

By: Representative Martinson

To: Judiciary A

HOUSE BILL NO. 525

1 AN ACT TO AMEND SECTIONS 63-11-23 AND 63-11-30, MISSISSIPPI  
2 CODE OF 1972, TO REVISE BLOOD ALCOHOL CONCENTRATION LEVELS UNDER  
3 THE IMPLIED CONSENT LAW; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 63-11-23, Mississippi Code of 1972, is  
6 amended as follows:

7 63-11-23. (1) The Commissioner of Public Safety, or his  
8 authorized agent, shall review the sworn report by a law  
9 enforcement officer as provided in Section 63-11-21. If upon such  
10 review the Commissioner of Public Safety, or his authorized agent,  
11 finds (a) that the law enforcement officer had reasonable grounds  
12 and probable cause to believe the person had been driving a motor  
13 vehicle upon the public highways, public roads and streets of this  
14 state while under the influence of intoxicating liquor or any  
15 other substance which may impair a person's mental or physical  
16 ability; (b) that he refused to submit to the test upon request of  
17 the officer; and (c) that the person was informed that his license  
18 and/or driving privileges would be suspended or denied if he  
19 refused to submit to the chemical test, then the Commissioner of  
20 Public Safety, or his authorized agent, shall give notice to the  
21 licensee that his license or permit to drive, or any nonresident  
22 operating privilege, shall be suspended thirty (30) days after the  
23 date of such notice for a period of ninety (90) days in the event  
24 such person has not previously been convicted of a violation of  
25 Section 63-11-30, or, for a period of one (1) year in the event of  
26 any previous conviction of such person under Section 63-11-30. In  
27 the event the commissioner or his authorized agent determines that



28 the license should not be suspended, he shall return the license  
29 or permit to the licensee.

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

32 (2) If the chemical testing of a person's breath indicates  
33 the blood alcohol concentration was eight one-hundredths percent  
34 (.08%) or more for persons who are above the legal age to purchase  
35 alcoholic beverages under state law, or two one-hundredths percent  
36 (.02%) or more for persons who are below the legal age to purchase  
37 alcoholic beverages under state law, based upon grams of alcohol  
38 per one hundred (100) milliliters of blood or grams of alcohol per  
39 two hundred ten (210) liters of breath as shown by a chemical  
40 analysis of such person's blood, or breath, or urine, the  
41 arresting officer shall seize the license and give the driver a  
42 receipt for his license on forms prescribed by the Commissioner of  
43 Public Safety and shall promptly forward the license together with  
44 a sworn report to the Commissioner of Public Safety. The receipt  
45 given a person as provided herein shall be valid as a permit to  
46 operate a motor vehicle for a period of thirty (30) days in order  
47 that the defendant be processed through the court having original  
48 jurisdiction and a final disposition had. If the defendant  
49 requests a trial within thirty (30) days and such trial is not  
50 commenced within thirty (30) days, then the court shall determine  
51 if the delay in the trial is the fault of the defendant or his  
52 counsel. If the court finds that such is not the fault of the  
53 defendant or his counsel, then the court shall order the  
54 defendant's driving privileges to be extended until such time as  
55 the defendant is convicted. If a receipt or permit to drive  
56 issued pursuant to the provisions of this subsection expires  
57 without a trial having been requested as provided for in this  
58 subsection, then the Commissioner of Public Safety or his  
59 authorized agent shall suspend the license or permit to drive or



60 any nonresident operating privilege for the applicable period of  
61 time as provided for in subsection (1) of this section.

62 (3) If the person is a resident without a license or permit  
63 to operate a motor vehicle in this state, the Commissioner of  
64 Public Safety, or his authorized agent, shall deny to the person  
65 the issuance of a license or permit for a period of one (1) year  
66 beginning thirty (30) days after the date of notice of such  
67 suspension.

68 (4) It shall be the duty of the county prosecuting attorney,  
69 an attorney employed under the provisions of Section 19-3-49, or  
70 in the event there is no such prosecuting attorney for the county,  
71 the duty of the district attorney to represent the state in any  
72 hearing held under the provisions of Section 63-11-25, under the  
73 provisions of Section 63-11-37(2) or under the provisions of  
74 Section 63-11-30(2) (a).

