

By: Representative Reynolds

To: Judiciary A

HOUSE BILL NO. 1185

1 AN ACT TO AMEND SECTIONS 63-11-30 AND 63-11-31, MISSISSIPPI
 2 CODE OF 1972, TO PROVIDE THAT UPON A SECOND OR SUBSEQUENT
 3 VIOLATION OF THE IMPLIED CONSENT LAW, THE COURT ORDER OF
 4 IMPOUNDMENT OF THE VEHICLE REGISTERED TO THE PERSON CONVICTED
 5 SHALL NOT BE FOR THE DURATION OF CONVICTED PERSON'S LICENSE
 6 SUSPENSION, BUT SHALL SUBJECT THAT VEHICLE TO SALE UNDER THE
 7 ADMINISTRATIVE FORFEITURE PROCEDURES FOR VEHICLES SEIZED UNDER THE
 8 IMPLIED CONSENT LAW; TO AMEND SECTIONS 63-11-49, 63-11-51 AND
 9 63-11-53, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR
 10 RELATED PURPOSES.

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

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

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

31 person's blood, based upon grams of alcohol per one hundred (100)
32 milliliters of blood or grams of alcohol per two hundred ten (210)
33 liters of breath as shown by a chemical analysis of such person's
34 blood, breath or urine, administered as authorized by this chapter
35 for persons operating a commercial motor vehicle.

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

56 Further, the commissioner shall notify in writing the owner
57 of the vehicle and the person convicted of the first violation
58 that there is the possibility of impoundment and sale of the
59 vehicle if such person is convicted of a second violation of this
60 subsection. The owner of the vehicle and the person convicted of
61 the first violation shall be considered notified under this
62 paragraph if the notice is deposited in the United States mail,
63 and any claim that the notice was not in fact received by the

64 addressee shall not affect a subsequent proceeding to sell the
65 vehicle after impoundment.

66 The circuit court having jurisdiction in the county in which
67 the conviction was had or the circuit court of the person's county
68 of residence may reduce the suspension of driving privileges under
69 Section 63-11-30(2)(a) if the denial of which would constitute a
70 hardship on the offender, except that no court may issue such an
71 order reducing the suspension of driving privileges under this
72 subsection until thirty (30) days have elapsed from the effective
73 date of the suspension. Hardships shall only apply to first
74 offenses under Section 63-11-30(1), and shall not apply to second,
75 third or subsequent convictions of any person violating subsection
76 (1) of this section. A reduction of suspension on the basis of
77 hardship shall not be available to any person who refused to
78 submit to a chemical test upon the request of a law enforcement
79 officer as provided in Section 63-11-5. When the petition is
80 filed, such person shall pay to the circuit clerk of the court
81 where the petition is filed a fee of Fifty Dollars (\$50.00), which
82 shall be deposited into the State General Fund to the credit of a
83 special fund hereby created in the State Treasury to be used for
84 alcohol or drug abuse treatment and education, upon appropriation
85 by the Legislature. This fee shall be in addition to any other
86 court costs or fees required for the filing of petitions.

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

95 The order entered under the provisions of this subsection
96 shall contain the specific grounds upon which hardship was

97 determined, and shall order the petitioner to attend and complete
98 an alcohol safety education program as provided in Section
99 63-11-32. A certified copy of such order shall be delivered to
100 the Commissioner of Public Safety by the clerk of the court within
101 five (5) days of the entry of the order. The certified copy of
102 such order shall contain information which will identify the
103 petitioner, including, but not limited to, the name, mailing
104 address, street address, social security number and driver's
105 license number of the petitioner.

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

- 111 (i) Continue his employment;
- 112 (ii) Continue attending school or an educational
113 institution; or
- 114 (iii) Obtain necessary medical care.

115 Proof of the hardship shall be established by clear and
116 convincing evidence which shall be supported by independent
117 documentation.

