

By: Representatives Montgomery (74th),
Chism, Formby, Nicholson, Reeves, Rushing,
Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1164

1 AN ACT TO AMEND SECTIONS 63-11-23 AND 63-11-30, MISSISSIPPI
2 CODE OF 1972, TO REVISE BLOOD ALCOHOL CONCENTRATION LEVELS UNDER
3 THE IMPLIED CONSENT LAW; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 63-11-23, Mississippi Code of 1972, is
6 amended as follows:

7 63-11-23. (1) The Commissioner of Public Safety, or his
8 authorized agent, shall review the sworn report by a law
9 enforcement officer as provided in Section 63-11-21. If upon such
10 review the Commissioner of Public Safety, or his authorized agent,
11 finds (a) that the law enforcement officer had reasonable grounds
12 and probable cause to believe the person had been driving a motor
13 vehicle upon the public highways, public roads and streets of this
14 state while under the influence of intoxicating liquor or any
15 other substance which may impair a person's mental or physical
16 ability; (b) that he refused to submit to the test upon request of
17 the officer; and (c) that the person was informed that his license
18 and/or driving privileges would be suspended or denied if he
19 refused to submit to the chemical test, then the Commissioner of
20 Public Safety, or his authorized agent, shall give notice to the
21 licensee that his license or permit to drive, or any nonresident
22 operating privilege, shall be suspended thirty (30) days after the
23 date of such notice for a period of ninety (90) days in the event
24 such person has not previously been convicted of a violation of
25 Section 63-11-30, or, for a period of one (1) year in the event of
26 any previous conviction of such person under Section 63-11-30. In
27 the event the commissioner or his authorized agent determines that

28 the license should not be suspended, he shall return the license
29 or permit to the licensee.

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

32 (2) If the chemical testing of a person's breath indicates
33 the blood alcohol concentration was eight one-hundredths percent
34 (.08%) or more for persons who are above the legal age to purchase
35 alcoholic beverages under state law, or two one-hundredths percent
36 (.02%) or more for persons who are below the legal age to purchase
37 alcoholic beverages under state law, based upon grams of alcohol
38 per one hundred (100) milliliters of blood or grams of alcohol per
39 two hundred ten (210) liters of breath as shown by a chemical
40 analysis of such person's blood, or breath, or urine, the
41 arresting officer shall seize the license and give the driver a
42 receipt for his license on forms prescribed by the Commissioner of
43 Public Safety and shall promptly forward the license together with
44 a sworn report to the Commissioner of Public Safety. The receipt
45 given a person as provided herein shall be valid as a permit to
46 operate a motor vehicle for a period of thirty (30) days in order
47 that the defendant be processed through the court having original
48 jurisdiction and a final disposition had. If the defendant
49 requests a trial within thirty (30) days and such trial is not
50 commenced within thirty (30) days, then the court shall determine
51 if the delay in the trial is the fault of the defendant or his
52 counsel. If the court finds that such is not the fault of the
53 defendant or his counsel, then the court shall order the
54 defendant's driving privileges to be extended until such time as
55 the defendant is convicted. If a receipt or permit to drive
56 issued pursuant to the provisions of this subsection expires
57 without a trial having been requested as provided for in this
58 subsection, then the Commissioner of Public Safety or his
59 authorized agent shall suspend the license or permit to drive or

60 any nonresident operating privilege for the applicable period of
61 time as provided for in subsection (1) of this section.

62 (3) If the person is a resident without a license or permit
63 to operate a motor vehicle in this state, the Commissioner of
64 Public Safety, or his authorized agent, shall deny to the person
65 the issuance of a license or permit for a period of one (1) year
66 beginning thirty (30) days after the date of notice of such
67 suspension.

68 (4) It shall be the duty of the county prosecuting attorney,
69 an attorney employed under the provisions of Section 19-3-49, or
70 in the event there is no such prosecuting attorney for the county,
71 the duty of the district attorney to represent the state in any
72 hearing held under the provisions of Section 63-11-25, under the
73 provisions of Section 63-11-37(2) or under the provisions of
74 Section 63-11-30(2)(a).

