

HOUSE BILL NO. 16

1 AN ACT TO AMEND SECTIONS 63-11-3, 63-11-5, 63-11-8, 63-11-13,
2 63-11-17, 63-11-19, 63-11-21, 63-11-23 AND 63-11-30, MISSISSIPPI
3 CODE OF 1972, TO PROVIDE FOR THE TESTING OF SALIVA IN IMPLIED
4 CONSENT VIOLATIONS; TO REVISE THE BLOOD ALCOHOL LEVEL IN THE
5 IMPLIED CONSENT LAW; TO PROVIDE THAT SENTENCES SHALL NOT BE
6 SUSPENDED OR REDUCED; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 63-11-3, Mississippi Code of 1972, is
9 amended as follows:

10 63-11-3. The following words and phrases shall have the
11 meaning ascribed herein, unless the context clearly indicates
12 otherwise:

13 (a) "Driving privilege" or "privilege" means both the
14 driver's license of those licensed in Mississippi and the driving
15 privilege of unlicensed residents and the privilege of
16 nonresidents, licensed or not, the purpose of this section being
17 to make unlicensed and nonresident drivers subject to the same
18 penalties as licensed residents.

19 (b) "Community service" means work, projects or
20 services for the benefit of the community assigned, supervised and
21 recorded by appropriate public officials.

22 (c) "Chemical test" means an analysis of a person's
23 blood, breath, saliva, urine or other bodily substance for the
24 determination of the presence of alcohol or any other substance
25 which may impair a person's mental or physical ability.

26 (d) "Refusal to take breath, saliva, urine and/or blood
27 test" means an individual declining to take a chemical test,
28 and/or the failure to provide an adequate breath sample as



29 required by the Implied Consent Law when requested by a law
30 enforcement officer.

31 (e) "Alcohol concentration" means either grams of
32 alcohol per one hundred (100) milliliters of blood or grams of
33 alcohol per two hundred ten (210) liters of breath.

34 (f) "Qualified person to withdraw blood" means any
35 person who has been trained to withdraw blood in the course of
36 their employment duties including, but not limited to, laboratory
37 personnel, phlebotomist, emergency medical personnel, nurses and
38 doctors.

39 (g) "Victim impact panel" means a two-hour seminar in
40 which victims of DUI accidents relate their experiences following
41 the accident to persons convicted under the Implied Consent Law.
42 Paneling programs shall be based on a model developed by Mothers
43 Against Drunk Driving (MADD) victim panel or equivalent program
44 approved by the court.

45 (h) "Booked" means the administrative step taken after
46 the arrested person is brought to the police station, which
47 involves entry of the person's name, the crime for which the
48 arrest was made, and other relevant facts on the police docket,
49 and which may also include photographing, fingerprinting, and the
50 like.

51 **SECTION 2.** Section 63-11-5, Mississippi Code of 1972, is
52 amended as follows:

53 63-11-5. (1) Any person who operates a motor vehicle upon
54 the public highways, public roads and streets of this state shall
55 be deemed to have given his consent, subject to the provisions of
56 this chapter, to a chemical test or tests of his breath or saliva
57 for the purpose of determining alcohol concentration. A person
58 shall give his consent to a chemical test or tests of his breath,
59 blood, saliva or urine for the purpose of determining the presence
60 in his body of any other substance which would impair a person's
61 ability to operate a motor vehicle. The test or tests shall be



62 administered at the direction of any highway patrol officer, any
63 sheriff or his duly commissioned deputies, any police officer in
64 any incorporated municipality, any national park ranger, any
65 officer of a state-supported institution of higher learning campus
66 police force if such officer is exercising this authority in
67 regard to a violation that occurred on campus property, or any
68 security officer appointed and commissioned pursuant to the Pearl
69 River Valley Water Supply District Security Officer Law of 1978 if
70 such officer is exercising this authority in regard to a violation
71 that occurred within the limits of the Pearl River Valley Water
72 Supply District, when such officer has reasonable grounds and
73 probable cause to believe that the person was driving or had under
74 his actual physical control a motor vehicle upon the public
75 streets or highways of this state while under the influence of
76 intoxicating liquor or any other substance which had impaired such
77 person's ability to operate a motor vehicle. No such test shall
78 be administered by any person who has not met all the educational
79 and training requirements of the appropriate course of study
80 prescribed by the Board on Law Enforcement Officers Standards and
81 Training; provided, however, that sheriffs and elected chiefs of
82 police shall be exempt from such educational and training
83 requirement. No such tests shall be given by any officer or any
84 agency to any person within fifteen (15) minutes of consumption of
85 any substance by mouth.