75 **SECTION 2.** Section 63-11-30, Mississippi Code of 1972, is  
76 amended as follows:

77 63-11-30. (1) It is unlawful for any person to drive or  
78 otherwise operate a vehicle within this state who (a) is under the  
79 influence of intoxicating liquor; (b) is under the influence of  
80 any other substance which has impaired such person's ability to  
81 operate a motor vehicle; (c) has an alcohol concentration of eight  
82 one-hundredths percent (.08%) or more for persons who are above  
83 the legal age to purchase alcoholic beverages under state law, or  
84 two one-hundredths percent (.02%) or more for persons who are  
85 below the legal age to purchase alcoholic beverages under state  
86 law, in the person's blood based upon grams of alcohol per one  
87 hundred (100) milliliters of blood or grams of alcohol per two  
88 hundred ten (210) liters of breath as shown by a chemical analysis  
89 of such person's breath, blood or urine administered as authorized  
90 by this chapter; (d) is under the influence of any drug or  
91 controlled substance, the possession of which is unlawful under  
92 the Mississippi Controlled Substances Law; or (e) has an alcohol



93 concentration of four one-hundredths percent (.04%) or more in the  
94 person's blood, based upon grams of alcohol per one hundred (100)  
95 milliliters of blood or grams of alcohol per two hundred ten (210)  
96 liters of breath as shown by a chemical analysis of such person's  
97 blood, breath or urine, administered as authorized by this chapter  
98 for persons operating a commercial motor vehicle.

99       (2) (a) Except as otherwise provided in subsection (3),  
100 upon conviction of any person for the first offense of violating  
101 subsection (1) of this section where chemical tests provided for  
102 under Section 63-11-5 were given, or where chemical test results  
103 are not available, such person shall be fined not less than Two  
104 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
105 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
106 hours in jail or both; and the court shall order such person to  
107 attend and complete an alcohol safety education program as  
108 provided in Section 63-11-32. The court may substitute attendance  
109 at a victim impact panel instead of forty-eight (48) hours in  
110 jail. In addition, the Department of Public Safety, the  
111 Commissioner of Public Safety or his duly authorized agent shall,  
112 after conviction and upon receipt of the court abstract, suspend  
113 the driver's license and driving privileges of such person for a  
114 period of not less than ninety (90) days and until such person  
115 attends and successfully completes an alcohol safety education  
116 program as herein provided; provided, however, in no event shall  
117 such period of suspension exceed one (1) year. Commercial driving  
118 privileges shall be suspended as provided in Section 63-1-83.

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



126 date of the suspension. Hardships shall only apply to first  
127 offenses under Section 63-11-30(1), and shall not apply to second,  
128 third or subsequent convictions of any person violating subsection  
129 (1) of this section. A reduction of suspension on the basis of  
130 hardship shall not be available to any person who refused to  
131 submit to a chemical test upon the request of a law enforcement  
132 officer as provided in Section 63-11-5. When the petition is  
133 filed, such person shall pay to the circuit clerk of the court  
134 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
135 shall be deposited into the State General Fund to the credit of a  
136 special fund hereby created in the State Treasury to be used for  
137 alcohol or drug abuse treatment and education, upon appropriation  
138 by the Legislature. This fee shall be in addition to any other  
139 court costs or fees required for the filing of petitions.

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

148 The order entered under the provisions of this subsection  
149 shall contain the specific grounds upon which hardship was  
150 determined, and shall order the petitioner to attend and complete  
151 an alcohol safety education program as provided in Section  
152 63-11-32. A certified copy of such order shall be delivered to  
153 the Commissioner of Public Safety by the clerk of the court within  
154 five (5) days of the entry of the order. The certified copy of  
155 such order shall contain information which will identify the  
156 petitioner, including, but not limited to, the name, mailing  
157 address, street address, social security number and driver's  
158 license number of the petitioner.



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

- 164 (i) Continue his employment;
- 165 (ii) Continue attending school or an educational  
166 institution; or
- 167 (iii) Obtain necessary medical care.

168 Proof of the hardship shall be established by clear and  
169 convincing evidence which shall be supported by independent  
170 documentation.

