

By: Senator(s) Chamberlin

To: Judiciary

SENATE BILL NO. 2559

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE AN ENHANCED PENALTY FOR DRIVING UNDER THE INFLUENCE  
3 WHILE A CHILD OF A CERTAIN AGE IS A PASSENGER; AND FOR RELATED  
4 PURPOSES.

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

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

8 63-11-30. (1) It is unlawful for any person to drive or  
9 otherwise operate a vehicle within this state who (a) is under the  
10 influence of intoxicating liquor; (b) is under the influence of  
11 any other substance which has impaired such person's ability to  
12 operate a motor vehicle; (c) has an alcohol concentration of ten  
13 one-hundredths percent (.10%) or more for persons who are above  
14 the legal age to purchase alcoholic beverages under state law, or  
15 two one-hundredths percent (.02%) or more for persons who are  
16 below the legal age to purchase alcoholic beverages under state  
17 law, in the person's blood based upon grams of alcohol per one  
18 hundred (100) milliliters of blood or grams of alcohol per two  
19 hundred ten (210) liters of breath as shown by a chemical analysis  
20 of such person's breath, blood or urine administered as authorized  
21 by this chapter; (d) is under the influence of any drug or  
22 controlled substance, the possession of which is unlawful under  
23 the Mississippi Controlled Substances Law; or (e) has an alcohol  
24 concentration of four one-hundredths percent (.04%) or more in the  
25 person's blood, based upon grams of alcohol per one hundred (100)  
26 milliliters of blood or grams of alcohol per two hundred ten (210)  
27 liters of breath as shown by a chemical analysis of such person's

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

30 (2) (a) Except as otherwise provided in subsection (3),  
31 upon conviction of any person for the first offense of violating  
32 subsection (1) of this section where chemical tests provided for  
33 under Section 63-11-5 were given, or where chemical test results  
34 are not available, such person shall be fined not less than Two  
35 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
36 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
37 hours in jail or both; and the court shall order such person to  
38 attend and complete an alcohol safety education program as  
39 provided in Section 63-11-32. The court may substitute attendance  
40 at a victim impact panel instead of forty-eight (48) hours in  
41 jail. Provided, however, conviction for a first offense when a  
42 child aged eight (8) years or younger was a passenger in the  
43 vehicle at the time of the violation shall be sentenced to not  
44 less than forty-eight (48) hours nor more than thirty (30) days in  
45 jail and a fine of not less than Five Hundred Dollars (\$500.00)  
46 nor more than One Thousand Five Hundred Dollars (\$1,500.00). In  
47 addition, the Department of Public Safety, the Commissioner of  
48 Public Safety or his duly authorized agent shall, after conviction  
49 and upon receipt of the court abstract, suspend the driver's  
50 license and driving privileges of such person for a period of not  
51 less than ninety (90) days and until such person attends and  
52 successfully completes an alcohol safety education program as  
53 herein provided; provided, however, in no event shall such period  
54 of suspension exceed one (1) year. Commercial driving privileges  
55 shall be suspended as provided in Section 63-1-83.

56 The circuit court having jurisdiction in the county in which  
57 the conviction was had or the circuit court of the person's county  
58 of residence may reduce the suspension of driving privileges under  
59 Section 63-11-30(2) (a) if the denial of which would constitute a  
60 hardship on the offender, except that no court may issue such an

61 order reducing the suspension of driving privileges under this  
62 subsection until thirty (30) days have elapsed from the effective  
63 date of the suspension. Hardships shall only apply to first  
64 offenses under Section 63-11-30(1), and shall not apply to second,  
65 third or subsequent convictions of any person violating subsection  
66 (1) of this section. A reduction of suspension on the basis of  
67 hardship shall not be available to any person who refused to  
68 submit to a chemical test upon the request of a law enforcement  
69 officer as provided in Section 63-11-5. When the petition is  
70 filed, such person shall pay to the circuit clerk of the court  
71 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
72 shall be deposited into the State General Fund to the credit of a  
73 special fund hereby created in the State Treasury to be used for  
74 alcohol or drug abuse treatment and education, upon appropriation  
75 by the Legislature. This fee shall be in addition to any other  
76 court costs or fees required for the filing of petitions.

