

By: Representative Flaggs

To: Judiciary A

HOUSE BILL NO. 718

1 AN ACT TO AMEND SECTIONS 63-1-55 AND 63-11-30, MISSISSIPPI
2 CODE OF 1972, TO AUTHORIZE JUDGES TO SUSPEND THE DRIVER'S LICENSE
3 OF A MINOR WHO IS A PASSENGER IN THE VEHICLE OF ANOTHER MINOR
4 CONVICTED OF A VIOLATION OF THE IMPLIED CONSENT LAW; AND FOR
5 RELATED PURPOSES.

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

7 SECTION 1. Section 63-1-55, Mississippi Code of 1972, is
8 amended as follows:

9 63-1-55. (1) A trial judge, in his discretion, if the
10 person so convicted or who has entered a plea of guilty for any
11 traffic violation, except the offenses enumerated in paragraphs
12 (a) through (e) of subsection (1) of Section 63-1-51 and
13 violations of the Implied Consent Law and the Uniform Controlled
14 Substances Law, is a minor and dependent upon and subject to the
15 care, custody and control of his parents or guardian, may, in lieu
16 of the penalties otherwise provided by law and the provision of
17 said section, suspend such minor's driver's license by taking and
18 keeping same in custody of the court for a period of time not to
19 exceed ninety (90) days. The judge so ordering such suspension
20 shall enter upon his docket "DEFENDANT'S DRIVER'S LICENSE
21 SUSPENDED FOR _____ DAYS IN LIEU OF CONVICTION" and such action
22 by the trial judge shall not constitute a conviction. The trial
23 judge also may require the minor to successfully complete a
24 defensive driving course approved by the judge as a condition of
25 the suspension. Costs of court and penalty assessment for driver
26 education and training program may be imposed in such actions
27 within the discretion of the court. Should a minor appeal, in the
28 time and manner as by law provided, the decision whereby his



29 license is suspended, the trial judge shall then return said
30 license to the minor and impose the fines and/or penalties that he
31 would have otherwise imposed and same shall constitute a
32 conviction.

33 (2) A trial judge, in his discretion, may suspend the
34 driver's license of any minor who is a passenger in a vehicle of
35 another minor who is convicted of a violation of the Implied
36 Consent Law.

37 SECTION 2. Section 63-11-30, Mississippi Code of 1972, is
38 amended as follows:

39 63-11-30. (1) It is unlawful for any person to drive or
40 otherwise operate a vehicle within this state who (a) is under the
41 influence of intoxicating liquor; (b) is under the influence of
42 any other substance which has impaired such person's ability to
43 operate a motor vehicle; (c) has an alcohol concentration of ten
44 one-hundredths percent (.10%) or more for persons who are above
45 the legal age to purchase alcoholic beverages under state law, or
46 two one-hundredths percent (.02%) or more for persons who are
47 below the legal age to purchase alcoholic beverages under state
48 law, in the person's blood based upon grams of alcohol per one
49 hundred (100) milliliters of blood or grams of alcohol per two
50 hundred ten (210) liters of breath as shown by a chemical analysis
51 of such person's breath, blood or urine administered as authorized
52 by this chapter; (d) is under the influence of any drug or
53 controlled substance, the possession of which is unlawful under
54 the Mississippi Controlled Substances Law; or (e) has an alcohol
55 concentration of four one-hundredths percent (.04%) or more in the
56 person's blood, based upon grams of alcohol per one hundred (100)
57 milliliters of blood or grams of alcohol per two hundred ten (210)
58 liters of breath as shown by a chemical analysis of such person's
59 blood, breath or urine, administered as authorized by this chapter
60 for persons operating a commercial motor vehicle.



61 (2) (a) Except as otherwise provided in subsection (3),
62 upon conviction of any person for the first offense of violating
63 subsection (1) of this section where chemical tests provided for
64 under Section 63-11-5 were given, or where chemical test results
65 are not available, such person shall be fined not less than Two
66 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
67 (\$1,000.00), or imprisoned for not more than forty-eight (48)
68 hours in jail or both; and the court shall order such person to
69 attend and complete an alcohol safety education program as
70 provided in Section 63-11-32. The court may substitute attendance
71 at a victim impact panel instead of forty-eight (48) hours in
72 jail. In addition, the Department of Public Safety, the
73 Commissioner of Public Safety or his duly authorized agent shall,
74 after conviction and upon receipt of the court abstract, suspend
75 the driver's license and driving privileges of such person for a
76 period of not less than ninety (90) days and until such person
77 attends and successfully completes an alcohol safety education
78 program as herein provided; provided, however, in no event shall
79 such period of suspension exceed one (1) year. Commercial driving
80 privileges shall be suspended as provided in Section 63-1-83.

