

By: Representatives Reeves, Martinson

To: Judiciary A

HOUSE BILL NO. 346

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY SENTENCING FOR FELONY OFFENSES FOR DUI DEATH OR
3 MUTILATION; TO AMEND SECTION 67-3-53, MISSISSIPPI CODE OF 1972, TO
4 REVISE UNLAWFUL ACTS RELATING TO THE SALE AND CONSUMPTION OF
5 ALCOHOLIC BEVERAGES IN NONRESTAURANT ESTABLISHMENTS; AND FOR
6 RELATED PURPOSES.

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

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

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



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

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

52 The circuit court having jurisdiction in the county in which
53 the conviction was had or the circuit court of the person's county
54 of residence may reduce the suspension of driving privileges under
55 Section 63-11-30(2) (a) if the denial of which would constitute a
56 hardship on the offender, except that no court may issue such an
57 order reducing the suspension of driving privileges under this
58 subsection until thirty (30) days have elapsed from the effective
59 date of the suspension. Hardships shall only apply to first
60 offenses under Section 63-11-30(1), and shall not apply to second,
61 third or subsequent convictions of any person violating subsection
62 (1) of this section. A reduction of suspension on the basis of



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

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

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

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



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

97 (i) Continue his employment;

98 (ii) Continue attending school or an educational
99 institution; or

100 (iii) Obtain necessary medical care.

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

104 (b) Except as otherwise provided in subsection (3),
105 upon any second conviction of any person violating subsection (1)
106 of this section, the offenses being committed within a period of
107 five (5) years, such person shall be fined not less than Six
108 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
109 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
110 days nor more than one (1) year and sentenced to community service
111 work for not less than ten (10) days nor more than one (1) year.
112 The minimum penalties shall not be suspended or reduced by the
113 court and no prosecutor shall offer any suspension or sentence
114 reduction as part of a plea bargain. Except as may otherwise be
115 provided by paragraph (d) of this subsection, the Commissioner of
116 Public Safety shall suspend the driver's license of such person
117 for two (2) years. Suspension of a commercial driver's license
118 shall be governed by Section 63-1-83. Upon any second conviction
119 as described in this paragraph, the court shall ascertain whether
120 the defendant is married, and if the defendant is married shall
121 obtain the name and address of the defendant's spouse; the clerk
122 of the court shall submit this information to the Department of
123 Public Safety. Further, the commissioner shall notify in writing,
124 by certified mail, return receipt requested, the owner of the
125 vehicle and the spouse, if any, of the person convicted of the
126 second violation of the possibility of forfeiture of the vehicle
127 if such person is convicted of a third violation of subsection (1)



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

133 For any second or subsequent conviction of any person under
134 this section, the person shall also be subject to the penalties
135 set forth in Section 63-11-31.

136 (c) Except as otherwise provided in subsection (3), for
137 any third or subsequent conviction of any person violating
138 subsection (1) of this section, the offenses being committed
139 within a period of five (5) years, such person shall be guilty of
140 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
141 nor more than Five Thousand Dollars (\$5,000.00), shall be
142 imprisoned not less than one (1) year nor more than five (5) years
143 in the State Penitentiary. The minimum penalties shall not be
144 suspended or reduced by the court and no prosecutor shall offer
145 any suspension or sentence reduction as part of a plea bargain.
146 The law enforcement agency shall seize the vehicle operated by any
147 person charged with a third or subsequent violation of subsection
148 (1) of this section, if such convicted person was driving the
149 vehicle at the time the offense was committed. Such vehicle may
150 be forfeited in the manner provided by Sections 63-11-49 through
151 63-11-53. Except as may otherwise be provided by paragraph (e) of
152 this subsection, the Commissioner of Public Safety shall suspend
153 the driver's license of such person for five (5) years. The
154 suspension of a commercial driver's license shall be governed by
155 Section 63-1-83.

156 (d) Except as otherwise provided in subsection (3), any
157 person convicted of a second violation of subsection (1) of this
158 section shall receive an in-depth diagnostic assessment, and if as
159 a result of such assessment is determined to be in need of
160 treatment of his alcohol and/or drug abuse problem, such person



161 shall successfully complete treatment of his alcohol and/or drug
162 abuse problem at a program site certified by the Department of
163 Mental Health. Such person shall be eligible for reinstatement of
164 his driving privileges upon the successful completion of such
165 treatment after a period of one (1) year after such person's
166 driver's license is suspended. Each person who receives a
167 diagnostic assessment shall pay a fee representing the cost of
168 such assessment. Each person who participates in a treatment
169 program shall pay a fee representing the cost of such treatment.