86 (2) If the officer has reasonable grounds and probable cause
87 to believe such person to have been driving a motor vehicle upon
88 the public highways, public roads, and streets of this state while
89 under the influence of intoxicating liquor, such officer shall
90 inform such person that his failure to submit to such chemical
91 test or tests of his breath shall result in the suspension of his
92 privilege to operate a motor vehicle upon the public streets and
93 highways of this state for a period of ninety (90) days in the
94 event such person has not previously been convicted of a violation



95 of Section 63-11-30, or, for a period of one (1) year in the event
96 of any previous conviction of such person under Section 63-11-30.

97 (3) The traffic ticket, citation or affidavit issued to a
98 person arrested for a violation of this chapter shall conform to
99 the requirements of Section 63-9-21(3)(b).

100 (4) Any person arrested under the provisions of this chapter
101 shall be informed that he has the right to telephone for the
102 purpose of requesting legal or medical assistance immediately
103 after being booked for a violation under this chapter.

104 (5) The Commissioner of Public Safety and the State Crime
105 Laboratory created pursuant to Section 45-1-17 are hereby
106 authorized from and after the passage of this section to adopt
107 procedures, rules and regulations, applicable to the Implied
108 Consent Law.

109 **SECTION 3.** Section 63-11-8, Mississippi Code of 1972, is
110 amended as follows:

111 63-11-8. (1) The operator of any motor vehicle involved in
112 an accident that results in a death shall be tested for the
113 purpose of determining the alcohol content or drug content of such
114 operator's blood, breath, saliva or urine. Any blood withdrawal
115 required by this section shall be administered by any qualified
116 person and shall be administered within two (2) hours after such
117 accident, if possible. The exact time of the accident, to the
118 extent possible, and the exact time of the blood withdrawal shall
119 be recorded.

120 (2) If any investigating law enforcement officer has
121 reasonable grounds to believe that a person is the operator of a
122 motor vehicle involved in an accident that has resulted in a
123 death, it shall be such officer's duty to see that a chemical test
124 is administered as required by this section.

125 (3) The results of a test administered pursuant to this
126 section may be used as evidence in any court or administrative
127 hearing without the consent of the person so tested.



128 (4) No person may refuse to submit to a chemical test
129 required under the provisions of this section.

130 (5) Analysis of blood, saliva or urine to determine alcohol
131 or drug content pursuant to this section shall be conducted by the
132 Mississippi Crime Laboratory or a laboratory whose methods and
133 procedures have been approved by the Mississippi Crime Laboratory.

134 **SECTION 4.** Section 63-11-13, Mississippi Code of 1972, is
135 amended as follows:

136 63-11-13. The person tested may, at his own expense, have a
137 physician, registered nurse, clinical laboratory technologist or
138 clinical laboratory technician or any other qualified person of
139 his choosing administer a test, approved by the State Crime
140 Laboratory created pursuant to Section 45-1-17, in addition to any
141 other test, for the purpose of determining the amount of alcohol
142 in his blood at the time alleged as shown by chemical analysis of
143 his blood, breath, saliva or urine. The failure or inability to
144 obtain an additional test by such arrested person shall not
145 preclude the admissibility in evidence of the test taken at the
146 direction of a law enforcement officer.

147 **SECTION 5.** Section 63-11-17, Mississippi Code of 1972, is
148 amended as follows:

149 63-11-17. No qualified person, hospital, clinic or funeral
150 home shall incur any civil or criminal liability as the result of
151 the proper administration of a test or chemical analysis of a
152 person's breath, blood, saliva or urine when requested in writing
153 by a law enforcement officer to administer such a test or perform
154 such chemical analysis.

