

By: Turner

To: Judiciary

## SENATE BILL NO. 2794

1 AN ACT TO AMEND SECTIONS 63-11-30 AND 63-11-23, MISSISSIPPI  
2 CODE OF 1972, TO REVISE THE BLOOD ALCOHOL LEVEL FOR DRIVING UNDER  
3 THE INFLUENCE; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 63-11-30, Mississippi Code of 1972, is  
6 amended as follows:[CSQ1]

7 63-11-30. (1) It is unlawful for any person to drive or  
8 otherwise operate a vehicle within this state who (a) is under the  
9 influence of intoxicating liquor; (b) is under the influence of  
10 any other substance which has impaired such person's ability to  
11 operate a motor vehicle; (c) has an alcohol concentration of eight  
12 one-hundredths percent (.08%) or more for persons who are above  
13 the legal age to purchase alcoholic beverages under state law, or  
14 two one-hundredths percent (.02%) or more for persons who are  
15 below the legal age to purchase alcoholic beverages under state  
16 law, in the person's blood based upon grams of alcohol per one  
17 hundred (100) milliliters of blood or grams of alcohol per two  
18 hundred ten (210) liters of breath as shown by a chemical analysis  
19 of such person's breath, blood or urine administered as authorized  
20 by this chapter; (d) is under the influence of any drug or  
21 controlled substance, the possession of which is unlawful under  
22 the Mississippi Controlled Substances Law; or (e) has an alcohol  
23 concentration of four one-hundredths percent (.04%) or more in the  
24 person's blood, based upon grams of alcohol per one hundred (100)  
25 milliliters of blood or grams of alcohol per two hundred ten (210)  
26 liters of breath as shown by a chemical analysis of such person's

27 blood, breath or urine, administered as authorized by this chapter  
28 for persons operating a commercial motor vehicle.

29 (2) (a) Except as otherwise provided in subsection (3),  
30 upon conviction of any person for the first offense of violating  
31 subsection (1) of this section where chemical tests provided for  
32 under Section 63-11-5 were given, or where chemical test results  
33 are not available, such person shall be fined not less than Two  
34 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
35 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
36 hours in jail or both; and the court shall order such person to  
37 attend and complete an alcohol safety education program as  
38 provided in Section 63-11-32. The court may substitute attendance  
39 at a victim impact panel instead of forty-eight (48) hours in  
40 jail. In addition, the Department of Public Safety, the  
41 Commissioner of Public Safety or his duly authorized agent shall,  
42 after conviction and upon receipt of the court abstract, suspend  
43 the driver's license and driving privileges of such person for a  
44 period of not less than ninety (90) days and until such person  
45 attends and successfully completes an alcohol safety education  
46 program as herein provided; provided, however, in no event shall  
47 such period of suspension exceed one (1) year. Commercial driving  
48 privileges shall be suspended as provided in Section 63-1-83.

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

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

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

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

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

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

97 (iii) Obtain necessary medical care.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

232 (i) Continue his employment;

233 (ii) Continue attending school or an educational  
234 institution; or

235 (iii) Obtain necessary medical care.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

355 SECTION 2. Section 63-11-23, Mississippi Code of 1972, is  
356 amended as follows:[CSQ2]

357 63-11-23. (1) The Commissioner of Public Safety, or his  
358 authorized agent, shall review the sworn report by a law  
359 enforcement officer as provided in Section 63-11-21. If upon such  
360 review the Commissioner of Public Safety, or his authorized agent,

361 finds (a) that the law enforcement officer had reasonable grounds  
362 and probable cause to believe the person had been driving a motor  
363 vehicle upon the public highways, public roads and streets of this  
364 state while under the influence of intoxicating liquor or any  
365 other substance which may impair a person's mental or physical  
366 ability; (b) that he refused to submit to the test upon request of  
367 the officer; and (c) that the person was informed that his license  
368 and/or driving privileges would be suspended or denied if he  
369 refused to submit to the chemical test, then the Commissioner of  
370 Public Safety, or his authorized agent, shall give notice to the  
371 licensee that his license or permit to drive, or any nonresident  
372 operating privilege, shall be suspended thirty (30) days after the  
373 date of such notice for a period of ninety (90) days in the event  
374 such person has not previously been convicted of a violation of  
375 Section 63-11-30, or, for a period of one (1) year in the event of  
376 any previous conviction of such person under Section 63-11-30. In  
377 the event the commissioner or his authorized agent determines that  
378 the license should not be suspended, he shall return the license  
379 or permit to the licensee.

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

382 (2) If the chemical testing of a person's breath indicates  
383 the blood alcohol concentration was eight one-hundredths percent  
384 (.08%) or more for persons who are above the legal age to purchase  
385 alcoholic beverages under state law, or two one-hundredths percent  
386 (.02%) or more for persons who are below the legal age to purchase  
387 alcoholic beverages under state law, based upon grams of alcohol  
388 per one hundred (100) milliliters of blood or grams of alcohol per  
389 two hundred ten (210) liters of breath as shown by a chemical  
390 analysis of such person's blood, or breath, or urine, the  
391 arresting officer shall seize the license and give the driver a  
392 receipt for his license on forms prescribed by the Commissioner of  
393 Public Safety and shall promptly forward the license together with

394 a sworn report to the Commissioner of Public Safety. The receipt  
395 given a person as provided herein shall be valid as a permit to  
396 operate a motor vehicle for a period of thirty (30) days in order  
397 that the defendant be processed through the court having original  
398 jurisdiction and a final disposition had; provided, however, that  
399 if the defendant makes a written request directed to the trial  
400 judge requesting that a trial be held on the matter within such  
401 thirty-day period and such defendant is not afforded a trial  
402 within such period, then the Commissioner of Public Safety shall  
403 issue such defendant a permit to drive that shall be valid for an  
404 additional thirty (30) days. If the defendant makes a written  
405 request to the trial judge requesting that a trial be held on the  
406 matter prior to the expiration of such permit to drive and such  
407 defendant is not afforded a trial within such period, then the  
408 Commissioner of Public Safety shall issue such defendant a permit  
409 to drive for an additional thirty (30) days. In no event shall a  
410 defendant be permitted to drive under the provisions of this  
411 subsection for more than ninety (90) days after the initial  
412 seizure of such defendant's license. The fact that the defendant  
413 has the right to request a trial and the effect of a denial of  
414 such request shall be plainly stated on the face of any receipt or  
415 permit to drive issued such defendant. If a receipt or permit to  
416 drive issued pursuant to the provisions of this subsection expires  
417 without a trial having been requested as provided for in this  
418 subsection, then the Commissioner of Public Safety or his  
419 authorized agent shall suspend the license or permit to drive or  
420 any nonresident operating privilege for the applicable period of  
421 time as provided for in subsection (1) of this section.

422 (3) If the person is a resident without a license or permit  
423 to operate a motor vehicle in this state, the Commissioner of  
424 Public Safety, or his authorized agent, shall deny to the person  
425 the issuance of a license or permit for a period of one (1) year  
426 beginning thirty (30) days after the date of notice of such

427 suspension.

428           (4) It shall be the duty of the county prosecuting attorney,  
429 an attorney employed under the provisions of Section 19-3-49, or  
430 in the event there is no such prosecuting attorney for the county,  
431 the duty of the district attorney to represent the state in any  
432 hearing held under the provisions of Section 63-11-25, under the  
433 provisions of Section 63-11-37(2) or under the provisions of  
434 Section 63-11-30(2)(a).

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