

By: Representatives Watson, Fleming

To: Transportation

HOUSE BILL NO. 284  
(As Passed the House)

1 AN ACT TO AMEND SECTIONS 63-9-11 AND 63-9-17, MISSISSIPPI  
2 CODE OF 1972, TO DELETE THE DATE OF REPEAL OF THE PROVISIONS OF  
3 LAW THAT AUTHORIZE A COURT TO EXPUNGE THE DRIVING RECORD OF  
4 PERSONS CONVICTED OF CERTAIN TRAFFIC OFFENSES UPON COMPLETION OF A  
5 TRAFFIC SAFETY VIOLATOR COURSE, AND THAT REQUIRE COURTS TO  
6 MAINTAIN FULL RECORDS OF ALL PROCEEDINGS RELATED TO TRAFFIC  
7 VIOLATIONS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 63-9-11, Mississippi Code of 1972, is  
10 amended as follows:

11 63-9-11. (1) It is a misdemeanor for any person to violate  
12 any of the provisions of Chapter 3, 5 or 7 of this title, unless  
13 such violation is by such chapters or other law of this state  
14 declared to be a felony.

15 (2) Every person convicted of a misdemeanor for a violation  
16 of any of the provisions of such chapters for which another  
17 penalty is not provided shall for first conviction thereof be  
18 punished by a fine of not more than One Hundred Dollars (\$100.00)  
19 or by imprisonment for not more than ten (10) days; for a second  
20 such conviction within one (1) year thereafter such person shall  
21 be punished by a fine of not more than Two Hundred Dollars  
22 (\$200.00) or by imprisonment for not more than twenty (20) days or  
23 by both such fine and imprisonment; upon a third or subsequent  
24 conviction within one (1) year after the first conviction such  
25 person shall be punished by a fine of not more than Five Hundred  
26 Dollars (\$500.00) or by imprisonment for not more than six (6)  
27 months or by both such fine and imprisonment.

28 (3) (a) Whenever a person not covered under Section 63-1-55  
29 is charged with a misdemeanor violation of any of the provisions

30 of Chapter 3, 5 or 7 of this title, the person shall be eligible  
31 to participate in not less than four (4) hours of a traffic safety  
32 violator course and thereby have no record of the violation on the  
33 person's driving record if the person meets all the following  
34 conditions:

35 (i) The defendant has a valid Mississippi driver's  
36 license or permit.

37 (ii) The defendant has not had a conviction of a  
38 violation under Chapter 3, 5 or 7 of this title within three (3)  
39 years before the current offense; any conviction entered before  
40 October 1, 2002, does not constitute a prior offense for the  
41 purposes of this subsection (3).

42 (iii) The defendant's public and nonpublic driving  
43 record as maintained by the Department of Public Safety does not  
44 indicate successful completion of a traffic safety violator course  
45 under this section in the three-year period before the offense.

46 (iv) The defendant files an affidavit with the  
47 court stating that this is the defendant's first conviction in  
48 more than three (3) years or since October 1, 2002, whichever is  
49 the lesser period of time; the defendant is not in the process of  
50 taking a course under this section; and the defendant has not  
51 completed a course under this section that is not yet reflected on  
52 the defendant's public or nonpublic driving record.

53 (v) The offense charged is for a misdemeanor  
54 offense under Chapter 3, 5 or 7 of this title.

55 (vi) The defendant pays the applicable fine, costs  
56 and any assessments required by law to be paid upon conviction of  
57 such an offense.

58 (vii) The defendant pays to the court an  
59 additional fee of Ten Dollars (\$10.00) to elect to proceed under  
60 the provisions of this subsection (3).

61 (b) (i) 1. An eligible defendant may enter a plea of  
62 nolo contendere or guilty in person or in writing and present to

63 the court, in person or by mail postmarked on or before the  
64 appearance date on the citation, an oral or written request to  
65 participate in a course under this subsection (3).

66           2. The court shall withhold acceptance of the  
67 plea and defer sentencing in order to allow the eligible defendant  
68 ninety (90) days to successfully complete not less than four (4)  
69 hours of a court-approved traffic safety violator course at the  
70 cost of the defendant. Upon proof of successful completion  
71 entered with the court, the court shall dismiss the prosecution  
72 and direct that the case be closed. The only record maintained  
73 thereafter shall be the nonpublic record required under Section  
74 63-9-17 solely for use by the courts in determining eligibility  
75 under this subsection (3).