155 **SECTION 6.** Section 63-11-19, Mississippi Code of 1972, is
156 amended as follows:

157 63-11-19. A chemical analysis of the person's breath, blood,
158 saliva or urine, to be considered valid under the provisions of
159 this section, shall have been performed according to methods
160 approved by the State Crime Laboratory created pursuant to Section



161 45-1-17 and the Commissioner of Public Safety and performed by an
162 individual possessing a valid permit issued by the State Crime
163 Laboratory for making such analysis. The State Crime Laboratory
164 and the Commissioner of Public Safety are authorized to approve
165 satisfactory techniques or methods, to ascertain the
166 qualifications and competence of individuals to conduct such
167 analyses, and to issue permits which shall be subject to
168 termination or revocation at the discretion of the State Crime
169 Laboratory. The State Crime Laboratory shall not approve the
170 permit required herein for any law enforcement officer other than
171 a member of the State Highway Patrol, a sheriff or his deputies, a
172 city policeman, an officer of a state-supported institution of
173 higher learning campus police force, a security officer appointed
174 and commissioned pursuant to the Pearl River Valley Water Supply
175 District Security Officer Law of 1978, a national park ranger, a
176 national park ranger technician, a military policeman stationed at
177 a United States military base located within this state other than
178 a military policeman of the Army or Air National Guard or of
179 Reserve Units of the Army, Air Force, Navy or Marine Corps, a
180 marine law enforcement officer employed by the Department of
181 Marine Resources, or a conservation officer employed by the
182 Mississippi Department of Wildlife, Fisheries and Parks. The
183 permit given a conservation officer or a marine law enforcement
184 officer shall authorize such officer to administer tests only for
185 violations of Sections 59-23-1 through 59-23-7.

186 The State Crime Laboratory shall make periodic, but not less
187 frequently than quarterly, tests of the methods, machines or
188 devices used in making chemical analysis of a person's breath as
189 shall be necessary to ensure the accuracy thereof, and shall issue
190 its certificate to verify the accuracy of the same.

191 **SECTION 7.** Section 63-11-21, Mississippi Code of 1972, is
192 amended as follows:



193 63-11-21. If a person refuses upon the request of a law
194 enforcement officer to submit to a chemical test of his breath,
195 blood or saliva designated by the law enforcement agency as
196 provided in Section 63-11-5, none shall be given, but the officer
197 shall at that point demand the driver's license of the person, who
198 shall deliver his driver's license into the hands of the officer.
199 If a person refuses to submit to a chemical test under the
200 provisions of this chapter, the person shall be informed by the
201 law enforcement officer that the refusal to submit to the test
202 shall subject him to arrest and punishment consistent with the
203 penalties prescribed in Section 63-11-30 for persons submitting to
204 the test. The officer shall give the driver a receipt for his
205 license on forms prescribed and furnished by the Commissioner of
206 Public Safety. The officer shall forward the driver's license
207 together with a sworn report to the Commissioner of Public Safety
208 stating that he had reasonable grounds and probable cause to
209 believe the person had been driving a motor vehicle upon the
210 public highways, public roads and streets of this state while
211 under the influence of intoxicating liquor, or any other substance
212 which may impair a person's mental or physical ability, stating
213 such grounds, and that the person had refused to submit to the
214 chemical test of his breath upon request of the law enforcement
215 officer.