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

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

94 address, street address, social security number and driver's  
95 license number of the petitioner.

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

101 (i) Continue his employment;

102 (ii) Continue attending school or an educational  
103 institution; or

104 (iii) Obtain necessary medical care.

105 Proof of the hardship shall be established by clear and  
106 convincing evidence which shall be supported by independent  
107 documentation.

108 (b) Except as otherwise provided in subsection (3),  
109 upon any second conviction of any person violating subsection (1)  
110 of this section, the offenses being committed within a period of  
111 five (5) years, such person shall be fined not less than Six  
112 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
113 Dollars (\$1,500.00), shall be imprisoned not less than five (5)  
114 days nor more than one (1) year and sentenced to community service  
115 work for not less than ten (10) days nor more than one (1) year.  
116 Conviction of a second offense when a child aged eight (8) years  
117 or younger was a passenger in the vehicle at the time of the  
118 violation shall be sentenced not less than fifteen (15) days nor  
119 more than one (1) year in jail, and shall be fined not less than  
120 One Thousand Dollars (\$1,000.00) nor more than Two Thousand  
121 Dollars (\$2,000.00). The minimum penalties shall not be suspended  
122 or reduced by the court and no prosecutor shall offer any  
123 suspension or sentence reduction as part of a plea bargain.

124 Except as may otherwise be provided by paragraph (d) of this  
125 subsection, the Commissioner of Public Safety shall suspend the  
126 driver's license of such person for two (2) years. Suspension of

127 a commercial driver's license shall be governed by Section  
128 63-1-83. Upon any second conviction as described in this  
129 paragraph, the court shall ascertain whether the defendant is  
130 married, and if the defendant is married shall obtain the name and  
131 address of the defendant's spouse; the clerk of the court shall  
132 submit this information to the Department of Public Safety.  
133 Further, the commissioner shall notify in writing, by certified  
134 mail, return receipt requested, the owner of the vehicle and the  
135 spouse, if any, of the person convicted of the second violation of  
136 the possibility of forfeiture of the vehicle if such person is  
137 convicted of a third violation of subsection (1) of this section.  
138 The owner of the vehicle and the spouse shall be considered  
139 notified under this paragraph if the notice is deposited in the  
140 United States mail and any claim that the notice was not in fact  
141 received by the addressee shall not affect a subsequent forfeiture  
142 proceeding.

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

146 (c) Except as otherwise provided in subsection (3), for  
147 any third or subsequent conviction of any person violating  
148 subsection (1) of this section, the offenses being committed  
149 within a period of five (5) years, such person shall be guilty of  
150 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
151 nor more than Five Thousand Dollars (\$5,000.00), shall be  
152 imprisoned not less than one (1) year nor more than five (5) years  
153 in the State Penitentiary. Any person convicted of a third or  
154 subsequent offense when a child aged eight (8) years or younger  
155 was a passenger in the vehicle at the time of the violation shall  
156 be sentenced to not less than six (6) months nor more than seven  
157 (7) years and shall be fined not less than Three Thousand Dollars  
158 (\$3,000.00) nor more than Seven Thousand Five Hundred Dollars  
159 (\$7,500.00). The minimum penalties shall not be suspended or

160 reduced by the court and no prosecutor shall offer any suspension  
161 or sentence reduction as part of a plea bargain. The law  
162 enforcement agency shall seize the vehicle operated by any person  
163 charged with a third or subsequent violation of subsection (1) of  
164 this section, if such convicted person was driving the vehicle at  
165 the time the offense was committed. Such vehicle may be forfeited  
166 in the manner provided by Sections 63-11-49 through 63-11-53.  
167 Except as may otherwise be provided by paragraph (e) of this  
168 subsection, the Commissioner of Public Safety shall suspend the  
169 driver's license of such person for five (5) years. The  
170 suspension of a commercial driver's license shall be governed by  
171 Section 63-1-83.