170 (e) Except as otherwise provided in subsection (3), any
171 person convicted of a third or subsequent violation of subsection
172 (1) of this section shall receive an in-depth diagnostic
173 assessment, and if as a result of such assessment is determined to
174 be in need of treatment of his alcohol and/or drug abuse problem,
175 such person shall enter an alcohol and/or drug abuse program
176 approved by the Department of Mental Health for treatment of such
177 person's alcohol and/or drug abuse problem. If such person
178 successfully completes such treatment, such person shall be
179 eligible for reinstatement of his driving privileges after a
180 period of three (3) years after such person's driver's license is
181 suspended.

182 (f) The Department of Public Safety shall promulgate
183 rules and regulations for the use of interlock ignition devices as
184 provided in Section 63-11-31 and consistent with the provisions
185 therein. Such rules and regulations shall provide for the
186 calibration of such devices and shall provide that the cost of the
187 use of such systems shall be borne by the offender. The
188 Department of Public Safety shall approve which vendors of such
189 devices shall be used to furnish such systems.

190 (3) (a) This subsection shall be known and may be cited as
191 Zero Tolerance for Minors. The provisions of this subsection
192 shall apply only when a person under the age of twenty-one (21)
193 years has a blood alcohol concentration two one-hundredths percent



194 (.02%) or more, but lower than eight one-hundredths percent
195 (.08%). If such person's blood alcohol concentration is eight
196 one-hundredths percent (.08%) or more, the provisions of
197 subsection (2) shall apply.

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

208 The circuit court having jurisdiction in the county in which
209 the conviction was had or the circuit court of the person's county
210 of residence may reduce the suspension of driving privileges under
211 Section 63-11-30(2)(a) if the denial of which would constitute a
212 hardship on the offender, except that no court may issue such an
213 order reducing the suspension of driving privileges under this
214 subsection until thirty (30) days have elapsed from the effective
215 date of the suspension. Hardships shall only apply to first
216 offenses under Section 63-11-30(1), and shall not apply to second,
217 third or subsequent convictions of any person violating subsection
218 (1) of this section. A reduction of suspension on the basis of
219 hardship shall not be available to any person who refused to
220 submit to a chemical test upon the request of a law enforcement
221 officer as provided in Section 63-11-5. When the petition is
222 filed, such person shall pay to the circuit clerk of the court
223 where the petition is filed a fee of Fifty Dollars (\$50.00), which
224 shall be deposited into the State General Fund to the credit of a
225 special fund hereby created in the State Treasury to be used for
226 alcohol or drug abuse treatment and education, upon appropriation



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

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

237 The order entered under the provisions of this subsection
238 shall contain the specific grounds upon which hardship was
239 determined, and shall order the petitioner to attend and complete
240 an alcohol safety education program as provided in Section
241 63-11-32. A certified copy of such order shall be delivered to
242 the Commissioner of Public Safety by the clerk of the court within
243 five (5) days of the entry of the order. The certified copy of
244 such order shall contain information which will identify the
245 petitioner, including, but not limited to, the name, mailing
246 address, street address, social security number and driver's
247 license number of the petitioner.

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

- 253 (i) Continue his employment;
- 254 (ii) Continue attending school or an educational
255 institution; or
- 256 (iii) Obtain necessary medical care.

257 Proof of the hardship shall be established by clear and
258 convincing evidence which shall be supported by independent
259 documentation.



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

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

273 (e) Any person under the age of twenty-one (21) years
274 convicted of a second violation of subsection (1) of this section,
275 may have the period that his driver's license is suspended reduced
276 if such person receives an in-depth diagnostic assessment, and as
277 a result of such assessment is determined to be in need of
278 treatment of his alcohol and/or drug abuse problem and
279 successfully completes treatment of his alcohol and/or drug abuse
280 problem at a program site certified by the Department of Mental
281 Health. Such person shall be eligible for reinstatement of his
282 driving privileges upon the successful completion of such
283 treatment after a period of six (6) months after such person's
284 driver's license is suspended. Each person who receives a
285 diagnostic assessment shall pay a fee representing the cost of
286 such assessment. Each person who participates in a treatment
287 program shall pay a fee representing the cost of such treatment.

