

By: Senator(s) Burton

To: Judiciary

SENATE BILL NO. 2105

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

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

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

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



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

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

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



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

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

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

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



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

- 96 (i) Continue his employment;
- 97 (ii) Continue attending school or an educational  
98 institution; or
- 99 (iii) Obtain necessary medical care.

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

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



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

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

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

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



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

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

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

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



193 (.02%) or more, but lower than eight one-hundredths percent  
194 (.08%). If such person's blood alcohol concentration is eight  
195 one-hundredths percent (.08%) or more, the provisions of  
196 subsection (2) shall apply.

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

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



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

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

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

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

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

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





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

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

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

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



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

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

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



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

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

355 (7) Convictions in other states of violations for driving or  
356 operating a vehicle while under the influence of an intoxicating



357 liquor or while under the influence of any other substance that  
358 has impaired the person's ability to operate a motor vehicle  
359 occurring after July 1, 1992, shall be counted for the purposes of  
360 determining if a violation of subsection (1) of this section is a  
361 first, second, third or subsequent offense and the penalty that  
362 shall be imposed upon conviction for a violation of subsection (1)  
363 of this section.

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

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

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

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

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