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

186 (e) Except as otherwise provided in subsection (3), any  
187 person convicted of a third or subsequent violation of subsection  
188 (1) of this section shall receive an in-depth diagnostic  
189 assessment, and if as a result of such assessment is determined to  
190 be in need of treatment of his alcohol and/or drug abuse problem,  
191 such person shall enter an alcohol and/or drug abuse program  
192 approved by the Department of Mental Health for treatment of such

193 person's alcohol and/or drug abuse problem. If such person  
194 successfully completes such treatment, such person shall be  
195 eligible for reinstatement of his driving privileges after a  
196 period of three (3) years after such person's driver's license is  
197 suspended.

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

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

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

224 The circuit court having jurisdiction in the county in which  
225 the conviction was had or the circuit court of the person's county

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

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

253       The order entered under the provisions of this subsection  
254 shall contain the specific grounds upon which hardship was  
255 determined, and shall order the petitioner to attend and complete  
256 an alcohol safety education program as provided in Section  
257 63-11-32. A certified copy of such order shall be delivered to  
258 the Commissioner of Public Safety by the clerk of the court within



259 five (5) days of the entry of the order. The certified copy of  
260 such order shall contain information which will identify the  
261 petitioner, including, but not limited to, the name, mailing  
262 address, street address, social security number and driver's  
263 license number of the petitioner.

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

- 269 (i) Continue his employment;
- 270 (ii) Continue attending school or an educational  
271 institution; or
- 272 (iii) Obtain necessary medical care.

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

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

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

289 (e) Any person under the age of twenty-one (21) years  
290 convicted of a second violation of subsection (1) of this section,  
291 may have the period that his driver's license is suspended reduced

292 if such person receives an in-depth diagnostic assessment, and as  
293 a result of such assessment is determined to be in need of  
294 treatment of his alcohol and/or drug abuse problem and  
295 successfully completes treatment of his alcohol and/or drug abuse  
296 problem at a program site certified by the Department of Mental  
297 Health. Such person shall be eligible for reinstatement of his  
298 driving privileges upon the successful completion of such  
299 treatment after a period of six (6) months after such person's  
300 driver's license is suspended. Each person who receives a  
301 diagnostic assessment shall pay a fee representing the cost of  
302 such assessment. Each person who participates in a treatment  
303 program shall pay a fee representing the cost of such treatment.

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

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

325 (4) In addition to the other penalties provided in this  
326 section, every person refusing a law enforcement officer's request  
327 to submit to a chemical test of his breath as provided in this  
328 chapter, or who was unconscious at the time of a chemical test and  
329 refused to consent to the introduction of the results of such test  
330 in any prosecution, shall suffer an additional suspension of  
331 driving privileges as follows:

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

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

350 (6) Upon conviction of any violation of subsection (1) of  
351 this section, the trial judge shall sign in the place provided on  
352 the traffic ticket, citation or affidavit stating that the person  
353 arrested either employed an attorney or waived his right to an  
354 attorney after having been properly advised. If the person  
355 arrested employed an attorney, the name, address and telephone  
356 number of the attorney shall be written on the ticket, citation or  
357 affidavit. The judge shall cause a copy of the traffic ticket,

358 citation or affidavit, and any other pertinent documents  
359 concerning the conviction, to be sent to the Commissioner of  
360 Public Safety. A copy of the traffic ticket, citation or  
361 affidavit and any other pertinent documents, having been attested  
362 as true and correct by the Commissioner of Public Safety, or his  
363 designee, shall be sufficient proof of the conviction for purposes  
364 of determining the enhanced penalty for any subsequent convictions  
365 of violations of subsection (1) of this section.

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

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

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

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

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

394           SECTION 2. This act shall take effect and be in force from  
395 and after July 1, 2001.