of the type that records and stores  
183 the driver's blood alcohol content at certain intervals for use by  
184 the court as provided by law. No such device ordered pursuant to  
185 this subsection shall be used that will or that may be set,  
186 modified or adjusted to automatically turn the motor vehicle's  
187 engine off after it has been started.

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

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

192           SECTION 2. Section 63-11-30, Mississippi Code of 1972, is  
193 amended as follows:[CSQ1]

194           63-11-30. (1) It is unlawful for any person to drive or  
195 otherwise operate a vehicle within this state who (a) is under the  
196 influence of intoxicating liquor; (b) is under the influence of  
197 any other substance which has impaired such person's ability to

198 operate a motor vehicle; (c) has an alcohol concentration of ten  
199 one-hundredths percent (.10%) or more for persons who are above  
200 the legal age to purchase alcoholic beverages under state law, or  
201 two one-hundredths percent (.02%) or more for persons who are  
202 below the legal age to purchase alcoholic beverages under state  
203 law, in the person's blood based upon grams of alcohol per one  
204 hundred (100) milliliters of blood or grams of alcohol per two  
205 hundred ten (210) liters of breath as shown by a chemical analysis  
206 of such person's breath, blood or urine administered as authorized  
207 by this chapter; (d) is under the influence of any drug or  
208 controlled substance, the possession of which is unlawful under  
209 the Mississippi Controlled Substances Law; or (e) has an alcohol  
210 concentration of four one-hundredths percent (.04%) or more in the  
211 person's blood, based upon grams of alcohol per one hundred (100)  
212 milliliters of blood or grams of alcohol per two hundred ten (210)  
213 liters of breath as shown by a chemical analysis of such person's  
214 blood, breath or urine, administered as authorized by this chapter  
215 for persons operating a commercial motor vehicle.

216 (2) (a) Except as otherwise provided in subsection (3),  
217 upon conviction of any person for the first offense of violating  
218 subsection (1) of this section where chemical tests provided for  
219 under Section 63-11-5 were given, or where chemical test results  
220 are not available, such person shall be fined not less than Two  
221 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
222 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
223 hours in jail or both; and the court shall order such person to  
224 attend and complete an alcohol safety education program as  
225 provided in Section 63-11-32. The court may substitute attendance  
226 at a victim impact panel instead of forty-eight (48) hours in  
227 jail. In addition, the Department of Public Safety, the  
228 Commissioner of Public Safety or his duly authorized agent shall,  
229 after conviction and upon receipt of the court abstract, suspend  
230 the driver's license and driving privileges of such person for a

231 period of not less than ninety (90) days and until such person  
232 attends and successfully completes an alcohol safety education  
233 program as herein provided; provided, however, in no event shall  
234 such period of suspension exceed one (1) year. Commercial driving  
235 privileges shall be suspended as provided in Section 63-1-83.

236 The circuit court having jurisdiction in the county in which  
237 the conviction was had or the circuit court of the person's county  
238 of residence may reduce the suspension of driving privileges under  
239 Section 63-11-30(2)(a) if the denial of which would constitute a  
240 hardship on the offender, except that no court may issue such an  
241 order reducing the suspension of driving privileges under this  
242 subsection until thirty (30) days have elapsed from the effective  
243 date of the suspension. Hardships shall only apply to first  
244 offenses under Section 63-11-30(1), and shall not apply to second,  
245 third or subsequent convictions of any person violating subsection  
246 (1) of this section. A reduction of suspension on the basis of  
247 hardship shall not be available to any person who refused to  
248 submit to a chemical test upon the request of a law enforcement  
249 officer as provided in Section 63-11-5. When the petition is  
250 filed, such person shall pay to the circuit clerk of the court  
251 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
252 shall be deposited into the State General Fund to the credit of a  
253 special fund hereby created in the State Treasury to be used for  
254 alcohol or drug abuse treatment and education, upon appropriation  
255 by the Legislature. This fee shall be in addition to any other  
256 court costs or fees required for the filing of petitions.