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

77 63-11-30. (1) It is unlawful for any person to drive or
78 otherwise operate a vehicle within this state who (a) is under the
79 influence of intoxicating liquor; (b) is under the influence of
80 any other substance which has impaired such person's ability to
81 operate a motor vehicle; (c) has an alcohol concentration of eight
82 one-hundredths percent (.08%) or more for persons who are above
83 the legal age to purchase alcoholic beverages under state law, or
84 two one-hundredths percent (.02%) or more for persons who are
85 below the legal age to purchase alcoholic beverages under state
86 law, in the person's blood based upon grams of alcohol per one
87 hundred (100) milliliters of blood or grams of alcohol per two
88 hundred ten (210) liters of breath as shown by a chemical analysis
89 of such person's breath, blood or urine administered as authorized
90 by this chapter; (d) is under the influence of any drug or
91 controlled substance, the possession of which is unlawful under
92 the Mississippi Controlled Substances Law; or (e) has an alcohol

93 concentration of four one-hundredths percent (.04%) or more in the
94 person's blood, based upon grams of alcohol per one hundred (100)
95 milliliters of blood or grams of alcohol per two hundred ten (210)
96 liters of breath as shown by a chemical analysis of such person's
97 blood, breath or urine, administered as authorized by this chapter
98 for persons operating a commercial motor vehicle.

99 (2) (a) Except as otherwise provided in subsection (3),
100 upon conviction of any person for the first offense of violating
101 subsection (1) of this section where chemical tests provided for
102 under Section 63-11-5 were given, or where chemical test results
103 are not available, such person shall be fined not less than Two
104 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
105 (\$1,000.00), or imprisoned for not more than forty-eight (48)
106 hours in jail or both; and the court shall order such person to
107 attend and complete an alcohol safety education program as
108 provided in Section 63-11-32. The court may substitute attendance
109 at a victim impact panel instead of forty-eight (48) hours in
110 jail. In addition, the Department of Public Safety, the
111 Commissioner of Public Safety or his duly authorized agent shall,
112 after conviction and upon receipt of the court abstract, suspend
113 the driver's license and driving privileges of such person for a
114 period of not less than ninety (90) days and until such person
115 attends and successfully completes an alcohol safety education
116 program as herein provided; provided, however, in no event shall
117 such period of suspension exceed one (1) year. Commercial driving
118 privileges shall be suspended as provided in Section 63-1-83.

119 The circuit court having jurisdiction in the county in which
120 the conviction was had or the circuit court of the person's county
121 of residence may reduce the suspension of driving privileges under
122 Section 63-11-30(2)(a) if the denial of which would constitute a
123 hardship on the offender, except that no court may issue such an
124 order reducing the suspension of driving privileges under this
125 subsection until thirty (30) days have elapsed from the effective

126 date of the suspension. Hardships shall only apply to first
127 offenses under Section 63-11-30(1), and shall not apply to second,
128 third or subsequent convictions of any person violating subsection
129 (1) of this section. A reduction of suspension on the basis of
130 hardship shall not be available to any person who refused to
131 submit to a chemical test upon the request of a law enforcement
132 officer as provided in Section 63-11-5. When the petition is
133 filed, such person shall pay to the circuit clerk of the court
134 where the petition is filed a fee of Fifty Dollars (\$50.00), which
135 shall be deposited into the State General Fund to the credit of a
136 special fund hereby created in the State Treasury to be used for
137 alcohol or drug abuse treatment and education, upon appropriation
138 by the Legislature. This fee shall be in addition to any other
139 court costs or fees required for the filing of petitions.