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



293 (g) The court shall have the discretion to rule that a
294 first offense of this subsection by a person under the age of
295 twenty-one (21) years shall be nonadjudicated. Such person shall
296 be eligible for nonadjudication only once. The Department of
297 Public Safety shall maintain a confidential registry of all cases
298 which are nonadjudicated as provided in this paragraph. A judge
299 who rules that a case is nonadjudicated shall forward such ruling
300 to the Department of Public Safety. Judges and prosecutors
301 involved in implied consent violations shall have access to the
302 confidential registry for the purpose of determining
303 nonadjudication eligibility. A record of a person who has been
304 nonadjudicated shall be maintained for five (5) years or until
305 such person reaches the age of twenty-one (21) years. Any person
306 whose confidential record has been disclosed in violation of this
307 paragraph shall have a civil cause of action against the person
308 and/or agency responsible for such disclosure.

309 (4) In addition to the other penalties provided in this
310 section, every person refusing a law enforcement officer's request
311 to submit to a chemical test of his breath as provided in this
312 chapter, or who was unconscious at the time of a chemical test and
313 refused to consent to the introduction of the results of such test
314 in any prosecution, shall suffer an additional suspension of
315 driving privileges as follows:

316 The Commissioner of Public Safety or his authorized agent
317 shall suspend the driver's license or permit to drive or deny the
318 issuance of a license or permit to such person as provided for
319 first, second and third or subsequent offenders in subsection (2)
320 of this section. Such suspension shall be in addition to any
321 suspension imposed pursuant to subsection (1) of Section 63-11-23.
322 The minimum suspension imposed under this subsection shall not be
323 reduced and no prosecutor is authorized to offer a reduction of
324 such suspension as part of a plea bargain.



325 (5) Every person who operates any motor vehicle in violation
326 of the provisions of subsection (1) of this section and who in a
327 negligent manner causes the death of another or mutilates,
328 disfigures, permanently disables or destroys the tongue, eye, lip,
329 nose or any other limb, organ or member of another shall, upon
330 conviction, be guilty of a separate felony for each such death,
331 mutilation, disfigurement or other injury and shall be committed
332 to the custody of the State Department of Corrections for a period
333 of time of not less than five (5) years and not to exceed
334 twenty-five (25) years for each such death, mutilation,
335 disfigurement or other injury and the imprisonment for the second
336 or each subsequent conviction shall commence at the termination of
337 the imprisonment for the preceding conviction.

338 (6) Upon conviction of any violation of subsection (1) of
339 this section, the trial judge shall sign in the place provided on
340 the traffic ticket, citation or affidavit stating that the person
341 arrested either employed an attorney or waived his right to an
342 attorney after having been properly advised. If the person
343 arrested employed an attorney, the name, address and telephone
344 number of the attorney shall be written on the ticket, citation or
345 affidavit. The judge shall cause a copy of the traffic ticket,
346 citation or affidavit, and any other pertinent documents
347 concerning the conviction, to be sent to the Commissioner of
348 Public Safety. A copy of the traffic ticket, citation or
349 affidavit and any other pertinent documents, having been attested
350 as true and correct by the Commissioner of Public Safety, or his
351 designee, shall be sufficient proof of the conviction for purposes
352 of determining the enhanced penalty for any subsequent convictions
353 of violations of subsection (1) of this section.

354 (7) Convictions in other states of violations for driving or
355 operating a vehicle while under the influence of an intoxicating
356 liquor or while under the influence of any other substance that
357 has impaired the person's ability to operate a motor vehicle



358 occurring after July 1, 1992, shall be counted for the purposes of
359 determining if a violation of subsection (1) of this section is a
360 first, second, third or subsequent offense and the penalty that
361 shall be imposed upon conviction for a violation of subsection (1)
362 of this section.

363 (8) For the purposes of determining how to impose the
364 sentence for a second, third or subsequent conviction under this
365 section, the indictment shall not be required to enumerate
366 previous convictions. It shall only be necessary that the
367 indictment state the number of times that the defendant has been
368 convicted and sentenced within the past five (5) years under this
369 section to determine if an enhanced penalty shall be imposed. The
370 amount of fine and imprisonment imposed in previous convictions
371 shall not be considered in calculating offenses to determine a
372 second, third or subsequent offense of this section.

