

By: Representative Fleming

To: Judiciary A

HOUSE BILL NO. 1102

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE ANYONE ARRESTED FOR AN IMPLIED CONSENT VIOLATION TO BE  
3 HELD IN CUSTODY FOR 24 HOURS BEFORE BAIL MAY BE POSTED; AND FOR  
4 RELATED PURPOSES.

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

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

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



29 for persons operating a commercial motor vehicle. Upon an arrest  
30 for a violation of this section, the offender shall remain in the  
31 custody of the arresting law enforcement agency for twenty-four  
32 (24) hours before bail may be posted.

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

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



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

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

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

93 At any time following at least thirty (30) days of suspension  
94 for a first offense violation of this section, the court may grant



95 the person hardship driving privileges upon written petition of  
96 the defendant, if it finds reasonable cause to believe that  
97 revocation would hinder the person's ability to:

98 (i) Continue his employment;

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

101 (iii) Obtain necessary medical care.

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

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



128 if such person is convicted of a third violation of subsection (1)  
129 of this section. The owner of the vehicle and the spouse shall be  
130 considered notified under this paragraph if the notice is  
131 deposited in the United States mail and any claim that the notice  
132 was not in fact received by the addressee shall not affect a  
133 subsequent forfeiture proceeding.

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

137 (c) Except as otherwise provided in subsection (3), for  
138 any third or subsequent conviction of any person violating  
139 subsection (1) of this section, the offenses being committed  
140 within a period of five (5) years, such person shall be guilty of  
141 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
142 nor more than Five Thousand Dollars (\$5,000.00), shall be  
143 imprisoned not less than one (1) year nor more than five (5) years  
144 in the State Penitentiary. The minimum penalties shall not be  
145 suspended or reduced by the court and no prosecutor shall offer  
146 any suspension or sentence reduction as part of a plea bargain.  
147 The law enforcement agency shall seize the vehicle operated by any  
148 person charged with a third or subsequent violation of subsection  
149 (1) of this section, if such convicted person was driving the  
150 vehicle at the time the offense was committed. Such vehicle may  
151 be forfeited in the manner provided by Sections 63-11-49 through  
152 63-11-53. Except as may otherwise be provided by paragraph (e) of  
153 this subsection, the Commissioner of Public Safety shall suspend  
154 the driver's license of such person for five (5) years. The  
155 suspension of a commercial driver's license shall be governed by  
156 Section 63-1-83.

157 (d) Except as otherwise provided in subsection (3), any  
158 person convicted of a second violation of subsection (1) of this  
159 section shall receive an in-depth diagnostic assessment, and if as  
160 a result of such assessment is determined to be in need of



161 treatment of his alcohol and/or drug abuse problem, such person  
162 shall successfully complete treatment of his alcohol and/or drug  
163 abuse problem at a program site certified by the Department of  
164 Mental Health. Such person shall be eligible for reinstatement of  
165 his driving privileges upon the successful completion of such  
166 treatment after a period of one (1) year after such person's  
167 driver's license is suspended. Each person who receives a  
168 diagnostic assessment shall pay a fee representing the cost of  
169 such assessment. Each person who participates in a treatment  
170 program shall pay a fee representing the cost of such treatment.

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

183 (f) The Department of Public Safety shall promulgate  
184 rules and regulations for the use of interlock ignition devices as  
185 provided in Section 63-11-31 and consistent with the provisions  
186 therein. Such rules and regulations shall provide for the  
187 calibration of such devices and shall provide that the cost of the  
188 use of such systems shall be borne by the offender. The  
189 Department of Public Safety shall approve which vendors of such  
190 devices shall be used to furnish such systems.

191 (3) (a) This subsection shall be known and may be cited as  
192 Zero Tolerance for Minors. The provisions of this subsection  
193 shall apply only when a person under the age of twenty-one (21)



194 years has a blood alcohol concentration two one-hundredths percent  
195 (.02%) or more, but lower than eight one-hundredths percent  
196 (.08%). If such person's blood alcohol concentration is eight  
197 one-hundredths percent (.08%) or more, the provisions of  
198 subsection (2) shall apply.