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

148 The order entered under the provisions of this subsection
149 shall contain the specific grounds upon which hardship was
150 determined, and shall order the petitioner to attend and complete
151 an alcohol safety education program as provided in Section
152 63-11-32. A certified copy of such order shall be delivered to
153 the Commissioner of Public Safety by the clerk of the court within
154 five (5) days of the entry of the order. The certified copy of
155 such order shall contain information which will identify the
156 petitioner, including, but not limited to, the name, mailing
157 address, street address, social security number and driver's
158 license number of the petitioner.

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

164 (i) Continue his employment;

165 (ii) Continue attending school or an educational
166 institution; or

167 (iii) Obtain necessary medical care.

168 Proof of the hardship shall be established by clear and
169 convincing evidence which shall be supported by independent
170 documentation.

171 (b) Except as otherwise provided in subsection (3),
172 upon any second conviction of any person violating subsection (1)
173 of this section, the offenses being committed within a period of
174 five (5) years, such person shall be fined not less than Six
175 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
176 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
177 days nor more than one (1) year and sentenced to community service
178 work for not less than ten (10) days nor more than one (1) year.
179 The minimum penalties shall not be suspended or reduced by the
180 court and no prosecutor shall offer any suspension or sentence
181 reduction as part of a plea bargain. Except as may otherwise be
182 provided by paragraph (d) of this subsection, the Commissioner of
183 Public Safety shall suspend the driver's license of such person
184 for two (2) years. Suspension of a commercial driver's license
185 shall be governed by Section 63-1-83. Upon any second conviction
186 as described in this paragraph, the court shall ascertain whether
187 the defendant is married, and if the defendant is married shall
188 obtain the name and address of the defendant's spouse; the clerk
189 of the court shall submit this information to the Department of
190 Public Safety. Further, the commissioner shall notify in writing,
191 by certified mail, return receipt requested, the owner of the

192 vehicle and the spouse, if any, of the person convicted of the
193 second violation of the possibility of forfeiture of the vehicle
194 if such person is convicted of a third violation of subsection (1)
195 of this section. The owner of the vehicle and the spouse shall be
196 considered notified under this paragraph if the notice is
197 deposited in the United States mail and any claim that the notice
198 was not in fact received by the addressee shall not affect a
199 subsequent forfeiture proceeding.

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

203 (c) Except as otherwise provided in subsection (3), for
204 any third or subsequent conviction of any person violating
205 subsection (1) of this section, the offenses being committed
206 within a period of five (5) years, such person shall be guilty of
207 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
208 nor more than Five Thousand Dollars (\$5,000.00), shall be
209 imprisoned not less than one (1) year nor more than five (5) years
210 in the State Penitentiary. The minimum penalties shall not be
211 suspended or reduced by the court and no prosecutor shall offer
212 any suspension or sentence reduction as part of a plea bargain.
213 The law enforcement agency shall seize the vehicle operated by any
214 person charged with a third or subsequent violation of subsection
215 (1) of this section, if such convicted person was driving the
216 vehicle at the time the offense was committed. Such vehicle may
217 be forfeited in the manner provided by Sections 63-11-49 through
218 63-11-53. Except as may otherwise be provided by paragraph (e) of
219 this subsection, the Commissioner of Public Safety shall suspend
220 the driver's license of such person for five (5) years. The
221 suspension of a commercial driver's license shall be governed by
222 Section 63-1-83.

223 (d) Except as otherwise provided in subsection (3), any
224 person convicted of a second violation of subsection (1) of this

225 section shall receive an in-depth diagnostic assessment, and if as
226 a result of such assessment is determined to be in need of
227 treatment of his alcohol and/or drug abuse problem, such person
228 shall successfully complete treatment of his alcohol and/or drug
229 abuse problem at a program site certified by the Department of
230 Mental Health. Such person shall be eligible for reinstatement of
231 his driving privileges upon the successful completion of such
232 treatment after a period of one (1) year after such person's
233 driver's license is suspended. Each person who receives a
234 diagnostic assessment shall pay a fee representing the cost of
235 such assessment. Each person who participates in a treatment
236 program shall pay a fee representing the cost of such treatment.