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

377 (10) Suspension of driving privileges for any person
378 convicted of violations of Section 63-11-30(1) shall run
379 consecutively.

380 (11) The court may order the use of any ignition interlock
381 device as provided in Section 63-11-31.

382 SECTION 2. Section 67-3-53, Mississippi Code of 1972, is
383 amended as follows:

384 67-3-53. In addition to any act declared to be unlawful by
385 this chapter, or by Sections 27-71-301 through 27-71-347, and
386 Sections 67-3-17, 67-3-27, 67-3-29 and 67-3-57, it shall be
387 unlawful for the holder of a permit authorizing the sale of beer
388 or light wine at retail or for the employee of the holder of such
389 a permit:



390 (a) To sell or give to be consumed in or upon any
391 licensed premises any beer or light wine between the hours of
392 midnight and seven o'clock the following morning or during any
393 time the licensed premises may be required to be closed by
394 municipal ordinance or order of the board of supervisors;
395 provided, however, in areas where the sale of alcoholic beverages
396 is legal under the provisions of the Local Option Alcoholic
397 Beverage Control Law and the hours for selling such alcoholic
398 beverages have been extended beyond midnight for on-premises
399 permittees under Section 67-1-37, the hours for selling beer or
400 light wines are likewise extended in areas where the sale of beer
401 and light wines is legal in accordance with the provisions of this
402 chapter.

403 (b) To sell, give or furnish any beer or light wine to
404 any person visibly or noticeably intoxicated, or to any insane
405 person, or to any habitual drunkard, or to any person under the
406 age of twenty-one (21) years.

407 (c) To permit in the premises any lewd, immoral or
408 improper entertainment, conduct or practices.

409 (d) To permit loud, boisterous or disorderly conduct of
410 any kind upon the premises or to permit the use of loud musical
411 instruments if either or any of the same may disturb the peace and
412 quietude of the community wherein such business is located.

413 (e) To permit persons of ill repute, known criminals,
414 prostitutes or minors to frequent the licensed premises, except
415 minors accompanied by parents or guardians, or under proper
416 supervision.

417 (f) To permit or suffer illegal gambling or the
418 operation of illegal games of chance upon the licensed premises.

419 (g) To receive, possess or sell on the licensed
420 premises any beverage of any kind or character containing more
421 than five percent (5%) of alcohol by weight unless the licensee



422 also possesses an on-premises permit under the Local Option
423 Alcoholic Beverage Control Law.

424 (h) To allow any person under the age of twenty-one
425 (21) years upon the premises of a beer, light wine or distilled
426 spirits licensed establishment when beer, light wine or distilled
427 spirits are allowed by applicable permit to be consumed on the
428 premises unless such establishment is regularly in a bona fide
429 manner used and kept open for the serving of meals to guests for
430 compensation and which has suitable seating facilities for guests
431 and has suitable kitchen facilities connected therewith for
432 cooking an assortment of foods and meals commonly ordered at
433 various times of the day; the service of such food as sandwiches
434 and salads only shall not be deemed in compliance with this
435 requirement. No place shall qualify as a restaurant under these
436 rules and regulations unless twenty-five percent (25%) or more of
437 the revenue derived from such place shall be from the preparation,
438 cooking and serving of meals and not from the sale of alcoholic
439 beverages. Notwithstanding the foregoing, it shall be unlawful
440 for a holder of a permit, or the employee of such holder,
441 authorizing the sale of beer, light wine or distilled spirits to
442 allow any person under twenty-one (21) years to go into any area
443 of the premises set off as, held out to be, or used as a lounge or
444 bar area. In those establishments where there is an area of the
445 premises set off as, held out to be, or used as a lounge or bar
446 area, the licensee shall mark such area in a manner that clearly
447 defines and sets off such lounge or bar area and clearly prohibits
448 a person under the age of twenty-one (21) years. The acts
449 described in this section as unlawful shall be unlawful regardless
450 of whether beer, light wine or distilled spirits is, or is not,
451 sold or consumed on the premise at any particular time.

452 SECTION 3. This act shall take effect and be in force from
453 and after July 1, 2001.