216 **SECTION 8.** Section 63-11-23, Mississippi Code of 1972, is
217 amended as follows:

218 63-11-23. (1) The Commissioner of Public Safety, or his
219 authorized agent, shall review the sworn report by a law
220 enforcement officer as provided in Section 63-11-21. If upon such
221 review the Commissioner of Public Safety, or his authorized agent,
222 finds (a) that the law enforcement officer had reasonable grounds
223 and probable cause to believe the person had been driving a motor
224 vehicle upon the public highways, public roads and streets of this
225 state while under the influence of intoxicating liquor or any



226 other substance which may impair a person's mental or physical
227 ability; (b) that he refused to submit to the test upon request of
228 the officer; and (c) that the person was informed that his license
229 and/or driving privileges would be suspended or denied if he
230 refused to submit to the chemical test, then the Commissioner of
231 Public Safety, or his authorized agent, shall give notice to the
232 licensee that his license or permit to drive, or any nonresident
233 operating privilege, shall be suspended thirty (30) days after the
234 date of such notice for a period of ninety (90) days in the event
235 such person has not previously been convicted of a violation of
236 Section 63-11-30, or, for a period of one (1) year in the event of
237 any previous conviction of such person under Section 63-11-30. In
238 the event the commissioner or his authorized agent determines that
239 the license should not be suspended, he shall return the license
240 or permit to the licensee.

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

243 (2) If the chemical testing of a person's breath indicates
244 the blood alcohol concentration was eight one-hundredths percent
245 (.08%) or more for persons who are above the legal age to purchase
246 alcoholic beverages under state law, or two one-hundredths percent
247 (.02%) or more for persons who are below the legal age to purchase
248 alcoholic beverages under state law, based upon grams of alcohol
249 per one hundred (100) milliliters of blood or grams of alcohol per
250 two hundred ten (210) liters of breath as shown by a chemical
251 analysis of such person's blood, * * * breath, saliva or urine,
252 the arresting officer shall seize the license and give the driver
253 a receipt for his license on forms prescribed by the Commissioner
254 of Public Safety and shall promptly forward the license together
255 with a sworn report to the Commissioner of Public Safety. The
256 receipt given a person as provided herein shall be valid as a
257 permit to operate a motor vehicle for a period of thirty (30) days
258 in order that the defendant be processed through the court having



259 original jurisdiction and a final disposition had. If the
260 defendant requests a trial within thirty (30) days and such trial
261 is not commenced within thirty (30) days, then the court shall
262 determine if the delay in the trial is the fault of the defendant
263 or his counsel. If the court finds that such is not the fault of
264 the defendant or his counsel, then the court shall order the
265 defendant's driving privileges to be extended until such time as
266 the defendant is convicted. If a receipt or permit to drive
267 issued pursuant to the provisions of this subsection expires
268 without a trial having been requested as provided for in this
269 subsection, then the Commissioner of Public Safety or his
270 authorized agent shall suspend the license or permit to drive or
271 any nonresident operating privilege for the applicable period of
272 time as provided for in subsection (1) of this section.

273 (3) If the person is a resident without a license or permit
274 to operate a motor vehicle in this state, the Commissioner of
275 Public Safety, or his authorized agent, shall deny to the person
276 the issuance of a license or permit for a period of one (1) year
277 beginning thirty (30) days after the date of notice of such
278 suspension.

279 (4) It shall be the duty of the county prosecuting attorney,
280 an attorney employed under the provisions of Section 19-3-49, or
281 in the event there is no such prosecuting attorney for the county,
282 the duty of the district attorney to represent the state in any
283 hearing held under the provisions of Section 63-11-25, under the
284 provisions of Section 63-11-37(2) or under the provisions of
285 Section 63-11-30(2) (a).

286 **SECTION 9.** Section 63-11-30, Mississippi Code of 1972, is
287 amended as follows:

288 63-11-30. (1) It is unlawful for any person to drive or
289 otherwise operate a vehicle within this state who (a) is under the
290 influence of intoxicating liquor; (b) is under the influence of
291 any other substance which has impaired such person's ability to



