

By: Representative Robinson (84th)

To: Judiciary A

HOUSE BILL NO. 351

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE THE DEATH OF AN UNBORN FETUS IN DUI MANSLAUGHTER; AND
3 FOR RELATED PURPOSES.

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

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

7 63-11-30. (1) It is unlawful for any person to drive or
8 otherwise operate a vehicle within this state who (a) is under the
9 influence of intoxicating liquor; (b) is under the influence of
10 any other substance which has impaired such person's ability to
11 operate a motor vehicle; (c) has an alcohol concentration of eight
12 one-hundredths percent (.08%) or more for persons who are above
13 the legal age to purchase alcoholic beverages under state law, or
14 two one-hundredths percent (.02%) or more for persons who are
15 below the legal age to purchase alcoholic beverages under state
16 law, in the person's blood based upon grams of alcohol per one
17 hundred (100) milliliters of blood or grams of alcohol per two
18 hundred ten (210) liters of breath as shown by a chemical analysis
19 of such person's breath, blood or urine administered as authorized
20 by this chapter; (d) is under the influence of any drug or
21 controlled substance, the possession of which is unlawful under
22 the Mississippi Controlled Substances Law; or (e) has an alcohol
23 concentration of four one-hundredths percent (.04%) or more in the
24 person's blood, based upon grams of alcohol per one hundred (100)
25 milliliters of blood or grams of alcohol per two hundred ten (210)
26 liters of breath as shown by a chemical analysis of such person's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

191 (.02%) or more, but lower than eight one-hundredths percent
192 (.08%). If such person's blood alcohol concentration is eight
193 one-hundredths percent (.08%) or more, the provisions of
194 subsection (2) shall apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

354 shall be imposed upon conviction for a violation of subsection (1)
355 of this section.

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

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

370 (10) Suspension of driving privileges for any person
371 convicted of violations of Section 63-11-30(1) shall run
372 consecutively.

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

375 **SECTION 2.** This act shall take effect and be in force from
376 and after July 1, 2004.