

By: Representative Fleming

To: Judiciary A

HOUSE BILL NO. 96
(As Sent to Governor)

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, TO ALLOW THE HARDSHIP
5 EXCEPTION TO BE GRANTED BY THE COURT OF CONVICTION, TO PROVIDE
6 THAT THOSE CONVICTED OF FELONY DUI WHERE NO SERIOUS DEATH OR
7 INJURY RESULTS MAY SERVE ANY PRISON TIME IMPOSED IN THE COUNTY
8 JAIL AT THE DISCRETION OF THE COURT, AND TO REQUIRE THE POSTING OF
9 BAIL IN CASES OF VEHICULAR MANSLAUGHTER; AND FOR RELATED PURPOSES.

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

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

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

31 milliliters of blood or grams of alcohol per two hundred ten (210)
32 liters of breath as shown by a chemical analysis of such person's
33 blood, breath or urine, administered as authorized by this chapter
34 for persons operating a commercial motor vehicle.

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

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

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

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

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

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

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

- 100 (i) Continue his employment;
101 (ii) Continue attending school or an educational
102 institution; or
103 (iii) Obtain necessary medical care.

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

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

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

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

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

163 (d) Except as otherwise provided in subsection (3), any
164 person convicted of a second violation of subsection (1) of this
165 section shall receive an in-depth diagnostic assessment, and if as
166 a result of such assessment is determined to be in need of
167 treatment of his alcohol and/or drug abuse problem, such person
168 shall successfully complete treatment of his alcohol and/or drug
169 abuse problem at a program site certified by the Department of
170 Mental Health. Such person shall be eligible for reinstatement of
171 his driving privileges upon the successful completion of such
172 treatment after a period of one (1) year after such person's
173 driver's license is suspended. Each person who receives a
174 diagnostic assessment shall pay a fee representing the cost of
175 such assessment. Each person who participates in a treatment
176 program shall pay a fee representing the cost of such treatment.

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

189 (f) The Department of Public Safety shall promulgate
190 rules and regulations for the use of interlock ignition devices as
191 provided in Section 63-11-31 and consistent with the provisions
192 therein. Such rules and regulations shall provide for the
193 calibration of such devices and shall provide that the cost of the
194 use of such systems shall be borne by the offender. The

195 Department of Public Safety shall approve which vendors of such
196 devices shall be used to furnish such systems.

197 (3) (a) This subsection shall be known and may be cited as
198 Zero Tolerance for Minors. The provisions of this subsection
199 shall apply only when a person under the age of twenty-one (21)
200 years has a blood alcohol concentration two one-hundredths percent
201 (.02%) or more, but lower than eight one-hundredths percent
202 (.08%). If such person's blood alcohol concentration is eight
203 one-hundredths percent (.08%) or more, the provisions of
204 subsection (2) shall apply.

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

215 The * * * court * * * in the county in which the conviction
216 was had or the circuit court of the person's county of residence
217 may reduce the suspension of driving privileges under Section
218 63-11-30(2)(a) if the denial of which would constitute a hardship
219 on the offender, except that no court may issue such an order
220 reducing the suspension of driving privileges under this
221 subsection until thirty (30) days have elapsed from the effective
222 date of the suspension. Hardships shall only apply to first
223 offenses under Section 63-11-30(1), and shall not apply to second,
224 third or subsequent convictions of any person violating subsection
225 (1) of this section. A reduction of suspension on the basis of
226 hardship shall not be available to any person who refused to
227 submit to a chemical test upon the request of a law enforcement

228 officer as provided in Section 63-11-5. When the petition is
229 filed, such person shall pay to the circuit clerk of the court
230 where the petition is filed a fee of Fifty Dollars (\$50.00), which
231 shall be deposited into the State General Fund to the credit of a
232 special fund hereby created in the State Treasury to be used for
233 alcohol or drug abuse treatment and education, upon appropriation
234 by the Legislature. This fee shall be in addition to any other
235 court costs or fees required for the filing of petitions.

