

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 886

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; TO REVISE THE PENALTY FOR A THIRD OR  
4 SUBSEQUENT OFFENSE; AND FOR RELATED PURPOSES.

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

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

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



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

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

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



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

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

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

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

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



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

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

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



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

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

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



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

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

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

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



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

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

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

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



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

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

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





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

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

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



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

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

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

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

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



324 (iii) Obtain necessary medical care.

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

446 **SECTION 3.** This act shall take effect and be in force from  
447 and after July 1, 2002.

