

By: Burton

To: Judiciary

SENATE BILL NO. 3093

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR SEPARATE CONVICTIONS FOR SEPARATE INJURIES OR
3 DEATHS CAUSED BY AGGRAVATED DUI, EVEN THOUGH ARISING BUT FROM ONE
4 ACT OF DRIVING WHILE UNDER THE INFLUENCE; AND FOR RELATED
5 PURPOSES.

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

7 SECTION 1. Section 63-11-30, Mississippi Code of 1972, is
8 amended as follows:

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

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

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

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

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

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

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

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

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

98 institution; or

99 (iii) Obtain necessary medical care.

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

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

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

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

130 (c) Except as otherwise provided in subsection (3), for

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

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

162 (e) Except as otherwise provided in subsection (3), any
163 person convicted of a third or subsequent violation of subsection

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

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

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

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

197 offenses under Section 63-11-30(1), and shall not apply to second,
198 third or subsequent convictions of any person violating subsection
199 (1) of this section. A reduction of suspension on the basis of
200 hardship shall not be available to any person who refused to
201 submit to a chemical test upon the request of a law enforcement
202 officer as provided in Section 63-11-5. When the petition is
203 filed, such person shall pay to the circuit clerk of the court
204 where the petition is filed a fee of Fifty Dollars (\$50.00), which
205 shall be deposited into the State General Fund to the credit of a
206 special fund hereby created in the State Treasury to be used for
207 alcohol or drug abuse treatment and education, upon appropriation
208 by the Legislature. This fee shall be in addition to any other
209 court costs or fees required for the filing of petitions.

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

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

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

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

234 (i) Continue his employment;

235 (ii) Continue attending school or an educational
236 institution; or

237 (iii) Obtain necessary medical care.

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

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

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

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

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

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

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

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

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

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

307 (5) Every person who operates any motor vehicle in violation
308 of the provisions of subsection (1) of this section and who in a
309 negligent manner causes the death of another or mutilates,
310 disfigures, permanently disables or destroys the tongue, eye, lip,
311 nose or any other limb, organ or member of another shall, upon
312 conviction, be guilty of a separate felony for each such death or
313 mutilation, disfigurement or other injury and shall be committed
314 to the custody of the State Department of Corrections for a period
315 of time not to exceed twenty-five (25) years for each such death,
316 mutilation, disfigurement or other injury, and the imprisonment on
317 the second or each subsequent conviction, in the discretion of the
318 court, shall commence either at the termination of the
319 imprisonment for the preceding conviction or run concurrently with
320 the preceding conviction.

321 (6) Upon conviction of any violation of subsection (1) of
322 this section, the trial judge shall sign in the place provided on
323 the traffic ticket, citation or affidavit stating that the person
324 arrested either employed an attorney or waived his right to an
325 attorney after having been properly advised. If the person
326 arrested employed an attorney, the name, address and telephone
327 number of the attorney shall be written on the ticket, citation or
328 affidavit. The judge shall cause a copy of the traffic ticket,

329 citation or affidavit, and any other pertinent documents
330 concerning the conviction, to be sent to the Commissioner of
331 Public Safety. A copy of the traffic ticket, citation or
332 affidavit and any other pertinent documents, having been attested
333 as true and correct by the Commissioner of Public Safety, or his
334 designee, shall be sufficient proof of the conviction for purposes
335 of determining the enhanced penalty for any subsequent convictions
336 of violations of subsection (1) of this section.

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

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

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

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

362 consecutively.

363 SECTION 2. This act shall take effect and be in force from
364 and after its passage.