

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 123

1 AN ACT TO AMEND SECTIONS 63-11-30, 63-11-49 AND 63-11-53,
2 MISSISSIPPI CODE OF 1972, TO REVISE FORFEITURE PROCEEDINGS AND
3 DISPOSITION UNDER THE IMPLIED CONSENT LAW; TO PROVIDE NOTICE TO
4 LIENHOLDERS; TO REPEAL SECTION 63-11-51, MISSISSIPPI CODE OF 1972,
5 WHICH PROVIDES FOR THE INSTITUTION OF FORFEITURE PROCEEDINGS; AND
6 FOR RELATED PURPOSES.

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

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

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



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

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

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



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

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

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

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



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

97 (i) Continue his employment;

98 (ii) Continue attending school or an educational
99 institution; or

100 (iii) Obtain necessary medical care.

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

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



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

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

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



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

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

187 (f) The Department of Public Safety shall promulgate
188 rules and regulations for the use of interlock ignition devices as
189 provided in Section 63-11-31 and consistent with the provisions
190 therein. Such rules and regulations shall provide for the
191 calibration of such devices and shall provide that the cost of the
192 use of such systems shall be borne by the offender. The



193 Department of Public Safety shall approve which vendors of such
194 devices shall be used to furnish such systems.

195 (3) (a) This subsection shall be known and may be cited as
196 Zero Tolerance for Minors. The provisions of this subsection
197 shall apply only when a person under the age of twenty-one (21)
198 years has a blood alcohol concentration two one-hundredths percent
199 (.02%) or more, but lower than eight one-hundredths percent
200 (.08%). If such person's blood alcohol concentration is eight
201 one-hundredths percent (.08%) or more, the provisions of
202 subsection (2) shall apply.

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

213 The circuit court having jurisdiction in the county in which
214 the conviction was had or the circuit court of the person's county
215 of residence may reduce the suspension of driving privileges under
216 Section 63-11-30(2)(a) if the denial of which would constitute a
217 hardship on the offender, except that no court may issue such an
218 order reducing the suspension of driving privileges under this
219 subsection until thirty (30) days have elapsed from the effective
220 date of the suspension. Hardships shall only apply to first
221 offenses under Section 63-11-30(1), and shall not apply to second,
222 third or subsequent convictions of any person violating subsection
223 (1) of this section. A reduction of suspension on the basis of
224 hardship shall not be available to any person who refused to
225 submit to a chemical test upon the request of a law enforcement



226 officer as provided in Section 63-11-5. When the petition is
227 filed, such person shall pay to the circuit clerk of the court
228 where the petition is filed a fee of Fifty Dollars (\$50.00), which
229 shall be deposited into the State General Fund to the credit of a
230 special fund hereby created in the State Treasury to be used for
231 alcohol or drug abuse treatment and education, upon appropriation
232 by the Legislature. This fee shall be in addition to any other
233 court costs or fees required for the filing of petitions.

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

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

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

258 (i) Continue his employment;



259 (ii) Continue attending school or an educational
260 institution; or

261 (iii) Obtain necessary medical care.

262 Proof of the hardship shall be established by clear and
263 convincing evidence which shall be supported by independent
264 documentation.

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

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

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



291 such assessment. Each person who participates in a treatment
292 program shall pay a fee representing the cost of such treatment.

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

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

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

321 The Commissioner of Public Safety or his authorized agent
322 shall suspend the driver's license or permit to drive or deny the
323 issuance of a license or permit to such person as provided for



324 first, second and third or subsequent offenders in subsection (2)
325 of this section. Such suspension shall be in addition to any
326 suspension imposed pursuant to subsection (1) of Section 63-11-23.
327 The minimum suspension imposed under this subsection shall not be
328 reduced and no prosecutor is authorized to offer a reduction of
329 such suspension as part of a plea bargain.

330 (5) Every person who operates any motor vehicle in violation
331 of the provisions of subsection (1) of this section and who in a
332 negligent manner causes the death of another or mutilates,
333 disfigures, permanently disables or destroys the tongue, eye, lip,
334 nose or any other limb, organ or member of another shall, upon
335 conviction, be guilty of a felony and shall be committed to the
336 custody of the State Department of Corrections for a period of
337 time of not less than five (5) years and not to exceed twenty-five
338 (25) years.