81 The circuit court having jurisdiction in the county in which
82 the conviction was had or the circuit court of the person's county
83 of residence may reduce the suspension of driving privileges under
84 Section 63-11-30(2) (a) if the denial of which would constitute a
85 hardship on the offender, except that no court may issue such an
86 order reducing the suspension of driving privileges under this
87 subsection until thirty (30) days have elapsed from the effective
88 date of the suspension. Hardships shall only apply to first
89 offenses under Section 63-11-30(1), and shall not apply to second,
90 third or subsequent convictions of any person violating subsection
91 (1) of this section. A reduction of suspension on the basis of
92 hardship shall not be available to any person who refused to
93 submit to a chemical test upon the request of a law enforcement



94 officer as provided in Section 63-11-5. When the petition is
95 filed, such person shall pay to the circuit clerk of the court
96 where the petition is filed a fee of Fifty Dollars (\$50.00), which
97 shall be deposited into the State General Fund to the credit of a
98 special fund hereby created in the State Treasury to be used for
99 alcohol or drug abuse treatment and education, upon appropriation
100 by the Legislature. This fee shall be in addition to any other
101 court costs or fees required for the filing of petitions.

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

110 The order entered under the provisions of this subsection
111 shall contain the specific grounds upon which hardship was
112 determined, and shall order the petitioner to attend and complete
113 an alcohol safety education program as provided in Section
114 63-11-32. A certified copy of such order shall be delivered to
115 the Commissioner of Public Safety by the clerk of the court within
116 five (5) days of the entry of the order. The certified copy of
117 such order shall contain information which will identify the
118 petitioner, including, but not limited to, the name, mailing
119 address, street address, social security number and driver's
120 license number of the petitioner.

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

126 (i) Continue his employment;



127 (ii) Continue attending school or an educational
128 institution; or

129 (iii) Obtain necessary medical care.

130 Proof of the hardship shall be established by clear and
131 convincing evidence which shall be supported by independent
132 documentation.

133 (b) Except as otherwise provided in subsection (3),
134 upon any second conviction of any person violating subsection (1)
135 of this section, the offenses being committed within a period of
136 five (5) years, such person shall be fined not less than Six
137 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
138 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
139 days nor more than one (1) year and sentenced to community service
140 work for not less than ten (10) days nor more than one (1) year.
141 The minimum penalties shall not be suspended or reduced by the
142 court and no prosecutor shall offer any suspension or sentence
143 reduction as part of a plea bargain. Except as may otherwise be
144 provided by paragraph (d) of this subsection, the Commissioner of
145 Public Safety shall suspend the driver's license of such person
146 for two (2) years. Suspension of a commercial driver's license
147 shall be governed by Section 63-1-83. Upon any second conviction
148 as described in this paragraph, the court shall ascertain whether
149 the defendant is married, and if the defendant is married shall
150 obtain the name and address of the defendant's spouse; the clerk
151 of the court shall submit this information to the Department of
152 Public Safety. Further, the commissioner shall notify in writing,
153 by certified mail, return receipt requested, the owner of the
154 vehicle and the spouse, if any, of the person convicted of the
155 second violation of the possibility of forfeiture of the vehicle
156 if such person is convicted of a third violation of subsection (1)
157 of this section. The owner of the vehicle and the spouse shall be
158 considered notified under this paragraph if the notice is
159 deposited in the United States mail and any claim that the notice



160 was not in fact received by the addressee shall not affect a
161 subsequent forfeiture proceeding.

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

165 (c) Except as otherwise provided in subsection (3), for
166 any third or subsequent conviction of any person violating
167 subsection (1) of this section, the offenses being committed
168 within a period of five (5) years, such person shall be guilty of
169 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
170 nor more than Five Thousand Dollars (\$5,000.00), shall be
171 imprisoned not less than one (1) year nor more than five (5) years
172 in the State Penitentiary. The minimum penalties shall not be
173 suspended or reduced by the court and no prosecutor shall offer
174 any suspension or sentence reduction as part of a plea bargain.
175 The law enforcement agency shall seize the vehicle operated by any
176 person charged with a third or subsequent violation of subsection
177 (1) of this section, if such convicted person was driving the
178 vehicle at the time the offense was committed. Such vehicle may
179 be forfeited in the manner provided by Sections 63-11-49 through
180 63-11-53. Except as may otherwise be provided by paragraph (e) of
181 this subsection, the Commissioner of Public Safety shall suspend
182 the driver's license of such person for five (5) years. The
183 suspension of a commercial driver's license shall be governed by
184 Section 63-1-83.