257 The petition filed under the provisions of this subsection  
258 shall contain the specific facts which the petitioner alleges to  
259 constitute a hardship and the driver's license number of the  
260 petitioner. A hearing may be held on any petition filed under  
261 this subsection only after ten (10) days' prior written notice to  
262 the Commissioner of Public Safety, or his designated agent, or the  
263 attorney designated to represent the state. At such hearing, the



264 court may enter an order reducing the period of suspension.

265 The order entered under the provisions of this subsection  
266 shall contain the specific grounds upon which hardship was  
267 determined, and shall order the petitioner to attend and complete  
268 an alcohol safety education program as provided in Section  
269 63-11-32. A certified copy of such order shall be delivered to  
270 the Commissioner of Public Safety by the clerk of the court within  
271 five (5) days of the entry of the order. The certified copy of  
272 such order shall contain information which will identify the  
273 petitioner, including, but not limited to, the name, mailing  
274 address, street address, Social Security number and driver's  
275 license number of the petitioner.

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

- 281 (i) Continue his employment;
- 282 (ii) Continue attending school or an educational  
283 institution; or
- 284 (iii) Obtain necessary medical care.

285 Proof of the hardship shall be established by clear and  
286 convincing evidence which shall be supported by independent  
287 documentation.

288 (b) Except as otherwise provided in subsection (3),  
289 upon any second conviction of any person violating subsection (1)  
290 of this section, the offenses being committed within a period of  
291 five (5) years, such person shall be fined not less than Six  
292 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
293 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)  
294 days nor more than one (1) year and sentenced to community service  
295 work for not less than ten (10) days nor more than one (1) year.  
296 The minimum penalties shall not be suspended. Except as may

297 otherwise be provided by paragraph (e) of this subsection, the  
298 Commissioner of Public Safety shall suspend the driver's license  
299 of such person for two (2) years. Suspension of a commercial  
300 driver's license shall be governed by Section 63-1-83. Upon any  
301 second conviction as described in this paragraph, the court shall  
302 ascertain whether the defendant is married, and if the defendant  
303 is married shall obtain the name and address of the defendant's  
304 spouse; the clerk of the court shall submit this information to  
305 the Department of Public Safety. Further, the commissioner shall  
306 notify in writing, by certified mail, return receipt requested,  
307 the owner of the vehicle and the spouse, if any, of the person  
308 convicted of the second violation of the possibility of forfeiture  
309 of the vehicle if such person is convicted of a third violation of  
310 subsection (1) of this section. The owner of the vehicle and the  
311 spouse shall be considered notified under this paragraph if the  
312 notice is deposited in the United States mail and any claim that  
313 the notice was not in fact received by the addressee shall not  
314 affect a subsequent forfeiture proceeding.

315 For any second or subsequent conviction of any person under  
316 this section, the person shall also be subject to the penalties  
317 set forth in Section 1 of Senate Bill No. 2737, 2000 Regular  
318 Session.

319 (c) Except as otherwise provided in subsection (3), for  
320 any third or subsequent conviction of any person violating  
321 subsection (1) of this section, the offenses being committed  
322 within a period of five (5) years, such person shall be guilty of  
323 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
324 nor more than Five Thousand Dollars (\$5,000.00) and shall be  
325 imprisoned not less than one (1) year nor more than five (5) years  
326 in the State Penitentiary. The minimum penalties shall not be  
327 suspended. The law enforcement agency shall seize the vehicle  
328 operated by any person charged with a third or subsequent  
329 violation of subsection (1) of this section, if such convicted

330 person was driving the vehicle at the time the offense was  
331 committed. Such vehicle may be forfeited in the manner provided  
332 by Sections 63-11-49 through 63-11-53. Except as may otherwise be  
333 provided by paragraph (e) of this subsection, the Commissioner of  
334 Public Safety shall suspend the driver's license of such person  
335 for five (5) years. The suspension of a commercial driver's  
336 license shall be governed by Section 63-1-83.

337 (d) Except as otherwise provided in subsection (3), any  
338 person convicted of a second or subsequent violation of subsection  
339 (1) of this section \* \* \* shall receive an in-depth diagnostic  
340 assessment, and if as a result of such assessment is determined to  
341 be in need of treatment of his alcohol and/or drug abuse problem  
342 shall successfully complete treatment of his alcohol and/or drug  
343 abuse problem at a program site certified by the Department of  
344 Mental Health. Such person shall be eligible for reinstatement of  
345 his driving privileges upon the successful completion of such  
346 treatment after a period of one (1) year after such person's  
347 driver's license is suspended. Each person who receives a  
348 diagnostic assessment shall pay a fee representing the cost of  
349 such assessment. Each person who participates in a treatment  
350 program shall pay a fee representing the cost of such treatment.

