

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 566

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE MINIMUM PENALTY FOR FIRST AND SECOND DUI OFFENSES IF
3 BLOOD ALCOHOL CONCENTRATION IN .15% OR MORE; AND FOR RELATED
4 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) or not less than Six Hundred
36 Dollars (\$600.00) if the chemical test revealed a blood alcohol
37 concentration of fifteen one-hundredths percent (.15%) or more,
38 nor more than One Thousand Dollars (\$1,000.00), or imprisoned for
39 not more than forty-eight (48) hours in jail or both; and the
40 court shall order such person to attend and complete an alcohol
41 safety education program as provided in Section 63-11-32. The
42 court may substitute attendance at a victim impact panel instead
43 of forty-eight (48) hours in jail. In addition, the Department of
44 Public Safety, the Commissioner of Public Safety or his duly
45 authorized agent shall, after conviction and upon receipt of the
46 court abstract, suspend the driver's license and driving
47 privileges of such person for a period of not less than ninety
48 (90) days and until such person attends and successfully completes
49 an alcohol safety education program as herein provided; provided,
50 however, in no event shall such period of suspension exceed one
51 (1) year. Commercial driving privileges shall be suspended as
52 provided in Section 63-1-83.

53 The circuit court having jurisdiction in the county in which
54 the conviction was had or the circuit court of the person's county
55 of residence may reduce the suspension of driving privileges under
56 Section 63-11-30(2)(a) if the denial of which would constitute a
57 hardship on the offender, except that no court may issue such an
58 order reducing the suspension of driving privileges under this
59 subsection until thirty (30) days have elapsed from the effective
60 date of the suspension. Hardships shall only apply to first

61 offenses under Section 63-11-30(1), and shall not apply to second,
62 third or subsequent convictions of any person violating subsection
63 (1) of this section. A reduction of suspension on the basis of
64 hardship shall not be available to any person who refused to
65 submit to a chemical test upon the request of a law enforcement
66 officer as provided in Section 63-11-5. When the petition is
67 filed, such person shall pay to the circuit clerk of the court
68 where the petition is filed a fee of Fifty Dollars (\$50.00), which
69 shall be deposited into the State General Fund to the credit of a
70 special fund hereby created in the State Treasury to be used for
71 alcohol or drug abuse treatment and education, upon appropriation
72 by the Legislature. This fee shall be in addition to any other
73 court costs or fees required for the filing of petitions.

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

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

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

98 (i) Continue his employment;

99 (ii) Continue attending school or an educational
100 institution; or

101 (iii) Obtain necessary medical care.

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

105 (b) Except as otherwise provided in subsection (3),
106 upon any second conviction of any person violating subsection (1)
107 of this section, the offenses being committed within a period of
108 five (5) years, such person shall be fined not less than Six
109 Hundred Dollars (\$600.00) or not less than One Thousand Dollars
110 (\$1,000.00) if the chemical test revealed a blood alcohol
111 concentration of fifteen one-hundredths percent (.15%) or more,
112 nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall
113 be imprisoned not less than five (5) days nor more than one (1)
114 year and sentenced to community service work for not less than ten
115 (10) days nor more than one (1) year. The minimum penalties shall
116 not be suspended or reduced by the court and no prosecutor shall
117 offer any suspension or sentence reduction as part of a plea
118 bargain. Except as may otherwise be provided by paragraph (d) of
119 this subsection, the Commissioner of Public Safety shall suspend
120 the driver's license of such person for two (2) years. Suspension
121 of a commercial driver's license shall be governed by Section
122 63-1-83. Upon any second conviction as described in this
123 paragraph, the court shall ascertain whether the defendant is
124 married, and if the defendant is married shall obtain the name and
125 address of the defendant's spouse; the clerk of the court shall

126 submit this information to the Department of Public Safety.
127 Further, the commissioner shall notify in writing, by certified
128 mail, return receipt requested, the owner of the vehicle and the
129 spouse, if any, of the person convicted of the second violation of
130 the possibility of forfeiture of the vehicle if such person is
131 convicted of a third violation of subsection (1) of this section.
132 The owner of the vehicle and the spouse shall be considered
133 notified under this paragraph if the notice is deposited in the
134 United States mail and any claim that the notice was not in fact
135 received by the addressee shall not affect a subsequent forfeiture
136 proceeding.

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

140 (c) Except as otherwise provided in subsection (3), for
141 any third or subsequent conviction of any person violating
142 subsection (1) of this section, the offenses being committed
143 within a period of five (5) years, such person shall be guilty of
144 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
145 nor more than Five Thousand Dollars (\$5,000.00), shall be
146 imprisoned not less than one (1) year nor more than five (5) years
147 in the State Penitentiary. The minimum penalties shall not be
148 suspended or reduced by the court and no prosecutor shall offer
149 any suspension or sentence reduction as part of a plea bargain.
150 The law enforcement agency shall seize the vehicle operated by any
151 person charged with a third or subsequent violation of subsection
152 (1) of this section, if such convicted person was driving the
153 vehicle at the time the offense was committed. Such vehicle may
154 be forfeited in the manner provided by Sections 63-11-49 through
155 63-11-53. Except as may otherwise be provided by paragraph (e) of
156 this subsection, the Commissioner of Public Safety shall suspend
157 the driver's license of such person for five (5) years. The

158 suspension of a commercial driver's license shall be governed by
159 Section 63-1-83.

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

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

186 (f) The Department of Public Safety shall promulgate
187 rules and regulations for the use of interlock ignition devices as
188 provided in Section 63-11-31 and consistent with the provisions
189 therein. Such rules and regulations shall provide for the
190 calibration of such devices and shall provide that the cost of the

191 use of such systems shall be borne by the offender. The
192 Department of Public Safety shall approve which vendors of such
193 devices shall be used to furnish such systems.

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

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

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

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

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

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

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

- 257 (i) Continue his employment;
258 (ii) Continue attending school or an educational
259 institution; or
260 (iii) Obtain necessary medical care.

261 Proof of the hardship shall be established by clear and
262 convincing evidence which shall be supported by independent
263 documentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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