292 operate a motor vehicle; (c) has an alcohol concentration of eight
293 one-hundredths percent (.08%) or more for persons who are above
294 the legal age to purchase alcoholic beverages under state law, or
295 two one-hundredths percent (.02%) or more for persons who are
296 below the legal age to purchase alcoholic beverages under state
297 law, in the person's blood based upon grams of alcohol per one
298 hundred (100) milliliters of blood or grams of alcohol per two
299 hundred ten (210) liters of breath as shown by a chemical analysis
300 of such person's breath, blood, saliva or urine administered as
301 authorized by this chapter; (d) is under the influence of any drug
302 or controlled substance, the possession of which is unlawful under
303 the Mississippi Controlled Substances Law; or (e) has an alcohol
304 concentration of four one-hundredths percent (.04%) or more in the
305 person's blood, based upon grams of alcohol per one hundred (100)
306 milliliters of blood or grams of alcohol per two hundred ten (210)
307 liters of breath as shown by a chemical analysis of such person's
308 blood, breath, saliva or urine, administered as authorized by this
309 chapter for persons operating a commercial motor vehicle.

310 (2) (a) Except as otherwise provided in subsection (3),
311 upon conviction of any person for the first offense of violating
312 subsection (1) of this section where chemical tests provided for
313 under Section 63-11-5 were given, or where chemical test results
314 are not available, such person shall be fined not less than Two
315 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
316 (\$1,000.00), or imprisoned for not more than forty-eight (48)
317 hours in jail or both; and the court shall order such person to
318 attend and complete an alcohol safety education program as
319 provided in Section 63-11-32. The court may substitute attendance
320 at a victim impact panel instead of forty-eight (48) hours in
321 jail. In addition, the Department of Public Safety, the
322 Commissioner of Public Safety or his duly authorized agent shall,
323 after conviction and upon receipt of the court abstract, suspend
324 the driver's license and driving privileges of such person for a



325 period of not less than ninety (90) days and until such person
326 attends and successfully completes an alcohol safety education
327 program as herein provided; provided, however, in no event shall
328 such period of suspension exceed one (1) year. Commercial driving
329 privileges shall be suspended as provided in Section 63-1-83.

330 The circuit court having jurisdiction in the county in which
331 the conviction was had or the circuit court of the person's county
332 of residence may reduce the suspension of driving privileges under
333 Section 63-11-30(2)(a) if the denial of which would constitute a
334 hardship on the offender, except that no court may issue such an
335 order reducing the suspension of driving privileges under this
336 subsection until thirty (30) days have elapsed from the effective
337 date of the suspension. Hardships shall only apply to first
338 offenses under Section 63-11-30(1), and shall not apply to second,
339 third or subsequent convictions of any person violating subsection
340 (1) of this section. A reduction of suspension on the basis of
341 hardship shall not be available to any person who refused to
342 submit to a chemical test upon the request of a law enforcement
343 officer as provided in Section 63-11-5. When the petition is
344 filed, such person shall pay to the circuit clerk of the court
345 where the petition is filed a fee of Fifty Dollars (\$50.00), which
346 shall be deposited into the State General Fund to the credit of a
347 special fund hereby created in the State Treasury to be used for
348 alcohol or drug abuse treatment and education, upon appropriation
349 by the Legislature. This fee shall be in addition to any other
350 court costs or fees required for the filing of petitions.

351 The petition filed under the provisions of this subsection
352 shall contain the specific facts which the petitioner alleges to
353 constitute a hardship and the driver's license number of the
354 petitioner. A hearing may be held on any petition filed under
355 this subsection only after ten (10) days' prior written notice to
356 the Commissioner of Public Safety, or his designated agent, or the



357 attorney designated to represent the state. At such hearing, the
358 court may enter an order reducing the period of suspension.

359 The order entered under the provisions of this subsection
360 shall contain the specific grounds upon which hardship was
361 determined, and shall order the petitioner to attend and complete
362 an alcohol safety education program as provided in Section
363 63-11-32. A certified copy of such order shall be delivered to
364 the Commissioner of Public Safety by the clerk of the court within
365 five (5) days of the entry of the order. The certified copy of
366 such order shall contain information which will identify the
367 petitioner, including, but not limited to, the name, mailing
368 address, street address, social security number and driver's
369 license number of the petitioner.

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

- 375 (i) Continue his employment;
- 376 (ii) Continue attending school or an educational
377 institution; or
- 378 (iii) Obtain necessary medical care.

379 Proof of the hardship shall be established by clear and
380 convincing evidence which shall be supported by independent
381 documentation.