237 (e) Except as otherwise provided in subsection (3), any
238 person convicted of a third or subsequent violation of subsection
239 (1) of this section shall receive an in-depth diagnostic
240 assessment, and if as a result of such assessment is determined to
241 be in need of treatment of his alcohol and/or drug abuse problem,
242 such person shall enter an alcohol and/or drug abuse program
243 approved by the Department of Mental Health for treatment of such
244 person's alcohol and/or drug abuse problem. If such person
245 successfully completes such treatment, such person shall be
246 eligible for reinstatement of his driving privileges after a
247 period of three (3) years after such person's driver's license is
248 suspended.

249 (f) The Department of Public Safety shall promulgate
250 rules and regulations for the use of interlock ignition devices as
251 provided in Section 63-11-31 and consistent with the provisions
252 therein. Such rules and regulations shall provide for the
253 calibration of such devices and shall provide that the cost of the
254 use of such systems shall be borne by the offender. The
255 Department of Public Safety shall approve which vendors of such
256 devices shall be used to furnish such systems.

257 (3) (a) This subsection shall be known and may be cited as
258 Zero Tolerance for Minors. The provisions of this subsection
259 shall apply only when a person under the age of twenty-one (21)
260 years has a blood alcohol concentration two one-hundredths percent
261 (.02%) or more, but lower than eight one-hundredths percent
262 (.08%). If such person's blood alcohol concentration is eight
263 one-hundredths percent (.08%) or more, the provisions of
264 subsection (2) shall apply.

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

275 The circuit court having jurisdiction in the county in which
276 the conviction was had or the circuit court of the person's county
277 of residence may reduce the suspension of driving privileges under
278 Section 63-11-30(2)(a) if the denial of which would constitute a
279 hardship on the offender, except that no court may issue such an
280 order reducing the suspension of driving privileges under this
281 subsection until thirty (30) days have elapsed from the effective
282 date of the suspension. Hardships shall only apply to first
283 offenses under Section 63-11-30(1), and shall not apply to second,
284 third or subsequent convictions of any person violating subsection
285 (1) of this section. A reduction of suspension on the basis of
286 hardship shall not be available to any person who refused to
287 submit to a chemical test upon the request of a law enforcement
288 officer as provided in Section 63-11-5. When the petition is
289 filed, such person shall pay to the circuit clerk of the court

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

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

304 The order entered under the provisions of this subsection
305 shall contain the specific grounds upon which hardship was
306 determined, and shall order the petitioner to attend and complete
307 an alcohol safety education program as provided in Section
308 63-11-32. A certified copy of such order shall be delivered to
309 the Commissioner of Public Safety by the clerk of the court within
310 five (5) days of the entry of the order. The certified copy of
311 such order shall contain information which will identify the
312 petitioner, including, but not limited to, the name, mailing
313 address, street address, social security number and driver's
314 license number of the petitioner.

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

- 320 (i) Continue his employment;
- 321 (ii) Continue attending school or an educational
322 institution; or

323 (iii) Obtain necessary medical care.

324 Proof of the hardship shall be established by clear and
325 convincing evidence which shall be supported by independent
326 documentation.

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

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

340 (e) Any person under the age of twenty-one (21) years
341 convicted of a second violation of subsection (1) of this section,
342 may have the period that his driver's license is suspended reduced
343 if such person receives an in-depth diagnostic assessment, and as
344 a result of such assessment is determined to be in need of
345 treatment of his alcohol and/or drug abuse problem and
346 successfully completes treatment of his alcohol and/or drug abuse
347 problem at a program site certified by the Department of Mental
348 Health. Such person shall be eligible for reinstatement of his
349 driving privileges upon the successful completion of such
350 treatment after a period of six (6) months after such person's
351 driver's license is suspended. Each person who receives a
352 diagnostic assessment shall pay a fee representing the cost of
353 such assessment. Each person who participates in a treatment
354 program shall pay a fee representing the cost of such treatment.