118 (b) Except as otherwise provided in subsection (3),
119 upon any second conviction of any person violating subsection (1)
120 of this section, the offenses being committed within a period of
121 five (5) years, such person shall be fined not less than Six
122 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
123 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
124 days nor more than one (1) year and sentenced to community service
125 work for not less than ten (10) days nor more than one (1) year.
126 The minimum penalties shall not be suspended or reduced by the
127 court and no prosecutor shall offer any suspension or sentence
128 reduction as part of a plea bargain. Except as may otherwise be
129 provided by paragraph (d) of this subsection, the Commissioner of

130 Public Safety shall suspend the driver's license of such person
131 for two (2) years. Suspension of a commercial driver's license
132 shall be governed by Section 63-1-83. Upon any second conviction
133 as described in this paragraph, the court shall ascertain whether
134 the defendant is married, and if the defendant is married shall
135 obtain the name and address of the defendant's spouse; the clerk
136 of the court shall submit this information to the Department of
137 Public Safety. Further, the commissioner shall notify in writing,
138 by certified mail, return receipt requested, the owner of the
139 vehicle and the spouse, if any, of the person convicted of the
140 second violation of the possibility of forfeiture of the vehicle
141 if such person is convicted of a third violation of subsection (1)
142 of this section. The owner of the vehicle and the spouse shall be
143 considered notified under this paragraph if the notice is
144 deposited in the United States mail, and any claim that the notice
145 was not in fact received by the addressee shall not affect a
146 subsequent forfeiture proceeding.

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

150 (c) Except as otherwise provided in subsection (3), for
151 any third or subsequent conviction of any person violating
152 subsection (1) of this section, the offenses being committed
153 within a period of five (5) years, such person shall be guilty of
154 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
155 nor more than Five Thousand Dollars (\$5,000.00), shall be
156 imprisoned not less than one (1) year nor more than five (5) years
157 in the State Penitentiary. The minimum penalties shall not be
158 suspended or reduced by the court and no prosecutor shall offer
159 any suspension or sentence reduction as part of a plea bargain.
160 The law enforcement agency shall seize the vehicle operated by any
161 person charged with a third or subsequent violation of subsection
162 (1) of this section, if such convicted person was driving the

163 vehicle at the time the offense was committed. Such vehicle may
164 be forfeited in the manner provided by Sections 63-11-49 through
165 63-11-53. Except as may otherwise be provided by paragraph (e) of
166 this subsection, the Commissioner of Public Safety shall suspend
167 the driver's license of such person for five (5) years. The
168 suspension of a commercial driver's license shall be governed by
169 Section 63-1-83.

170 (d) Except as otherwise provided in subsection (3), any
171 person convicted of a second violation of subsection (1) of this
172 section shall receive an in-depth diagnostic assessment, and if as
173 a result of such assessment is determined to be in need of
174 treatment of his alcohol and/or drug abuse problem, such person
175 shall successfully complete treatment of his alcohol and/or drug
176 abuse problem at a program site certified by the Department of
177 Mental Health. Such person shall be eligible for reinstatement of
178 his driving privileges upon the successful completion of such
179 treatment after a period of one (1) year after such person's
180 driver's license is suspended. Each person who receives a
181 diagnostic assessment shall pay a fee representing the cost of
182 such assessment. Each person who participates in a treatment
183 program shall pay a fee representing the cost of such treatment.

184 (e) Except as otherwise provided in subsection (3), any
185 person convicted of a third or subsequent violation of subsection
186 (1) of this section shall receive an in-depth diagnostic
187 assessment, and if as a result of such assessment is determined to
188 be in need of treatment of his alcohol and/or drug abuse problem,
189 such person shall enter an alcohol and/or drug abuse program
190 approved by the Department of Mental Health for treatment of such
191 person's alcohol and/or drug abuse problem. If such person
192 successfully completes such treatment, such person shall be
193 eligible for reinstatement of his driving privileges after a
194 period of three (3) years after such person's driver's license is
195 suspended.