171 (b) Except as otherwise provided in subsection (3),  
172 upon any second conviction of any person violating subsection (1)  
173 of this section, the offenses being committed within a period of  
174 five (5) years, such person shall be fined not less than Six  
175 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
176 Dollars (\$1,500.00), shall be imprisoned not less than five (5)  
177 days nor more than one (1) year and sentenced to community service  
178 work for not less than ten (10) days nor more than one (1) year.  
179 The minimum penalties shall not be suspended or reduced by the  
180 court and no prosecutor shall offer any suspension or sentence  
181 reduction as part of a plea bargain. Except as may otherwise be  
182 provided by paragraph (d) of this subsection, the Commissioner of  
183 Public Safety shall suspend the driver's license of such person  
184 for two (2) years. Suspension of a commercial driver's license  
185 shall be governed by Section 63-1-83. Upon any second conviction  
186 as described in this paragraph, the court shall ascertain whether  
187 the defendant is married, and if the defendant is married shall  
188 obtain the name and address of the defendant's spouse; the clerk  
189 of the court shall submit this information to the Department of  
190 Public Safety. Further, the commissioner shall notify in writing,  
191 by certified mail, return receipt requested, the owner of the



192 vehicle and the spouse, if any, of the person convicted of the  
193 second violation of the possibility of forfeiture of the vehicle  
194 if such person is convicted of a third violation of subsection (1)  
195 of this section. The owner of the vehicle and the spouse shall be  
196 considered notified under this paragraph if the notice is  
197 deposited in the United States mail and any claim that the notice  
198 was not in fact received by the addressee shall not affect a  
199 subsequent forfeiture proceeding.

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

203 (c) Except as otherwise provided in subsection (3), for  
204 any third or subsequent conviction of any person violating  
205 subsection (1) of this section, the offenses being committed  
206 within a period of five (5) years, such person shall be guilty of  
207 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
208 nor more than Five Thousand Dollars (\$5,000.00), shall be  
209 imprisoned not less than one (1) year nor more than five (5) years  
210 in the State Penitentiary. The minimum penalties shall not be  
211 suspended or reduced by the court and no prosecutor shall offer  
212 any suspension or sentence reduction as part of a plea bargain.  
213 The law enforcement agency shall seize the vehicle operated by any  
214 person charged with a third or subsequent violation of subsection  
215 (1) of this section, if such convicted person was driving the  
216 vehicle at the time the offense was committed. Such vehicle may  
217 be forfeited in the manner provided by Sections 63-11-49 through  
218 63-11-53. Except as may otherwise be provided by paragraph (e) of  
219 this subsection, the Commissioner of Public Safety shall suspend  
220 the driver's license of such person for five (5) years. The  
221 suspension of a commercial driver's license shall be governed by  
222 Section 63-1-83.

223 (d) Except as otherwise provided in subsection (3), any  
224 person convicted of a second violation of subsection (1) of this



225 section shall receive an in-depth diagnostic assessment, and if as  
226 a result of such assessment is determined to be in need of  
227 treatment of his alcohol and/or drug abuse problem, such person  
228 shall successfully complete treatment of his alcohol and/or drug  
229 abuse problem at a program site certified by the Department of  
230 Mental Health. Such person shall be eligible for reinstatement of  
231 his driving privileges upon the successful completion of such  
232 treatment after a period of one (1) year after such person's  
233 driver's license is suspended. Each person who receives a  
234 diagnostic assessment shall pay a fee representing the cost of  
235 such assessment. Each person who participates in a treatment  
236 program shall pay a fee representing the cost of such treatment.

237 (e) Except as otherwise provided in subsection (3), any  
238 person convicted of a third or subsequent violation of subsection  
239 (1) of this section shall receive an in-depth diagnostic  
240 assessment, and if as a result of such assessment is determined to  
241 be in need of treatment of his alcohol and/or drug abuse problem,  
242 such person shall enter an alcohol and/or drug abuse program  
243 approved by the Department of Mental Health for treatment of such  
244 person's alcohol and/or drug abuse problem. If such person  
245 successfully completes such treatment, such person shall be  
246 eligible for reinstatement of his driving privileges after a  
247 period of three (3) years after such person's driver's license is  
248 suspended.

