

By: Senator(s) White (29th)

To: Judiciary

SENATE BILL NO. 3000

1 AN ACT TO AMEND SECTIONS 63-11-3, 63-11-5, 63-11-8, 63-11-13,  
2 63-11-17, 63-11-19, 63-11-21, 63-11-23 AND 63-11-30, MISSISSIPPI  
3 CODE OF 1972, TO PROVIDE FOR THE TESTING OF SALIVA IN IMPLIED  
4 CONSENT VIOLATIONS; TO REVISE THE BLOOD ALCOHOL LEVEL IN THE  
5 IMPLIED CONSENT LAW; TO PROVIDE FOR ENHANCED PENALTIES ON  
6 SUBSEQUENT CONVICTIONS IF OFFENSES WERE COMMITTED WITHIN A PERIOD  
7 OF 10 YEARS; TO PROVIDE THAT SENTENCES SHALL NOT BE SUSPENDED OR  
8 REDUCED; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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



31 required by the Implied Consent Law when requested by a law  
32 enforcement officer.

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

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

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

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

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

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



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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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



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

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

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



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

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

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





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

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

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

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

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



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

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



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

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

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



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

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

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

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

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

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



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

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

416 (c) Except as otherwise provided in subsection (3), for  
417 any third or subsequent conviction of any person violating  
418 subsection (1) of this section, the offenses being committed  
419 within a period of ten (10) years, such person shall be guilty of  
420 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
421 nor more than Five Thousand Dollars (\$5,000.00), shall be  
422 imprisoned not less than one (1) year nor more than five (5) years  
423 in the State Penitentiary. The minimum penalties shall not be  
424 suspended or reduced by the court and no prosecutor shall offer



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

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

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



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

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

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

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

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



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

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

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





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

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

533 (i) Continue his employment;

534 (ii) Continue attending school or an educational  
535 institution; or

536 (iii) Obtain necessary medical care.

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

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

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

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



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

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

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



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

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

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

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



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

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

639 (8) For the purposes of determining how to impose the  
640 sentence for a second, third or subsequent conviction under this  
641 section, the indictment shall not be required to enumerate  
642 previous convictions. It shall only be necessary that the  
643 indictment state the number of times that the defendant has been  
644 convicted and sentenced within the past ten (10) years under this  
645 section to determine if an enhanced penalty shall be imposed. The  
646 amount of fine and imprisonment imposed in previous convictions  
647 shall not be considered in calculating offenses to determine a  
648 second, third or subsequent offense of this section.

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



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

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

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

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