196 (f) The Department of Public Safety shall promulgate
197 rules and regulations for the use of interlock ignition devices as
198 provided in Section 63-11-31 and consistent with the provisions
199 therein. Such rules and regulations shall provide for the
200 calibration of such devices and shall provide that the cost of the
201 use of such systems shall be borne by the offender. The
202 Department of Public Safety shall approve which vendors of such
203 devices shall be used to furnish such systems.

204 (3) (a) This subsection shall be known and may be cited as
205 Zero Tolerance for Minors. The provisions of this subsection
206 shall apply only when a person under the age of twenty-one (21)
207 years has a blood alcohol concentration two one-hundredths percent
208 (.02%) or more, but lower than eight one-hundredths percent
209 (.08%). If such person's blood alcohol concentration is eight
210 one-hundredths percent (.08%) or more, the provisions of
211 subsection (2) shall apply.

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

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

229 date of the suspension. Hardships shall only apply to first
230 offenses under Section 63-11-30(1), and shall not apply to second,
231 third or subsequent convictions of any person violating subsection
232 (1) of this section. A reduction of suspension on the basis of
233 hardship shall not be available to any person who refused to
234 submit to a chemical test upon the request of a law enforcement
235 officer as provided in Section 63-11-5. When the petition is
236 filed, such person shall pay to the circuit clerk of the court
237 where the petition is filed a fee of Fifty Dollars (\$50.00), which
238 shall be deposited into the State General Fund to the credit of a
239 special fund hereby created in the State Treasury to be used for
240 alcohol or drug abuse treatment and education, upon appropriation
241 by the Legislature. This fee shall be in addition to any other
242 court costs or fees required for the filing of petitions.

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

251 The order entered under the provisions of this subsection
252 shall contain the specific grounds upon which hardship was
253 determined, and shall order the petitioner to attend and complete
254 an alcohol safety education program as provided in Section
255 63-11-32. A certified copy of such order shall be delivered to
256 the Commissioner of Public Safety by the clerk of the court within
257 five (5) days of the entry of the order. The certified copy of
258 such order shall contain information which will identify the
259 petitioner, including, but not limited to, the name, mailing
260 address, street address, social security number and driver's
261 license number of the petitioner.

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

267 (i) Continue his employment;

268 (ii) Continue attending school or an educational
269 institution; or

270 (iii) Obtain necessary medical care.

271 Proof of the hardship shall be established by clear and
272 convincing evidence which shall be supported by independent
273 documentation.

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

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

287 (e) Any person under the age of twenty-one (21) years
288 convicted of a second violation of subsection (1) of this section,
289 may have the period that his driver's license is suspended reduced
290 if such person receives an in-depth diagnostic assessment, and as
291 a result of such assessment is determined to be in need of
292 treatment of his alcohol and/or drug abuse problem and
293 successfully completes treatment of his alcohol and/or drug abuse
294 problem at a program site certified by the Department of Mental

295 Health. Such person shall be eligible for reinstatement of his
296 driving privileges upon the successful completion of such
297 treatment after a period of six (6) months after such person's
298 driver's license is suspended. Each person who receives a
299 diagnostic assessment shall pay a fee representing the cost of
300 such assessment. Each person who participates in a treatment
301 program shall pay a fee representing the cost of such treatment.

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

307 (g) The court shall have the discretion to rule that a
308 first offense of this subsection by a person under the age of
309 twenty-one (21) years shall be nonadjudicated. Such person shall
310 be eligible for nonadjudication only once. The Department of
311 Public Safety shall maintain a confidential registry of all cases
312 which are nonadjudicated as provided in this paragraph. A judge
313 who rules that a case is nonadjudicated shall forward such ruling
314 to the Department of Public Safety. Judges and prosecutors
315 involved in implied consent violations shall have access to the
316 confidential registry for the purpose of determining
317 nonadjudication eligibility. A record of a person who has been
318 nonadjudicated shall be maintained for five (5) years or until
319 such person reaches the age of twenty-one (21) years. Any person
320 whose confidential record has been disclosed in violation of this
321 paragraph shall have a civil cause of action against the person
322 and/or agency responsible for such disclosure.