382 (b) Except as otherwise provided in subsection (3),
383 upon any second conviction of any person violating subsection (1)
384 of this section, the offenses being committed within a period of
385 five (5) years, such person shall be fined not less than Six
386 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
387 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
388 days nor more than one (1) year and sentenced to community service
389 work for not less than ten (10) days nor more than one (1) year.



390 The minimum penalties shall not be suspended or reduced by the
391 court and no prosecutor shall offer any suspension or sentence
392 reduction as part of a plea bargain. Except as may otherwise be
393 provided by paragraph (d) of this subsection, the Commissioner of
394 Public Safety shall suspend the driver's license of such person
395 for two (2) years. Suspension of a commercial driver's license
396 shall be governed by Section 63-1-83. Upon any second conviction
397 as described in this paragraph, the court shall ascertain whether
398 the defendant is married, and if the defendant is married shall
399 obtain the name and address of the defendant's spouse; the clerk
400 of the court shall submit this information to the Department of
401 Public Safety. Further, the commissioner shall notify in writing,
402 by certified mail, return receipt requested, the owner of the
403 vehicle and the spouse, if any, of the person convicted of the
404 second violation of the possibility of forfeiture of the vehicle
405 if such person is convicted of a third violation of subsection (1)
406 of this section. The owner of the vehicle and the spouse shall be
407 considered notified under this paragraph if the notice is
408 deposited in the United States mail and any claim that the notice
409 was not in fact received by the addressee shall not affect a
410 subsequent forfeiture proceeding.

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

414 (c) Except as otherwise provided in subsection (3), for
415 any third or subsequent conviction of any person violating
416 subsection (1) of this section, the offenses being committed
417 within a period of five (5) years, such person shall be guilty of
418 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
419 nor more than Five Thousand Dollars (\$5,000.00), shall be
420 imprisoned not less than one (1) year nor more than five (5) years
421 in the State Penitentiary. The minimum penalties shall not be
422 suspended or reduced by the court and no prosecutor shall offer



423 any suspension or sentence reduction as part of a plea bargain.
424 The law enforcement agency shall seize the vehicle operated by any
425 person charged with a third or subsequent violation of subsection
426 (1) of this section, if such convicted person was driving the
427 vehicle at the time the offense was committed. Such vehicle may
428 be forfeited in the manner provided by Sections 63-11-49 through
429 63-11-53. Except as may otherwise be provided by paragraph (e) of
430 this subsection, the Commissioner of Public Safety shall suspend
431 the driver's license of such person for five (5) years. The
432 suspension of a commercial driver's license shall be governed by
433 Section 63-1-83.

434 (d) Except as otherwise provided in subsection (3), any
435 person convicted of a second violation of subsection (1) of this
436 section shall receive an in-depth diagnostic assessment, and if as
437 a result of such assessment is determined to be in need of
438 treatment of his alcohol and/or drug abuse problem, such person
439 shall successfully complete treatment of his alcohol and/or drug
440 abuse problem at a program site certified by the Department of
441 Mental Health. Such person shall be eligible for reinstatement of
442 his driving privileges upon the successful completion of such
443 treatment after a period of one (1) year after such person's
444 driver's license is suspended. Each person who receives a
445 diagnostic assessment shall pay a fee representing the cost of
446 such assessment. Each person who participates in a treatment
447 program shall pay a fee representing the cost of such treatment.

448 (e) Except as otherwise provided in subsection (3), any
449 person convicted of a third or subsequent violation of subsection
450 (1) of this section shall receive an in-depth diagnostic
451 assessment, and if as a result of such assessment is determined to
452 be in need of treatment of his alcohol and/or drug abuse problem,
453 such person shall enter an alcohol and/or drug abuse program
454 approved by the Department of Mental Health for treatment of such
455 person's alcohol and/or drug abuse problem. If such person



456 successfully completes such treatment, such person shall be
457 eligible for reinstatement of his driving privileges after a
458 period of three (3) years after such person's driver's license is
459 suspended.