76           (ii) If a person pleads not guilty to a  
77 misdemeanor offense under any of the provisions of Chapter 3, 5 or  
78 7 of this title but is convicted, and the person meets all the  
79 requirements under paragraph (a) of this subsection, upon request  
80 of the defendant the court shall suspend the sentence for such  
81 offense to allow the defendant forty-five (45) days to  
82 successfully complete not less than four (4) hours of a  
83 court-approved traffic safety violator course at his own cost.  
84 Upon successful completion by the defendant of the course, the  
85 court shall set the conviction aside, dismiss the prosecution and  
86 direct that the case be closed. The court on its own motion shall  
87 expunge the record of the conviction, and the only record  
88 maintained thereafter shall be the nonpublic record required under  
89 Section 63-9-17 solely for use by the courts in determining an  
90 offender's eligibility under this subsection (3).

91           (c) An out-of-state resident shall be allowed to  
92 complete a substantially similar program in his home state,  
93 province or country provided the requirements of this subsection  
94 (3) are met, except that the necessary valid driver's license or  
95 permit shall be one issued by the home jurisdiction.

96           (d) A court shall not approve a traffic safety violator  
97 course under this subsection (3) that does not supply at least  
98 four (4) hours of instruction, an instructor's manual setting  
99 forth an appropriate curriculum, student workbooks, some  
100 scientifically verifiable analysis of the effectiveness of the  
101 curriculum and provide minimum qualifications for instructors.

102           (e) A court shall inform a defendant making inquiry or  
103 entering a personal appearance of the provisions of this  
104 subsection (3).

105           (f) The Department of Public Safety shall cause notice  
106 of the provisions of this subsection (3) to be available on its  
107 official website.

108           (g) Failure of a defendant to elect to come under the  
109 provisions of this subsection (3) for whatever reason, in and of  
110 itself, shall not invalidate a conviction.

111           (h) No employee of the sentencing court shall  
112 personally benefit from a defendant's attendance of a traffic  
113 safety violator course. Violation of this prohibition shall  
114 result in termination of employment.

115           (i) The additional fee of Ten Dollars (\$10.00) imposed  
116 under this subsection (3) shall be forwarded by the court clerk to  
117 the State Treasurer for deposit into a special fund created in the  
118 State Treasury. Monies in the special fund may be expended by the  
119 Department of Public Safety, upon legislative appropriation, to  
120 defray the costs incurred by the department in maintaining the  
121 nonpublic record of persons who are eligible for participation  
122 under the provisions of this subsection (3).

123       \* \* \*

124       **SECTION 2.** Section 63-9-17, Mississippi Code of 1972, is  
125 amended as follows:

126       63-9-17. (1) Every court shall keep a full record of the  
127 proceedings of every case in which a person is charged with any

128 violation of law regulating the operation of vehicles on the  
129 highways, streets or roads of this state.

130 (2) Unless otherwise sooner required by law, within  
131 forty-five (45) days after the conviction of a person upon a  
132 charge of violating any law regulating the operation of vehicles  
133 on the highways, streets or roads of this state, every court in  
134 which such conviction was had shall prepare and immediately  
135 forward to the Department of Public Safety an abstract of the  
136 record of said court covering the case in which said person was so  
137 convicted, which abstract must be certified by the person so  
138 authorized to prepare the same to be true and correct.

139 (3) Said abstract must be made upon a form approved by the  
140 Department of Public Safety, and shall include the name and  
141 address of the party charged, the registration number of the  
142 vehicle involved, the nature of the offense, the date of hearing,  
143 the plea, the judgment, and if the fine was satisfied by  
144 prepayment or appearance bond forfeiture, and the amount of the  
145 fine or forfeiture, as the case may be.

146 (4) Every court shall also forward a like report to the  
147 Department of Public Safety upon the conviction of any person of  
148 manslaughter or other felony in the commission of which a vehicle  
149 was used.

150 (5) Every court shall also forward a like report to the  
151 Department of Public Safety after the satisfactory completion by a  
152 defendant of an approved traffic safety violator course under  
153 Section 63-9-11, and the department shall make and maintain a  
154 private, nonpublic record to be kept for a period of three (3)  
155 years. The record shall be solely for the use of the courts in  
156 determining eligibility under Section 63-9-11, as a first-time  
157 offender, and shall not constitute a criminal record for the  
158 purpose of private or administrative inquiry. Reports forwarded  
159 to the Department of Public Safety under this subsection shall be

160 exempt from the provisions of the Mississippi Public Records Act  
161 of 1983. \* \* \*

162 (6) The failure by refusal or neglect of any such judicial  
163 officer to comply with any of the requirements of this section  
164 shall constitute misconduct in office and shall be grounds for  
165 removal therefrom.

166 (7) The Department of Public Safety shall keep copies of all  
167 abstracts received hereunder for a period of three (3) years at  
168 its main office and the same shall be open to public inspection  
169 during reasonable business hours. This subsection shall not apply  
170 to nonpublic records maintained solely for the use of the courts  
171 in determining offender eligibility.

172 **SECTION 3.** This act shall take effect and be in force from  
173 and after July 1, 2004.