323 (4) In addition to the other penalties provided in this
324 section, every person refusing a law enforcement officer's request
325 to submit to a chemical test of his breath as provided in this
326 chapter, or who was unconscious at the time of a chemical test and
327 refused to consent to the introduction of the results of such test

328 in any prosecution, shall suffer an additional suspension of
329 driving privileges as follows:

330 The Commissioner of Public Safety or his authorized agent
331 shall suspend the driver's license or permit to drive or deny the
332 issuance of a license or permit to such person as provided for
333 first, second and third or subsequent offenders in subsection (2)
334 of this section. Such suspension shall be in addition to any
335 suspension imposed pursuant to subsection (1) of Section 63-11-23.
336 The minimum suspension imposed under this subsection shall not be
337 reduced and no prosecutor is authorized to offer a reduction of
338 such suspension as part of a plea bargain.

339 (5) Every person who operates any motor vehicle in violation
340 of the provisions of subsection (1) of this section and who in a
341 negligent manner causes the death of another or mutilates,
342 disfigures, permanently disables or destroys the tongue, eye, lip,
343 nose or any other limb, organ or member of another shall, upon
344 conviction, be guilty of a felony and shall be committed to the
345 custody of the State Department of Corrections for a period of
346 time of not less than five (5) years and not to exceed twenty-five
347 (25) years.

348 (6) Upon conviction of any violation of subsection (1) of
349 this section, the trial judge shall sign in the place provided on
350 the traffic ticket, citation or affidavit stating that the person
351 arrested either employed an attorney or waived his right to an
352 attorney after having been properly advised. If the person
353 arrested employed an attorney, the name, address and telephone
354 number of the attorney shall be written on the ticket, citation or
355 affidavit. The judge shall cause a copy of the traffic ticket,
356 citation or affidavit, and any other pertinent documents
357 concerning the conviction, to be sent to the Commissioner of
358 Public Safety. A copy of the traffic ticket, citation or
359 affidavit and any other pertinent documents, having been attested
360 as true and correct by the Commissioner of Public Safety, or his

361 designee, shall be sufficient proof of the conviction for purposes
362 of determining the enhanced penalty for any subsequent convictions
363 of violations of subsection (1) of this section.

364 (7) Convictions in other states of violations for driving or
365 operating a vehicle while under the influence of an intoxicating
366 liquor or while under the influence of any other substance that
367 has impaired the person's ability to operate a motor vehicle
368 occurring after July 1, 1992, shall be counted for the purposes of
369 determining if a violation of subsection (1) of this section is a
370 first, second, third or subsequent offense and the penalty that
371 shall be imposed upon conviction for a violation of subsection (1)
372 of this section.

373 (8) For the purposes of determining how to impose the
374 sentence for a second, third or subsequent conviction under this
375 section, the indictment shall not be required to enumerate
376 previous convictions. It shall only be necessary that the
377 indictment state the number of times that the defendant has been
378 convicted and sentenced within the past five (5) years under this
379 section to determine if an enhanced penalty shall be imposed. The
380 amount of fine and imprisonment imposed in previous convictions
381 shall not be considered in calculating offenses to determine a
382 second, third or subsequent offense of this section.

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

387 (10) Suspension of driving privileges for any person
388 convicted of violations of Section 63-11-30(1) shall run
389 consecutively.

390 (11) The court may order the impoundment and sale or the use
391 of any ignition interlock device as provided in Section 63-11-31.