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

209 The circuit court having jurisdiction in the county in which  
210 the conviction was had or the circuit court of the person's county  
211 of residence may reduce the suspension of driving privileges under  
212 Section 63-11-30(2)(a) if the denial of which would constitute a  
213 hardship on the offender, except that no court may issue such an  
214 order reducing the suspension of driving privileges under this  
215 subsection until thirty (30) days have elapsed from the effective  
216 date of the suspension. Hardships shall only apply to first  
217 offenses under Section 63-11-30(1), and shall not apply to second,  
218 third or subsequent convictions of any person violating subsection  
219 (1) of this section. A reduction of suspension on the basis of  
220 hardship shall not be available to any person who refused to  
221 submit to a chemical test upon the request of a law enforcement  
222 officer as provided in Section 63-11-5. When the petition is  
223 filed, such person shall pay to the circuit clerk of the court  
224 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
225 shall be deposited into the State General Fund to the credit of a  
226 special fund hereby created in the State Treasury to be used for



227 alcohol or drug abuse treatment and education, upon appropriation  
228 by the Legislature. This fee shall be in addition to any other  
229 court costs or fees required for the filing of petitions.

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

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

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

- 254 (i) Continue his employment;
- 255 (ii) Continue attending school or an educational  
256 institution; or
- 257 (iii) Obtain necessary medical care.





258 Proof of the hardship shall be established by clear and  
259 convincing evidence which shall be supported by independent  
260 documentation.

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

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

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

289 (f) Any person under the age of twenty-one (21) years  
290 convicted of a third or subsequent violation of subsection (1) of



291 this section shall complete treatment of an alcohol and/or drug  
292 abuse program at a site certified by the Department of Mental  
293 Health.

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

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

317 The Commissioner of Public Safety or his authorized agent  
318 shall suspend the driver's license or permit to drive or deny the  
319 issuance of a license or permit to such person as provided for  
320 first, second and third or subsequent offenders in subsection (2)  
321 of this section. Such suspension shall be in addition to any  
322 suspension imposed pursuant to subsection (1) of Section 63-11-23.  
323 The minimum suspension imposed under this subsection shall not be



324 reduced and no prosecutor is authorized to offer a reduction of  
325 such suspension as part of a plea bargain.

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

335 (6) Upon conviction of any violation of subsection (1) of  
336 this section, the trial judge shall sign in the place provided on  
337 the traffic ticket, citation or affidavit stating that the person  
338 arrested either employed an attorney or waived his right to an  
339 attorney after having been properly advised. If the person  
340 arrested employed an attorney, the name, address and telephone  
341 number of the attorney shall be written on the ticket, citation or  
342 affidavit. The judge shall cause a copy of the traffic ticket,  
343 citation or affidavit, and any other pertinent documents  
344 concerning the conviction, to be sent to the Commissioner of  
345 Public Safety. A copy of the traffic ticket, citation or  
346 affidavit and any other pertinent documents, having been attested  
347 as true and correct by the Commissioner of Public Safety, or his  
348 designee, shall be sufficient proof of the conviction for purposes  
349 of determining the enhanced penalty for any subsequent convictions  
350 of violations of subsection (1) of this section.

351 (7) Convictions in other states of violations for driving or  
352 operating a vehicle while under the influence of an intoxicating  
353 liquor or while under the influence of any other substance that  
354 has impaired the person's ability to operate a motor vehicle  
355 occurring after July 1, 1992, shall be counted for the purposes of  
356 determining if a violation of subsection (1) of this section is a



357 first, second, third or subsequent offense and the penalty that  
358 shall be imposed upon conviction for a violation of subsection (1)  
359 of this section.

360 (8) For the purposes of determining how to impose the  
361 sentence for a second, third or subsequent conviction under this  
362 section, the indictment shall not be required to enumerate  
363 previous convictions. It shall only be necessary that the  
364 indictment state the number of times that the defendant has been  
365 convicted and sentenced within the past five (5) years under this  
366 section to determine if an enhanced penalty shall be imposed. The  
367 amount of fine and imprisonment imposed in previous convictions  
368 shall not be considered in calculating offenses to determine a  
369 second, third or subsequent offense of this section.

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

374 (10) Suspension of driving privileges for any person  
375 convicted of violations of Section 63-11-30(1) shall run  
376 consecutively.

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

379 **SECTION 2.** This act shall take effect and be in force from  
380 and after July 1, 2002.