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

360 (g) The court shall have the discretion to rule that a
361 first offense of this subsection by a person under the age of
362 twenty-one (21) years shall be nonadjudicated. Such person shall
363 be eligible for nonadjudication only once. The Department of
364 Public Safety shall maintain a confidential registry of all cases
365 which are nonadjudicated as provided in this paragraph. A judge
366 who rules that a case is nonadjudicated shall forward such ruling
367 to the Department of Public Safety. Judges and prosecutors
368 involved in implied consent violations shall have access to the
369 confidential registry for the purpose of determining
370 nonadjudication eligibility. A record of a person who has been
371 nonadjudicated shall be maintained for five (5) years or until
372 such person reaches the age of twenty-one (21) years. Any person
373 whose confidential record has been disclosed in violation of this
374 paragraph shall have a civil cause of action against the person
375 and/or agency responsible for such disclosure.

376 (4) In addition to the other penalties provided in this
377 section, every person refusing a law enforcement officer's request
378 to submit to a chemical test of his breath as provided in this
379 chapter, or who was unconscious at the time of a chemical test and
380 refused to consent to the introduction of the results of such test
381 in any prosecution, shall suffer an additional suspension of
382 driving privileges as follows:

383 The Commissioner of Public Safety or his authorized agent
384 shall suspend the driver's license or permit to drive or deny the
385 issuance of a license or permit to such person as provided for
386 first, second and third or subsequent offenders in subsection (2)
387 of this section. Such suspension shall be in addition to any

388 suspension imposed pursuant to subsection (1) of Section 63-11-23.
389 The minimum suspension imposed under this subsection shall not be
390 reduced and no prosecutor is authorized to offer a reduction of
391 such suspension as part of a plea bargain.

392 (5) Every person who operates any motor vehicle in violation
393 of the provisions of subsection (1) of this section and who in a
394 negligent manner causes the death of another or mutilates,
395 disfigures, permanently disables or destroys the tongue, eye, lip,
396 nose or any other limb, organ or member of another shall, upon
397 conviction, be guilty of a felony and shall be committed to the
398 custody of the State Department of Corrections for a period of
399 time of not less than five (5) years and not to exceed twenty-five
400 (25) years.

401 (6) Upon conviction of any violation of subsection (1) of
402 this section, the trial judge shall sign in the place provided on
403 the traffic ticket, citation or affidavit stating that the person
404 arrested either employed an attorney or waived his right to an
405 attorney after having been properly advised. If the person
406 arrested employed an attorney, the name, address and telephone
407 number of the attorney shall be written on the ticket, citation or
408 affidavit. The judge shall cause a copy of the traffic ticket,
409 citation or affidavit, and any other pertinent documents
410 concerning the conviction, to be sent to the Commissioner of
411 Public Safety. A copy of the traffic ticket, citation or
412 affidavit and any other pertinent documents, having been attested
413 as true and correct by the Commissioner of Public Safety, or his
414 designee, shall be sufficient proof of the conviction for purposes
415 of determining the enhanced penalty for any subsequent convictions
416 of violations of subsection (1) of this section.

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

421 occurring after July 1, 1992, shall be counted for the purposes of
422 determining if a violation of subsection (1) of this section is a
423 first, second, third or subsequent offense and the penalty that
424 shall be imposed upon conviction for a violation of subsection (1)
425 of this section.

426 (8) For the purposes of determining how to impose the
427 sentence for a second, third or subsequent conviction under this
428 section, the indictment shall not be required to enumerate
429 previous convictions. It shall only be necessary that the
430 indictment state the number of times that the defendant has been
431 convicted and sentenced within the past five (5) years under this
432 section to determine if an enhanced penalty shall be imposed. The
433 amount of fine and imprisonment imposed in previous convictions
434 shall not be considered in calculating offenses to determine a
435 second, third or subsequent offense of this section.

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

440 (10) Suspension of driving privileges for any person
441 convicted of violations of Section 63-11-30(1) shall run
442 consecutively.

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

445 SECTION 3. This act shall take effect and be in force from
446 and after its passage.