392 SECTION 2. Section 63-11-31, Mississippi Code of 1972, is
393 amended as follows:

394 63-11-31. (1) (a) In addition to the penalties authorized
395 for any second or subsequent convictions of Section 63-11-30, the
396 court shall order either the impoundment and sale of all vehicles
397 registered to the person convicted, or if other licensed drivers
398 living in the household are dependent upon the vehicle * * * for
399 necessary transportation, the court may order the installation of
400 an ignition interlock system on the vehicle in lieu of impoundment
401 and sale. Additionally, the court shall order the installation of
402 an ignition interlock system on all vehicles registered to the
403 person for a minimum period of six (6) months to occur upon
404 reinstatement of the person's driver's license if the court
405 determines it is a vehicle to which the person has access and
406 which should be subject to ignition interlock. The cost
407 associated with impoundment, * * * or ignition interlock shall be
408 paid by the person convicted. For the purpose of this section,
409 "ignition interlock device" means a device which connects a motor
410 vehicle ignition system to a breath-alcohol analyzer and prevents
411 a motor vehicle ignition from starting if the driver's blood
412 alcohol level exceeds the calibrated setting on the device.

413 (b) A person may not tamper with, or in any way attempt
414 to circumvent the * * * impoundment of vehicles ordered by the
415 court. A violation of this paragraph (b) is a misdemeanor and
416 upon conviction the violator shall be fined an amount not less
417 than Two Hundred Fifty Dollars (\$250.00) nor more than One
418 Thousand Dollars (\$1,000.00) or imprisoned for not more than one
419 (1) year or both.

420 (c) When a court orders a person to operate only a
421 motor vehicle which is equipped with a functioning ignition
422 interlock device, the court shall establish a specific calibration
423 setting no lower than two one-hundredths percent (.02%) nor more
424 than four one-hundredths percent (.04%) blood alcohol
425 concentration at which the ignition interlock device will prevent
426 the motor vehicle from being started.

427 (d) Upon ordering use of an ignition interlock device,
428 the court shall:

429 (i) State on the record the requirement for and
430 the period of use of the device, and so notify the Department of
431 Public Safety;

432 (ii) Direct that the records of the department
433 reflect that the person may not operate a motor vehicle that is
434 not equipped with an ignition interlock device;

435 (iii) Direct the department to attach or imprint a
436 notation on the driver's license of any person restricted under
437 this section stating that the person may operate only a motor
438 vehicle equipped with an ignition interlock device;

439 (iv) Require proof of the installation of the
440 device and periodic reporting by the person for verification of
441 the proper operation of the device;

442 (v) Require the person to have the system
443 monitored for proper use and accuracy by an entity approved by the
444 department at least semiannually, or more frequently as the
445 circumstances may require;

446 (vi) Require the person to pay the reasonable cost
447 of leasing or buying, monitoring, and maintaining the device, and
448 may establish a payment schedule therefore.

449 (e) (i) 1. A person prohibited under this section
450 from operating a motor vehicle that is not equipped with an
451 ignition interlock device may not solicit or have another person
452 attempt to start or start a motor vehicle equipped with such a
453 device.

454 2. A person may not attempt to start or start
455 a motor vehicle equipped with an ignition interlock device for the
456 purpose of providing an operable motor vehicle to a person who is
457 prohibited under this section from operating a motor vehicle that
458 is not equipped with an ignition interlock device.

459 3. A person may not tamper with, or in any
460 way attempt to circumvent, the operation of an ignition interlock
461 device that has been installed in a motor vehicle.

462 4. A person may not knowingly provide a motor
463 vehicle not equipped with a functioning ignition interlock device
464 to another person who the provider of such vehicle knows or should
465 know is prohibited from operating a motor vehicle not equipped
466 with an ignition interlock device.

467 (ii) A violation of this paragraph (e) is a
468 misdemeanor and upon conviction the violator shall be fined an
469 amount not less than Two Hundred Fifty Dollars (\$250.00) nor more
470 than One Thousand Dollars (\$1,000.00) or imprisoned for not more
471 than one (1) year, or both.