185 (d) Except as otherwise provided in subsection (3), any
186 person convicted of a second violation of subsection (1) of this
187 section shall receive an in-depth diagnostic assessment, and if as
188 a result of such assessment is determined to be in need of
189 treatment of his alcohol and/or drug abuse problem, such person
190 shall successfully complete treatment of his alcohol and/or drug
191 abuse problem at a program site certified by the Department of
192 Mental Health. Such person shall be eligible for reinstatement of



193 his driving privileges upon the successful completion of such
194 treatment after a period of one (1) year after such person's
195 driver's license is suspended. Each person who receives a
196 diagnostic assessment shall pay a fee representing the cost of
197 such assessment. Each person who participates in a treatment
198 program shall pay a fee representing the cost of such treatment.

199 (e) Except as otherwise provided in subsection (3), any
200 person convicted of a third or subsequent violation of subsection
201 (1) of this section shall receive an in-depth diagnostic
202 assessment, and if as a result of such assessment is determined to
203 be in need of treatment of his alcohol and/or drug abuse problem,
204 such person shall enter an alcohol and/or drug abuse program
205 approved by the Department of Mental Health for treatment of such
206 person's alcohol and/or drug abuse problem. If such person
207 successfully completes such treatment, such person shall be
208 eligible for reinstatement of his driving privileges after a
209 period of three (3) years after such person's driver's license is
210 suspended.

211 (f) The Department of Public Safety shall promulgate
212 rules and regulations for the use of interlock ignition devices as
213 provided in Section 63-11-31 and consistent with the provisions
214 therein. Such rules and regulations shall provide for the
215 calibration of such devices and shall provide that the cost of the
216 use of such systems shall be borne by the offender. The
217 Department of Public Safety shall approve which vendors of such
218 devices shall be used to furnish such systems.

219 (3) (a) This subsection shall be known and may be cited as
220 Zero Tolerance for Minors. The provisions of this subsection
221 shall apply only when a person under the age of twenty-one (21)
222 years has a blood alcohol concentration two one-hundredths percent
223 (.02%) or more, but lower than eight one-hundredths percent
224 (.08%). If such person's blood alcohol concentration is eight



225 one-hundredths percent (.08%) or more, the provisions of
226 subsection (2) shall apply.

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

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



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

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

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

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

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

289 (c) Upon any second conviction of any person under the
290 age of twenty-one (21) years violating subsection (1) of this



291 section, the offenses being committed within a period of five (5)
292 years, such person shall be fined not more than Five Hundred
293 Dollars (\$500.00) and shall have his driver's license suspended
294 for one (1) year.

295 (d) A trial judge may suspend the driver's license of a
296 minor who is a passenger in a vehicle with another minor who is
297 convicted of a violation of this section.

298 (e) For any third or subsequent conviction of any
299 person under the age of twenty-one (21) years violating subsection
300 (1) of this section, the offenses being committed within a period
301 of five (5) years, such person shall be fined not more than One
302 Thousand Dollars (\$1,000.00) and shall have his driver's license
303 suspended until he reaches the age of twenty-one (21) or for two
304 (2) years, whichever is longer.

305 (f) Any person under the age of twenty-one (21) years
306 convicted of a second violation of subsection (1) of this section,
307 may have the period that his driver's license is suspended reduced
308 if such person receives an in-depth diagnostic assessment, and as
309 a result of such assessment is determined to be in need of
310 treatment of his alcohol and/or drug abuse problem and
311 successfully completes treatment of his alcohol and/or drug abuse
312 problem at a program site certified by the Department of Mental
313 Health. Such person shall be eligible for reinstatement of his
314 driving privileges upon the successful completion of such
315 treatment after a period of six (6) months after such person's
316 driver's license is suspended. Each person who receives a
317 diagnostic assessment shall pay a fee representing the cost of
318 such assessment. Each person who participates in a treatment
319 program shall pay a fee representing the cost of such treatment.

