

By: Senator(s) Burton, White, Furniss, King

To: Judiciary

SENATE BILL NO. 2176

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR SEPARATE CONVICTIONS FOR SEPARATE INJURIES OR
3 DEATHS CAUSED BY AGGRAVATED DUI, EVEN THOUGH ARISING BUT FROM ONE
4 ACT OF DRIVING WHILE UNDER THE INFLUENCE; AND FOR RELATED
5 PURPOSES.

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

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

9 63-11-30. (1) It is unlawful for any person to drive or
10 otherwise operate a vehicle within this state who (a) is under the
11 influence of intoxicating liquor; (b) is under the influence of
12 any other substance which has impaired such person's ability to
13 operate a motor vehicle; (c) has an alcohol concentration of eight
14 one-hundredths percent (.08%) or more for persons who are above
15 the legal age to purchase alcoholic beverages under state law, or
16 two one-hundredths percent (.02%) or more for persons who are
17 below the legal age to purchase alcoholic beverages under state
18 law, in the person's blood based upon grams of alcohol per one
19 hundred (100) milliliters of blood or grams of alcohol per two
20 hundred ten (210) liters of breath as shown by a chemical analysis
21 of such person's breath, blood or urine administered as authorized
22 by this chapter; (d) is under the influence of any drug or
23 controlled substance, the possession of which is unlawful under
24 the Mississippi Controlled Substances Law; or (e) has an alcohol
25 concentration of four one-hundredths percent (.04%) or more in the
26 person's blood, based upon grams of alcohol per one hundred (100)
27 milliliters of blood or grams of alcohol per two hundred ten (210)
28 liters of breath as shown by a chemical analysis of such person's



29 blood, breath or urine, administered as authorized by this chapter
30 for persons operating a commercial motor vehicle.

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

315 The Commissioner of Public Safety or his authorized agent
316 shall suspend the driver's license or permit to drive or deny the
317 issuance of a license or permit to such person as provided for
318 first, second and third or subsequent offenders in subsection (2)
319 of this section. Such suspension shall be in addition to any
320 suspension imposed pursuant to subsection (1) of Section 63-11-23.
321 The minimum suspension imposed under this subsection shall not be
322 reduced and no prosecutor is authorized to offer a reduction of
323 such suspension as part of a plea bargain.



324 (5) Every person who operates any motor vehicle in violation
325 of the provisions of subsection (1) of this section and who in a
326 negligent manner causes the death of another or mutilates,
327 disfigures, permanently disables or destroys the tongue, eye, lip,
328 nose or any other limb, organ or member of another shall, upon
329 conviction, be guilty of a separate felony for each such death,
330 mutilation, disfigurement or other injury and shall be committed
331 to the custody of the State Department of Corrections for a period
332 of time of not less than five (5) years and not to exceed
333 twenty-five (25) years for each such death, mutilation,
334 disfigurement or other injury, and the imprisonment for the second
335 or each subsequent conviction, in the discretion of the court,
336 shall commence either at the termination of the imprisonment for
337 the preceding conviction or run concurrently with the preceding
338 conviction.

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

355 (7) Convictions in other states of violations for driving or
356 operating a vehicle while under the influence of an intoxicating



357 liquor or while under the influence of any other substance that
358 has impaired the person's ability to operate a motor vehicle
359 occurring after July 1, 1992, shall be counted for the purposes of
360 determining if a violation of subsection (1) of this section is a
361 first, second, third or subsequent offense and the penalty that
362 shall be imposed upon conviction for a violation of subsection (1)
363 of this section.

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

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

378 (10) Suspension of driving privileges for any person
379 convicted of violations of Section 63-11-30(1) shall run
380 consecutively.

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

383 **SECTION 2.** This act shall take effect and be in force from
384 and after its passage.