472 (iii) A person shall not be in violation of this
473 paragraph (e) if:

474 1. The starting of a motor vehicle equipped
475 with an ignition interlock device is done for the purpose of
476 safety or mechanical repair of the device or the vehicle, and the
477 person subject to the court order does not operate the vehicle; or

478 2. The court finds that a person is required
479 to operate a motor vehicle in the course and scope of the person's
480 employment. If the vehicle is owned by the person's employer, the
481 person may operate that vehicle during regular working hours for
482 the purposes of employment without installation of an ignition
483 interlock device if the employer has been notified of such driving
484 privilege restriction and if proof of that notification is kept
485 with the vehicle at all times. This employment exemption does not
486 apply if the business entity that owns the vehicle is owned or
487 controlled by the person who is prohibited from operating the
488 motor vehicle not equipped with an ignition interlock device.

489 (f) (i) In addition to the circumstances under which a
490 judge may order the use of an ignition interlock device set out in
491 subsection (1)(a) of this section, a judge may order that the

492 vehicle owned or operated by a person or a family member of any
493 person who committed a violation of Section 63-11-30 be equipped
494 with an ignition interlock device for all or a portion of the time
495 the driver's license of the operator of such vehicle is suspended
496 or restricted pursuant to this section, if:

497 1. The operator of the vehicle used to
498 violate Section 63-11-30 has at least one (1) prior conviction for
499 driving a motor vehicle when such person's privilege to do so is
500 cancelled, suspended or revoked as provided by Section 63-11-30;
501 or

502 2. The driver's license of the operator of
503 such vehicle was cancelled, suspended or revoked at the time of
504 the violation of Section 63-11-30.

505 (ii) The provisions of this paragraph (f) shall
506 not apply if the vehicle used to commit the violation of Section
507 63-11-30, was, at the time of such violation, rented or stolen.

508 (2) The provisions of this section are supplemental to the
509 provisions of Section 63-11-30.

510 (3) Sales of any impounded vehicles shall be conducted in
511 accordance with the provisions of the administrative forfeiture
512 procedures set forth in Sections 63-11-49 through 63-11-53.

513 SECTION 3. Section 63-11-49, Mississippi Code of 1972, is
514 amended as follows:

515 63-11-49. (1) When a vehicle is seized under Section
516 63-11-30(2)(b) or (c), or impounded under Section 63-11-31, the
517 arresting officer shall impound the vehicle and the vehicle shall
518 be held as evidence until a court of competent jurisdiction makes
519 a final disposition of the case and the vehicle may be forfeited
520 by the administrative forfeiture procedures provided for in this
521 section upon final disposition as provided in Section
522 63-11-30(2)(b).

523 (2) The attorney for the law enforcement agency shall
524 provide notice of intention to forfeit the seized vehicle

525 administratively, by certified mail, return receipt requested, to
526 all persons who are required to be notified pursuant to Section
527 63-11-51.

528 (3) In the event that notice of intention to forfeit the
529 seized vehicle administratively cannot be given as provided in
530 subsection (2) of this section because of refusal, failure to
531 claim, insufficient address or any other reason, the attorney for
532 the law enforcement agency shall provide notice by publication in
533 a newspaper of general circulation in the county in which the
534 seizure occurred for once a week for three (3) consecutive weeks.

535 (4) Notice pursuant to subsections (2) and (3) of this
536 section shall include the following information:

537 (a) A description of the vehicle;

538 (b) The approximate value of the vehicle;

539 (c) The date and place of the seizure;

540 (d) The connection between the vehicle and the
541 violation of Section 63-11-30;

542 (e) The instructions for filing a request for judicial
543 review; and

544 (f) A statement that the vehicle will be forfeited to
545 the law enforcement agency if a request for judicial review is not
546 timely filed.