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

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

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

260 (i) Continue his employment;

261 (ii) Continue attending school or an educational
262 institution; or

263 (iii) Obtain necessary medical care.

264 Proof of the hardship shall be established by clear and
265 convincing evidence which shall be supported by independent
266 documentation.

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

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

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

293 such assessment. Each person who participates in a treatment
294 program shall pay a fee representing the cost of such treatment.

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

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

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

323 The Commissioner of Public Safety or his authorized agent
324 shall suspend the driver's license or permit to drive or deny the
325 issuance of a license or permit to such person as provided for

326 first, second and third or subsequent offenders in subsection (2)
327 of this section. Such suspension shall be in addition to any
328 suspension imposed pursuant to subsection (1) of Section 63-11-23.
329 The minimum suspension imposed under this subsection shall not be
330 reduced and no prosecutor is authorized to offer a reduction of
331 such suspension as part of a plea bargain.

332 (5) Every person who operates any motor vehicle in violation
333 of the provisions of subsection (1) of this section and who in a
334 negligent manner causes the death of another or mutilates,
335 disfigures, permanently disables or destroys the tongue, eye, lip,
336 nose or any other limb, organ or member of another shall, upon
337 conviction, be guilty of a separate felony for each such death,
338 mutilation, disfigurement or other injury and shall be committed
339 to the custody of the State Department of Corrections for a period
340 of time of not less than five (5) years and not to exceed
341 twenty-five (25) years for each such death, mutilation,
342 disfigurement or other injury, and the imprisonment for the second
343 or each subsequent conviction, in the discretion of the court,
344 shall commence either at the termination of the imprisonment for
345 the preceding conviction or run concurrently with the preceding
346 conviction. Any person charged with causing the death of another
347 as described in this subsection shall be required to post bail
348 before being released after arrest.

349 (6) Upon conviction of any violation of subsection (1) of
350 this section, the trial judge shall sign in the place provided on
351 the traffic ticket, citation or affidavit stating that the person
352 arrested either employed an attorney or waived his right to an
353 attorney after having been properly advised. If the person
354 arrested employed an attorney, the name, address and telephone
355 number of the attorney shall be written on the ticket, citation or
356 affidavit. The judge shall cause a copy of the traffic ticket,
357 citation or affidavit, and any other pertinent documents
358 concerning the conviction, to be sent to the Commissioner of

359 Public Safety. A copy of the traffic ticket, citation or
360 affidavit and any other pertinent documents, having been attested
361 as true and correct by the Commissioner of Public Safety, or his
362 designee, shall be sufficient proof of the conviction for purposes
363 of determining the enhanced penalty for any subsequent convictions
364 of violations of subsection (1) of this section.

365 (7) Convictions in other states of violations for driving or
366 operating a vehicle while under the influence of an intoxicating
367 liquor or while under the influence of any other substance that
368 has impaired the person's ability to operate a motor vehicle
369 occurring after July 1, 1992, shall be counted for the purposes of
370 determining if a violation of subsection (1) of this section is a
371 first, second, third or subsequent offense and the penalty that
372 shall be imposed upon conviction for a violation of subsection (1)
373 of this section.

374 (8) For the purposes of determining how to impose the
375 sentence for a second, third or subsequent conviction under this
376 section, the indictment shall not be required to enumerate
377 previous convictions. It shall only be necessary that the
378 indictment state the number of times that the defendant has been
379 convicted and sentenced within the past five (5) years under this
380 section to determine if an enhanced penalty shall be imposed. The
381 amount of fine and imprisonment imposed in previous convictions
382 shall not be considered in calculating offenses to determine a
383 second, third or subsequent offense of this section.

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

388 (10) Suspension of driving privileges for any person
389 convicted of violations of Section 63-11-30(1) shall run
390 consecutively.

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

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