351 (e) Except as otherwise provided in subsection (3), any  
352 person convicted of a third or subsequent violation of subsection  
353 (1) of this section may enter an alcohol and/or drug abuse program  
354 approved by the Department of Mental Health for treatment of such  
355 person's alcohol and/or drug abuse problem. If such person  
356 successfully completes such treatment, such person shall be  
357 eligible for reinstatement of his driving privileges after a  
358 period of three (3) years after such person's driver's license is  
359 suspended.

360 (3) (a) This subsection shall be known and may be cited as  
361 Zero Tolerance for Minors. The provisions of this subsection  
362 shall apply only when a person under the age of twenty-one (21)

363 years has a blood alcohol concentration two one-hundredths percent  
364 (.02%) or more, but lower than eight one-hundredths percent  
365 (.08%). If such person's blood alcohol concentration is eight  
366 one-hundredths percent (.08%) or more, the provisions of  
367 subsection (2) shall apply.

368 (b) Upon conviction of any person under the age of  
369 twenty-one (21) years for the first offense of violating  
370 subsection (1) of this section where chemical tests provided for  
371 under Section 63-11-5 were given, \* \* \* such person shall have his  
372 driver's license suspended for ninety (90) days and shall be fined  
373 Two Hundred Fifty Dollars (\$250.00); and the court shall order  
374 such person to attend and complete an alcohol safety education  
375 program as provided in Section 63-11-32. The court may also  
376 require attendance at a victim impact panel.

377 The circuit court having jurisdiction in the county in which  
378 the conviction was had or the circuit court of the person's county  
379 of residence may reduce the suspension of driving privileges under  
380 Section 63-11-30(2)(a) if the denial of which would constitute a  
381 hardship on the offender, except that no court may issue such an  
382 order reducing the suspension of driving privileges under this  
383 subsection until thirty (30) days have elapsed from the effective  
384 date of the suspension. Hardships shall only apply to first  
385 offenses under Section 63-11-30(1), and shall not apply to second,  
386 third or subsequent convictions of any person violating subsection  
387 (1) of this section. A reduction of suspension on the basis of  
388 hardship shall not be available to any person who refused to  
389 submit to a chemical test upon the request of a law enforcement  
390 officer as provided in Section 63-11-5. When the petition is  
391 filed, such person shall pay to the circuit clerk of the court  
392 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
393 shall be deposited into the State General Fund to the credit of a  
394 special fund hereby created in the State Treasury to be used for  
395 alcohol or drug abuse treatment and education, upon appropriation

396 by the Legislature. This fee shall be in addition to any other  
397 court costs or fees required for the filing of petitions.

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

406 The order entered under the provisions of this subsection  
407 shall contain the specific grounds upon which hardship was  
408 determined, and shall order the petitioner to attend and complete  
409 an alcohol safety education program as provided in Section  
410 63-11-32. A certified copy of such order shall be delivered to  
411 the Commissioner of Public Safety by the clerk of the court within  
412 five (5) days of the entry of the order. The certified copy of  
413 such order shall contain information which will identify the  
414 petitioner, including, but not limited to, the name, mailing  
415 address, street address, Social Security number and driver's  
416 license number of the petitioner.

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

- 422 (i) Continue his employment;
- 423 (ii) Continue attending school or an educational  
424 institution; or
- 425 (iii) Obtain necessary medical care.

426 Proof of the hardship shall be established by clear and  
427 convincing evidence which shall be supported by independent  
428 documentation.