460 (f) The Department of Public Safety shall promulgate
461 rules and regulations for the use of interlock ignition devices as
462 provided in Section 63-11-31 and consistent with the provisions
463 therein. Such rules and regulations shall provide for the
464 calibration of such devices and shall provide that the cost of the
465 use of such systems shall be borne by the offender. The
466 Department of Public Safety shall approve which vendors of such
467 devices shall be used to furnish such systems.

468 (3) (a) This subsection shall be known and may be cited as
469 Zero Tolerance for Minors. The provisions of this subsection
470 shall apply only when a person under the age of twenty-one (21)
471 years has a blood alcohol concentration two one-hundredths percent
472 (.02%) or more, but lower than eight one-hundredths percent
473 (.08%). If such person's blood alcohol concentration is eight
474 one-hundredths percent (.08%) or more, the provisions of
475 subsection (2) shall apply.

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

486 The circuit court having jurisdiction in the county in which
487 the conviction was had or the circuit court of the person's county
488 of residence may reduce the suspension of driving privileges under



489 Section 63-11-30(2)(a) if the denial of which would constitute a
490 hardship on the offender, except that no court may issue such an
491 order reducing the suspension of driving privileges under this
492 subsection until thirty (30) days have elapsed from the effective
493 date of the suspension. Hardships shall only apply to first
494 offenses under Section 63-11-30(1), and shall not apply to second,
495 third or subsequent convictions of any person violating subsection
496 (1) of this section. A reduction of suspension on the basis of
497 hardship shall not be available to any person who refused to
498 submit to a chemical test upon the request of a law enforcement
499 officer as provided in Section 63-11-5. When the petition is
500 filed, such person shall pay to the circuit clerk of the court
501 where the petition is filed a fee of Fifty Dollars (\$50.00), which
502 shall be deposited into the State General Fund to the credit of a
503 special fund hereby created in the State Treasury to be used for
504 alcohol or drug abuse treatment and education, upon appropriation
505 by the Legislature. This fee shall be in addition to any other
506 court costs or fees required for the filing of petitions.

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

515 The order entered under the provisions of this subsection
516 shall contain the specific grounds upon which hardship was
517 determined, and shall order the petitioner to attend and complete
518 an alcohol safety education program as provided in Section
519 63-11-32. A certified copy of such order shall be delivered to
520 the Commissioner of Public Safety by the clerk of the court within
521 five (5) days of the entry of the order. The certified copy of



522 such order shall contain information which will identify the
523 petitioner, including, but not limited to, the name, mailing
524 address, street address, social security number and driver's
525 license number of the petitioner.

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

531 (i) Continue his employment;

532 (ii) Continue attending school or an educational
533 institution; or

534 (iii) Obtain necessary medical care.

535 Proof of the hardship shall be established by clear and
536 convincing evidence which shall be supported by independent
537 documentation.

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

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

551 (e) Any person under the age of twenty-one (21) years
552 convicted of a second violation of subsection (1) of this section,
553 may have the period that his driver's license is suspended reduced
554 if such person receives an in-depth diagnostic assessment, and as



555 a result of such assessment is determined to be in need of
556 treatment of his alcohol and/or drug abuse problem and
557 successfully completes treatment of his alcohol and/or drug abuse
558 problem at a program site certified by the Department of Mental
559 Health. Such person shall be eligible for reinstatement of his
560 driving privileges upon the successful completion of such
561 treatment after a period of six (6) months after such person's
562 driver's license is suspended. Each person who receives a
563 diagnostic assessment shall pay a fee representing the cost of
564 such assessment. Each person who participates in a treatment
565 program shall pay a fee representing the cost of such treatment.