547 (5) In the event that a spouse of the owner of the seized or
548 impounded vehicle makes a showing to the department that the * * *
549 vehicle is the only source of transportation for the spouse, the
550 chief law enforcement officer shall declare that the vehicle is
551 thereby forfeited to such spouse. A written declaration of
552 forfeiture of a vehicle pursuant to this subsection shall be
553 sufficient cause for the title to the vehicle to be transferred to
554 the spouse. The provisions of this subsection shall apply only to
555 one (1) forfeiture per vehicle; if the vehicle is the subject of a
556 subsequent forfeiture proceeding by virtue of a subsequent
557 conviction of either spouse, the spouse to whom the vehicle was

558 forfeited pursuant to the first forfeiture proceeding may not
559 utilize the remedy provided herein in another forfeiture
560 proceeding.

561 (6) Persons claiming an interest in the seized or impounded
562 vehicle may initiate judicial review of the seizure or impoundment
563 and proposed forfeiture by filing a request for judicial review
564 with the attorney for the law enforcement agency within thirty
565 (30) days after receipt of the certified letter or within thirty
566 (30) days after the first publication of notice, whichever is
567 applicable.

568 (7) If no request for judicial review is timely filed, the
569 attorney for the law enforcement agency shall prepare a written
570 declaration of forfeiture of the subject vehicle and the forfeited
571 vehicle shall be disposed of in accordance with the provisions of
572 Section 63-11-51.

573 (8) Upon receipt of a timely request for judicial review,
574 the attorney for the law enforcement agency shall promptly file a
575 petition for forfeiture and proceed as provided in Section
576 63-11-51.

577 SECTION 4. Section 63-11-51, Mississippi Code of 1972, is
578 amended as follows:

579 63-11-51. (1) Except as otherwise provided in Section
580 63-11-49, when a vehicle is seized under Section 63-11-30(2)(b) or
581 (c), or impounded under Section 63-11-31, proceedings under this
582 section shall be instituted promptly upon final conviction.

583 (2) A petition for forfeiture shall be filed promptly in the
584 name of the State of Mississippi, the county or the municipality
585 and may be filed in the county in which the seizure is made, the
586 county in which the criminal prosecution is brought or the county
587 in which the owner of the seized vehicle is found. Forfeiture
588 proceedings may be brought in the circuit court or the county
589 court if a county court exists in the county and the value of the
590 seized vehicle is within the jurisdictional limits of the county

591 court as set forth in Section 9-9-21. A copy of such petition
592 shall be served upon the following persons by service of process
593 in the same manner as in civil cases:

594 (a) The owner of the vehicle, if address is known;

595 (b) Any secured party who has registered his lien or
596 filed a financing statement as provided by law, if the identity of
597 such secured party can be ascertained by the law enforcement
598 agency by making a good faith effort to ascertain the identity of
599 such secured party as described in subsections (3), (4), (5), (6)
600 and (7) of this section;

601 (c) Any other bona fide lienholder or secured party or
602 other person holding an interest in the vehicle in the nature of a
603 security interest of whom the law enforcement agency has actual
604 knowledge;

605 (d) Any person in possession of the vehicle subject to
606 forfeiture at the time that it was seized.

607 (3) If the vehicle is susceptible of titling under the
608 Mississippi Motor Vehicle Title Law and if there is any reasonable
609 cause to believe that the vehicle has been titled, the law
610 enforcement agency shall inquire of the State Tax Commission as to
611 what the records of the State Tax Commission show regarding who is
612 the record owner of the vehicle and who, if anyone, holds any lien
613 or security interest which affects the vehicle.

614 (4) If the vehicle is not titled in the State of
615 Mississippi, then the law enforcement agency shall attempt to
616 ascertain the name and address of the person in whose name the
617 vehicle is licensed, and if the vehicle is licensed in a state
618 which has in effect a certificate of title law, the agency shall
619 inquire of the appropriate agency of that state as to what the
620 records of the agency show regarding who is the record owner of
621 the vehicle and who, if anyone, holds any lien, security interest
622 or other instrument in the nature of a security device which
623 affects the vehicle.