320 (g) Any person under the age of twenty-one (21) years
321 convicted of a third or subsequent violation of subsection (1) of
322 this section shall complete treatment of an alcohol and/or drug



323 abuse program at a site certified by the Department of Mental
324 Health.

325 (h) The court shall have the discretion to rule that a
326 first offense of this subsection by a person under the age of
327 twenty-one (21) years shall be nonadjudicated. Such person shall
328 be eligible for nonadjudication only once. The Department of
329 Public Safety shall maintain a confidential registry of all cases
330 which are nonadjudicated as provided in this paragraph. A judge
331 who rules that a case is nonadjudicated shall forward such ruling
332 to the Department of Public Safety. Judges and prosecutors
333 involved in implied consent violations shall have access to the
334 confidential registry for the purpose of determining
335 nonadjudication eligibility. A record of a person who has been
336 nonadjudicated shall be maintained for five (5) years or until
337 such person reaches the age of twenty-one (21) years. Any person
338 whose confidential record has been disclosed in violation of this
339 paragraph shall have a civil cause of action against the person
340 and/or agency responsible for such disclosure.

341 (4) In addition to the other penalties provided in this
342 section, every person refusing a law enforcement officer's request
343 to submit to a chemical test of his breath as provided in this
344 chapter, or who was unconscious at the time of a chemical test and
345 refused to consent to the introduction of the results of such test
346 in any prosecution, shall suffer an additional suspension of
347 driving privileges as follows:

348 The Commissioner of Public Safety or his authorized agent
349 shall suspend the driver's license or permit to drive or deny the
350 issuance of a license or permit to such person as provided for
351 first, second and third or subsequent offenders in subsection (2)
352 of this section. Such suspension shall be in addition to any
353 suspension imposed pursuant to subsection (1) of Section 63-11-23.
354 The minimum suspension imposed under this subsection shall not be



355 reduced and no prosecutor is authorized to offer a reduction of
356 such suspension as part of a plea bargain.

357 (5) Every person who operates any motor vehicle in violation
358 of the provisions of subsection (1) of this section and who in a
359 negligent manner causes the death of another or mutilates,
360 disfigures, permanently disables or destroys the tongue, eye, lip,
361 nose or any other limb, organ or member of another shall, upon
362 conviction, be guilty of a felony and shall be committed to the
363 custody of the State Department of Corrections for a period of
364 time of not less than five (5) years and not to exceed twenty-five
365 (25) years.

366 (6) Upon conviction of any violation of subsection (1) of
367 this section, the trial judge shall sign in the place provided on
368 the traffic ticket, citation or affidavit stating that the person
369 arrested either employed an attorney or waived his right to an
370 attorney after having been properly advised. If the person
371 arrested employed an attorney, the name, address and telephone
372 number of the attorney shall be written on the ticket, citation or
373 affidavit. The judge shall cause a copy of the traffic ticket,
374 citation or affidavit, and any other pertinent documents
375 concerning the conviction, to be sent to the Commissioner of
376 Public Safety. A copy of the traffic ticket, citation or
377 affidavit and any other pertinent documents, having been attested
378 as true and correct by the Commissioner of Public Safety, or his
379 designee, shall be sufficient proof of the conviction for purposes
380 of determining the enhanced penalty for any subsequent convictions
381 of violations of subsection (1) of this section.

382 (7) Convictions in other states of violations for driving or
383 operating a vehicle while under the influence of an intoxicating
384 liquor or while under the influence of any other substance that
385 has impaired the person's ability to operate a motor vehicle
386 occurring after July 1, 1992, shall be counted for the purposes of
387 determining if a violation of subsection (1) of this section is a



388 first, second, third or subsequent offense and the penalty that
389 shall be imposed upon conviction for a violation of subsection (1)
390 of this section.

391 (8) For the purposes of determining how to impose the
392 sentence for a second, third or subsequent conviction under this
393 section, the indictment shall not be required to enumerate
394 previous convictions. It shall only be necessary that the
395 indictment state the number of times that the defendant has been
396 convicted and sentenced within the past five (5) years under this
397 section to determine if an enhanced penalty shall be imposed. The
398 amount of fine and imprisonment imposed in previous convictions
399 shall not be considered in calculating offenses to determine a
400 second, third or subsequent offense of this section.

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

405 (10) Suspension of driving privileges for any person
406 convicted of violations of Section 63-11-30(1) shall run
407 consecutively.

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

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

