

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 708

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT NONADJUDICATION SHALL NOT BE AVAILABLE TO PERSONS
3 WHO DO NOT TAKE A CHEMICAL TEST TO DETERMINE BLOOD ALCOHOL
4 CONCENTRATION; AND FOR 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 eight
13 one-hundredths percent (.08%) 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.

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

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



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

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

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

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



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

- 95 (i) Continue his employment;
- 96 (ii) Continue attending school or an educational
97 institution; or
- 98 (iii) Obtain necessary medical care.

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

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



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

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

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

154 (d) Except as otherwise provided in subsection (3), any
155 person convicted of a second violation of subsection (1) of this
156 section shall receive an in-depth diagnostic assessment, and if as
157 a result of such assessment is determined to be in need of
158 treatment of his alcohol and/or drug abuse problem, such person



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

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

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

188 (3) (a) This subsection shall be known and may be cited as
189 Zero Tolerance for Minors. The provisions of this subsection
190 shall apply only when a person under the age of twenty-one (21)
191 years has a blood alcohol concentration two one-hundredths percent



192 (.02%) or more, but lower than eight one-hundredths percent
193 (.08%). If such person's blood alcohol concentration is eight
194 one-hundredths percent (.08%) or more, the provisions of
195 subsection (2) shall apply.

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

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



225 by the Legislature. This fee shall be in addition to any other
226 court costs or fees required for the filing of petitions.

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

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

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

- 251 (i) Continue his employment;
- 252 (ii) Continue attending school or an educational
253 institution; or
- 254 (iii) Obtain necessary medical care.

255 Proof of the hardship shall be established by clear and
256 convincing evidence which shall be supported by independent
257 documentation.



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

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

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

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



291 (g) The court shall have the discretion to rule that a
292 first offense of this subsection by a person under the age of
293 twenty-one (21) years shall be nonadjudicated. Such person shall
294 be eligible for nonadjudication only once. If a chemical test to
295 determine blood alcohol concentration was not given, such person
296 shall not be eligible for nonadjudication. The Department of
297 Public Safety shall maintain a confidential registry of all cases
298 which are nonadjudicated as provided in this paragraph. A judge
299 who rules that a case is nonadjudicated shall forward such ruling
300 to the Department of Public Safety. Judges and prosecutors
301 involved in implied consent violations shall have access to the
302 confidential registry for the purpose of determining
303 nonadjudication eligibility. A record of a person who has been
304 nonadjudicated shall be maintained for five (5) years or until
305 such person reaches the age of twenty-one (21) years. Any person
306 whose confidential record has been disclosed in violation of this
307 paragraph shall have a civil cause of action against the person
308 and/or agency responsible for such disclosure.

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

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



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

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

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

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



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

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

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

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

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

378 **SECTION 2.** This act shall take effect and be in force from
379 and after July 1, 2003.