249 (f) The Department of Public Safety shall promulgate  
250 rules and regulations for the use of interlock ignition devices as  
251 provided in Section 63-11-31 and consistent with the provisions  
252 therein. Such rules and regulations shall provide for the  
253 calibration of such devices and shall provide that the cost of the  
254 use of such systems shall be borne by the offender. The  
255 Department of Public Safety shall approve which vendors of such  
256 devices shall be used to furnish such systems.





257           (3)   (a)   This subsection shall be known and may be cited as  
258 Zero Tolerance for Minors. The provisions of this subsection  
259 shall apply only when a person under the age of twenty-one (21)  
260 years has a blood alcohol concentration two one-hundredths percent  
261 (.02%) or more, but lower than eight one-hundredths percent  
262 (.08%). If such person's blood alcohol concentration is eight  
263 one-hundredths percent (.08%) or more, the provisions of  
264 subsection (2) shall apply.

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

275           The circuit court having jurisdiction in the county in which  
276 the conviction was had or the circuit court of the person's county  
277 of residence may reduce the suspension of driving privileges under  
278 Section 63-11-30(2) (a) if the denial of which would constitute a  
279 hardship on the offender, except that no court may issue such an  
280 order reducing the suspension of driving privileges under this  
281 subsection until thirty (30) days have elapsed from the effective  
282 date of the suspension. Hardships shall only apply to first  
283 offenses under Section 63-11-30(1), and shall not apply to second,  
284 third or subsequent convictions of any person violating subsection  
285 (1) of this section. A reduction of suspension on the basis of  
286 hardship shall not be available to any person who refused to  
287 submit to a chemical test upon the request of a law enforcement  
288 officer as provided in Section 63-11-5. When the petition is  
289 filed, such person shall pay to the circuit clerk of the court



290 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
291 shall be deposited into the State General Fund to the credit of a  
292 special fund hereby created in the State Treasury to be used for  
293 alcohol or drug abuse treatment and education, upon appropriation  
294 by the Legislature. This fee shall be in addition to any other  
295 court costs or fees required for the filing of petitions.

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

304 The order entered under the provisions of this subsection  
305 shall contain the specific grounds upon which hardship was  
306 determined, and shall order the petitioner to attend and complete  
307 an alcohol safety education program as provided in Section  
308 63-11-32. A certified copy of such order shall be delivered to  
309 the Commissioner of Public Safety by the clerk of the court within  
310 five (5) days of the entry of the order. The certified copy of  
311 such order shall contain information which will identify the  
312 petitioner, including, but not limited to, the name, mailing  
313 address, street address, social security number and driver's  
314 license number of the petitioner.

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

- 320 (i) Continue his employment;
- 321 (ii) Continue attending school or an educational  
322 institution; or



323 (iii) Obtain necessary medical care.

324 Proof of the hardship shall be established by clear and  
325 convincing evidence which shall be supported by independent  
326 documentation.

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

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

340 (e) Any person under the age of twenty-one (21) years  
341 convicted of a second violation of subsection (1) of this section,  
342 may have the period that his driver's license is suspended reduced  
343 if such person receives an in-depth diagnostic assessment, and as  
344 a result of such assessment is determined to be in need of  
345 treatment of his alcohol and/or drug abuse problem and  
346 successfully completes treatment of his alcohol and/or drug abuse  
347 problem at a program site certified by the Department of Mental  
348 Health. Such person shall be eligible for reinstatement of his  
349 driving privileges upon the successful completion of such  
350 treatment after a period of six (6) months after such person's  
351 driver's license is suspended. Each person who receives a  
352 diagnostic assessment shall pay a fee representing the cost of  
353 such assessment. Each person who participates in a treatment  
354 program shall pay a fee representing the cost of such treatment.