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.** Section 63-11-49, Mississippi Code of 1972, is
384 amended as follows:

385 63-11-49. (1) When a vehicle is seized under Section
386 63-11-30(2)(c) or (d), the arresting officer shall impound the
387 vehicle and the vehicle shall be held as evidence until a court of
388 competent jurisdiction makes a final disposition of the case and



389 the vehicle shall be forfeited * * * as provided in Section
390 63-11-30(2)(c).

391 (2) When a vehicle is forfeited pursuant to a conviction for
392 a third or subsequent offense DUI, the convicted person, if
393 appealing the conviction, may request the trial court in its
394 discretion to order a stay of forfeiture pending appeal.

395 (3) Vehicles forfeited pursuant to Section 63-11-30(2)(c)
396 shall be disposed of as provided in Section 63-11-53.

397 * * *

398 **SECTION 3.** Section 63-11-53, Mississippi Code of 1972, is
399 amended as follows:

400 63-11-53. (1) All money derived from the seizure and
401 forfeiture of vehicles under Section 63-11-30(2)(c) and (d) and
402 Section 63-11-49 * * * by the Mississippi Highway Safety Patrol
403 shall be forwarded to the State Treasurer and deposited in a
404 special fund which is hereby created for use by the Department of
405 Public Safety upon appropriation by the Legislature. Unexpended
406 amounts remaining in such special fund at the end of a fiscal year
407 shall not lapse into the State General Fund, and any interest
408 earned on amounts in such special fund shall be deposited to the
409 credit of the special fund. All other law enforcement agencies
410 shall establish a special fund which is to be used for law
411 enforcement purposes to purchase equipment for the law enforcement
412 agency, and any interest earned on the amount in such special fund
413 shall be deposited to the credit of the special fund.

414 (2) Except as otherwise provided in subsection (3), all
415 vehicles that have been forfeited shall be sold at a public
416 auction for cash by the law enforcement agency or its agent to the
417 highest and best bidder * * *. The proceeds of the sale, * * *
418 after deduction of all storage, towing, court costs and expenses
419 of liquidation shall be deposited in the manner described in
420 subsection (1) of this section.



421 (3) The law enforcement agency may maintain, repair, use and
422 operate for official purposes all vehicles that have been
423 forfeited if the vehicles are free from any interest of a bona
424 fide lienholder, secured party or other party who holds an
425 interest in the nature of a security interest. The agency may
426 purchase the interest of a bona fide lienholder, secured party or
427 other party who holds an interest so that the vehicle can be
428 released for its use. If the vehicle is susceptible of titling
429 under the Mississippi Motor Vehicle Title Law, the agency shall be
430 deemed to be the purchaser, and the certificate of title shall be
431 issued to it as required by subsection (4) of this section.

432 (4) The State Tax Commission shall issue a certificate of
433 title to any person who purchases vehicles under the provisions of
434 this section when a certificate of title is required under the
435 laws of this state.

436 **SECTION 4.** Any vehicle seized pursuant to Sections
437 63-11-30(2)(c) and 63-11-49 which is not forfeited may be released
438 to the owner or lienholder upon receipt of payment for all storage
439 and towing charges incurred by the law enforcement agency in
440 seizing the vehicle. The seizing law enforcement agency shall
441 notify in writing, by first class mail, the owner or lienholder at
442 the owner's or lienholder's last known address that the owner or
443 lienholder may retrieve the vehicle. In the event the owner or
444 lienholder do not claim the vehicle within thirty (30) days from
445 the date of mailing of the notice, the vehicle shall be sold at
446 public auction. The owner of the vehicle or the lienholder shall
447 be considered notified under this paragraph if the notice is
448 deposited in the United States mail and any claim that the notice
449 was not in fact received by the addressee shall not affect sale or
450 disposition of the vehicle. Any vehicle retrieved by a lienholder
451 shall not be returned to the person charged with the third or
452 subsequent offense of Section 63-11-30.



453 **SECTION 5.** Section 63-11-51, Mississippi Code of 1972, which
454 provides for the institution of forfeiture proceedings, is
455 repealed.

456 **SECTION 6.** This act shall take effect and be in force from
457 and after July 1, 2002.