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

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

442           (e) Any person under the age of twenty-one (21) years  
443 convicted of a second violation of subsection (1) of this section,  
444 may have the period that his driver's license is suspended reduced  
445 if such person receives an in-depth diagnostic assessment, and as  
446 a result of such assessment is determined to be in need of  
447 treatment of his alcohol and/or drug abuse problem and  
448 successfully completes treatment of his alcohol and/or drug abuse  
449 problem at a program site certified by the Department of Mental  
450 Health. Such person shall be eligible for reinstatement of his  
451 driving privileges upon the successful completion of such  
452 treatment after a period of six (6) months after such person's  
453 driver's license is suspended. Each person who receives a  
454 diagnostic assessment shall pay a fee representing the cost of  
455 such assessment. Each person who participates in a treatment  
456 program shall pay a fee representing the cost of such treatment.

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

462           (g) The court shall have the discretion to rule that a  
463 first offense of this subsection by a person under the age of  
464 twenty-one (21) years shall be nonadjudicated. Such person shall  
465 be eligible for nonadjudication only once. The Department of  
466 Public Safety shall maintain a confidential registry of all cases  
467 which are nonadjudicated as provided in this paragraph. A judge  
468 who rules that a case is nonadjudicated shall forward such ruling  
469 to the Department of Public Safety. Judges and prosecutors  
470 involved in implied consent violations shall have access to the  
471 confidential registry for the purpose of determining  
472 nonadjudication eligibility. A record of a person who has been  
473 nonadjudicated shall be maintained for five (5) years or until  
474 such person reaches the age of twenty-one (21) years. Any person  
475 whose confidential record has been disclosed in violation of this  
476 paragraph shall have a civil cause of action against the person  
477 and/or agency responsible for such disclosure.

478           (4) Every person convicted of operating a vehicle while  
479 under the influence of intoxicating liquor or any other substance  
480 which has impaired such person's ability to operate a motor  
481 vehicle where the person (a) refused a law enforcement officer's  
482 request to submit to a chemical test of his breath as provided in  
483 this chapter, or (b) was unconscious at the time of a chemical  
484 test and refused to consent to the introduction of the results of  
485 such test in any prosecution, shall be punished consistent with  
486 the penalties prescribed herein for persons submitting to the  
487 test, except that there shall be an additional suspension of  
488 driving privileges as follows:

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

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

503           (6) Upon conviction of any violation of subsection (1) of  
504 this section, the trial judge shall sign in the place provided on  
505 the traffic ticket, citation or affidavit stating that the person  
506 arrested either employed an attorney or waived his right to an  
507 attorney after having been properly advised. If the person  
508 arrested employed an attorney, the name, address and telephone  
509 number of the attorney shall be written on the ticket, citation or  
510 affidavit. The judge shall cause a copy of the traffic ticket,  
511 citation or affidavit, and any other pertinent documents  
512 concerning the conviction, to be sent to the Commissioner of  
513 Public Safety. A copy of the traffic ticket, citation or  
514 affidavit and any other pertinent documents, having been attested  
515 as true and correct by the Commissioner of Public Safety, or his  
516 designee, shall be sufficient proof of the conviction for purposes  
517 of determining the enhanced penalty for any subsequent convictions  
518 of violations of subsection (1) of this section.

519           (7) Convictions in other states of violations for driving or  
520 operating a vehicle while under the influence of an intoxicating  
521 liquor or while under the influence of any other substance that  
522 has impaired the person's ability to operate a motor vehicle  
523 occurring after July 1, 1992, shall be counted for the purposes of  
524 determining if a violation of subsection (1) of this section is a  
525 first, second, third or subsequent offense and the penalty that  
526 shall be imposed upon conviction for a violation of subsection (1)  
527 of this section.



528           (8) For the purposes of determining how to impose the  
529 sentence for a second, third or subsequent conviction under this  
530 section, the indictment shall not be required to enumerate  
531 previous convictions. It shall only be necessary that the  
532 indictment state the number of times that the defendant has been  
533 convicted and sentenced within the past five (5) years under this  
534 section to determine if an enhanced penalty shall be imposed. The  
535 amount of fine and imprisonment imposed in previous convictions  
536 shall not be considered in calculating offenses to determine a  
537 second, third or subsequent offense of this section.

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

542           (10) Suspension of driving privileges for any person  
543 convicted of violations of Section 63-11-30(1) shall run  
544 consecutively.

545           (11) The court may order the use of an ignition interlock  
546 device as provided by Section 1 of this act.

547           SECTION 3. This act shall take effect and be in force from  
548 and after July 1, 2000.