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

571 (g) The court shall have the discretion to rule that a
572 first offense of this subsection by a person under the age of
573 twenty-one (21) years shall be nonadjudicated. Such person shall
574 be eligible for nonadjudication only once. The Department of
575 Public Safety shall maintain a confidential registry of all cases
576 which are nonadjudicated as provided in this paragraph. A judge
577 who rules that a case is nonadjudicated shall forward such ruling
578 to the Department of Public Safety. Judges and prosecutors
579 involved in implied consent violations shall have access to the
580 confidential registry for the purpose of determining
581 nonadjudication eligibility. A record of a person who has been
582 nonadjudicated shall be maintained for five (5) years or until
583 such person reaches the age of twenty-one (21) years. Any person
584 whose confidential record has been disclosed in violation of this
585 paragraph shall have a civil cause of action against the person
586 and/or agency responsible for such disclosure.



587 (4) In addition to the other penalties provided in this
588 section, every person refusing a law enforcement officer's request
589 to submit to a chemical test of his breath as provided in this
590 chapter, or who was unconscious at the time of a chemical test and
591 refused to consent to the introduction of the results of such test
592 in any prosecution, shall suffer an additional suspension of
593 driving privileges as follows:

594 The Commissioner of Public Safety or his authorized agent
595 shall suspend the driver's license or permit to drive or deny the
596 issuance of a license or permit to such person as provided for
597 first, second and third or subsequent offenders in subsection (2)
598 of this section. Such suspension shall be in addition to any
599 suspension imposed pursuant to subsection (1) of Section 63-11-23.
600 The minimum suspension imposed under this subsection shall not be
601 reduced and no prosecutor is authorized to offer a reduction of
602 such suspension as part of a plea bargain.

603 (5) Every person who operates any motor vehicle in violation
604 of the provisions of subsection (1) of this section and who in a
605 negligent manner causes the death of another or mutilates,
606 disfigures, permanently disables or destroys the tongue, eye, lip,
607 nose or any other limb, organ or member of another shall, upon
608 conviction, be guilty of a felony and shall be committed to the
609 custody of the State Department of Corrections for a period of
610 time of not less than five (5) years and not to exceed twenty-five
611 (25) years.

612 (6) Upon conviction of any violation of subsection (1) of
613 this section, the trial judge shall sign in the place provided on
614 the traffic ticket, citation or affidavit stating that the person
615 arrested either employed an attorney or waived his right to an
616 attorney after having been properly advised. If the person
617 arrested employed an attorney, the name, address and telephone
618 number of the attorney shall be written on the ticket, citation or
619 affidavit. The judge shall cause a copy of the traffic ticket,



620 citation or affidavit, and any other pertinent documents
621 concerning the conviction, to be sent to the Commissioner of
622 Public Safety. A copy of the traffic ticket, citation or
623 affidavit and any other pertinent documents, having been attested
624 as true and correct by the Commissioner of Public Safety, or his
625 designee, shall be sufficient proof of the conviction for purposes
626 of determining the enhanced penalty for any subsequent convictions
627 of violations of subsection (1) of this section.

628 (7) Convictions in other states of violations for driving or
629 operating a vehicle while under the influence of an intoxicating
630 liquor or while under the influence of any other substance that
631 has impaired the person's ability to operate a motor vehicle
632 occurring after July 1, 1992, shall be counted for the purposes of
633 determining if a violation of subsection (1) of this section is a
634 first, second, third or subsequent offense and the penalty that
635 shall be imposed upon conviction for a violation of subsection (1)
636 of this section.

637 (8) For the purposes of determining how to impose the
638 sentence for a second, third or subsequent conviction under this
639 section, the indictment shall not be required to enumerate
640 previous convictions. It shall only be necessary that the
641 indictment state the number of times that the defendant has been
642 convicted and sentenced within the past five (5) years under this
643 section to determine if an enhanced penalty shall be imposed. The
644 amount of fine and imprisonment imposed in previous convictions
645 shall not be considered in calculating offenses to determine a
646 second, third or subsequent offense of this section.

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



651 (10) Suspension of driving privileges for any person
652 convicted of violations of Section 63-11-30(1) shall run
653 consecutively.

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

656 (12) The penalties provided in this section shall not be
657 suspended or reduced by the court and no prosecutor shall offer
658 any suspension or sentence reduction as part of a plea bargain.

659 **SECTION 10.** This act shall take effect and be in force from
660 and after July 1, 2002.