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

360           (g) The court shall have the discretion to rule that a  
361 first offense of this subsection by a person under the age of  
362 twenty-one (21) years shall be nonadjudicated. Such person shall  
363 be eligible for nonadjudication only once. The Department of  
364 Public Safety shall maintain a confidential registry of all cases  
365 which are nonadjudicated as provided in this paragraph. A judge  
366 who rules that a case is nonadjudicated shall forward such ruling  
367 to the Department of Public Safety. Judges and prosecutors  
368 involved in implied consent violations shall have access to the  
369 confidential registry for the purpose of determining  
370 nonadjudication eligibility. A record of a person who has been  
371 nonadjudicated shall be maintained for five (5) years or until  
372 such person reaches the age of twenty-one (21) years. Any person  
373 whose confidential record has been disclosed in violation of this  
374 paragraph shall have a civil cause of action against the person  
375 and/or agency responsible for such disclosure.

376           (4) In addition to the other penalties provided in this  
377 section, every person refusing a law enforcement officer's request  
378 to submit to a chemical test of his breath as provided in this  
379 chapter, or who was unconscious at the time of a chemical test and  
380 refused to consent to the introduction of the results of such test  
381 in any prosecution, shall suffer an additional suspension of  
382 driving privileges as follows:

383           The Commissioner of Public Safety or his authorized agent  
384 shall suspend the driver's license or permit to drive or deny the  
385 issuance of a license or permit to such person as provided for  
386 first, second and third or subsequent offenders in subsection (2)  
387 of this section. Such suspension shall be in addition to any



388 suspension imposed pursuant to subsection (1) of Section 63-11-23.  
389 The minimum suspension imposed under this subsection shall not be  
390 reduced and no prosecutor is authorized to offer a reduction of  
391 such suspension as part of a plea bargain.

392 (5) Every person who operates any motor vehicle in violation  
393 of the provisions of subsection (1) of this section and who in a  
394 negligent manner causes the death of another or mutilates,  
395 disfigures, permanently disables or destroys the tongue, eye, lip,  
396 nose or any other limb, organ or member of another shall, upon  
397 conviction, be guilty of a felony and shall be committed to the  
398 custody of the State Department of Corrections for a period of  
399 time of not less than five (5) years and not to exceed twenty-five  
400 (25) years.

401 (6) Upon conviction of any violation of subsection (1) of  
402 this section, the trial judge shall sign in the place provided on  
403 the traffic ticket, citation or affidavit stating that the person  
404 arrested either employed an attorney or waived his right to an  
405 attorney after having been properly advised. If the person  
406 arrested employed an attorney, the name, address and telephone  
407 number of the attorney shall be written on the ticket, citation or  
408 affidavit. The judge shall cause a copy of the traffic ticket,  
409 citation or affidavit, and any other pertinent documents  
410 concerning the conviction, to be sent to the Commissioner of  
411 Public Safety. A copy of the traffic ticket, citation or  
412 affidavit and any other pertinent documents, having been attested  
413 as true and correct by the Commissioner of Public Safety, or his  
414 designee, shall be sufficient proof of the conviction for purposes  
415 of determining the enhanced penalty for any subsequent convictions  
416 of violations of subsection (1) of this section.

417 (7) Convictions in other states of violations for driving or  
418 operating a vehicle while under the influence of an intoxicating  
419 liquor or while under the influence of any other substance that  
420 has impaired the person's ability to operate a motor vehicle



421 occurring after July 1, 1992, shall be counted for the purposes of  
422 determining if a violation of subsection (1) of this section is a  
423 first, second, third or subsequent offense and the penalty that  
424 shall be imposed upon conviction for a violation of subsection (1)  
425 of this section.

426 (8) For the purposes of determining how to impose the  
427 sentence for a second, third or subsequent conviction under this  
428 section, the indictment shall not be required to enumerate  
429 previous convictions. It shall only be necessary that the  
430 indictment state the number of times that the defendant has been  
431 convicted and sentenced within the past five (5) years under this  
432 section to determine if an enhanced penalty shall be imposed. The  
433 amount of fine and imprisonment imposed in previous convictions  
434 shall not be considered in calculating offenses to determine a  
435 second, third or subsequent offense of this section.

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

440 (10) Suspension of driving privileges for any person  
441 convicted of violations of Section 63-11-30(1) shall run  
442 consecutively.

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

445 **SECTION 3.** This act shall take effect and be in force from  
446 and after its passage.