624 (5) In the event the answer to an inquiry states that the
625 record owner of the vehicle is any person other than the person
626 who was in possession of it when it was seized, or states that any
627 person holds any lien, encumbrance, security interest, other
628 interest in the nature of a security interest, which affects the
629 vehicle, the law enforcement agency shall cause any record owner
630 and also any lienholder, secured party, other person who holds an
631 interest in the vehicle in the nature of a security interest, to
632 be named in the petition of forfeiture and to be served with
633 process in the same manner as in civil cases.

634 (6) If the owner of the vehicle cannot be found and served
635 with a copy of the petition of forfeiture, the law enforcement
636 agency shall file with the clerk of the court in which the
637 proceeding is pending an affidavit to such effect, whereupon the
638 clerk of the court shall publish notice of the hearing addressed
639 to "the Unknown Owner of . . .," filling in the blank space with
640 a reasonably detailed description of the vehicle subject to
641 forfeiture. Service by publication shall contain the other
642 requisites prescribed in Section 11-33-41, and shall be served as
643 provided in Section 11-33-37 for publication of notice for
644 attachments at law.

645 SECTION 5. Section 63-11-53, Mississippi Code of 1972, is
646 amended as follows:

647 63-11-53. (1) All money derived from the seizure,
648 impoundment and forfeiture of vehicles under Section
649 63-11-30(2)(b) and (c), Section 63-11-31, and Sections 63-11-49
650 and 63-11-51 by the Mississippi Highway Safety Patrol shall be
651 forwarded to the State Treasurer and deposited in a special fund
652 which is hereby created for use by the Department of Public Safety
653 upon appropriation by the Legislature. Unexpended amounts
654 remaining in such special fund at the end of a fiscal year shall
655 not lapse into the State General Fund, and any interest earned on
656 amounts in such special fund shall be deposited to the credit of

657 the special fund. All other law enforcement agencies shall
658 establish a special fund which is to be used for law enforcement
659 purposes to purchase equipment for the law enforcement agency, and
660 any interest earned on the amount in such special fund shall be
661 deposited to the credit of the special fund.

662 (2) Except as otherwise provided in subsection (3), all
663 vehicles that have been forfeited shall be sold at a public
664 auction for cash by the law enforcement agency, to the highest and
665 best bidder after advertising the sale for at least once each week
666 for three (3) consecutive weeks, the last notice to appear not
667 more than ten (10) days nor less than five (5) days prior to such
668 sale, in a newspaper having a general circulation in the county in
669 which the vehicle was seized. Such notices shall contain a
670 description of the vehicle to be sold and a statement of the time
671 and place of sale. It shall not be necessary to the validity of
672 such sale either to have the vehicle present at the place of sale
673 or to have the name of the owner thereof stated in such notice.
674 The proceeds of the sale shall be disposed of as follows:

675 (a) To any bona fide lienholder, secured party, or
676 other party holding an interest in the vehicle in the nature of a
677 security interest, to the extent of his interest; and

678 (b) The balance, if any, remaining after deduction of
679 all storage, court costs and expenses of liquidation shall be
680 deposited in the manner described in subsection (1) of this
681 section.

682 (3) The law enforcement agency may maintain, repair, use and
683 operate for official purposes all vehicles that have been
684 forfeited if the vehicles are free from any interest of a bona
685 fide lienholder, secured party or other party who holds an
686 interest in the nature of a security interest. The agency may
687 purchase the interest of a bona fide lienholder, secured party or
688 other party who holds an interest so that the vehicle can be
689 released for its use. If the vehicle is susceptible of titling

690 under the Mississippi Motor Vehicle Title Law, the agency shall be
691 deemed to be the purchaser, and the certificate of title shall be
692 issued to it as required by subsection (4) of this section.

693 (4) The State Tax Commission shall issue a certificate of
694 title to any person who purchases vehicles under the provisions of
695 this section when a certificate of title is required under the
696 laws of this state.

697 SECTION 6. This act shall take effect and be in force from
698 and after July 1, 2001.