

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 575

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THAT SECOND OR SUBSEQUENT DUI SENTENCES SHALL NOT BE
3 REDUCED; AND 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 sentence and penalties for a second offense shall not be
110 suspended or reduced by the court and no prosecutor shall offer
111 any suspension or sentence reduction as part of a plea bargain.
112 Except as may otherwise be provided by paragraph (d) of this
113 subsection, the Commissioner of Public Safety shall suspend the
114 driver's license of such person for two (2) years. Suspension of
115 a commercial driver's license shall be governed by Section
116 63-1-83. Upon any second conviction as described in this
117 paragraph, the court shall ascertain whether the defendant is
118 married, and if the defendant is married shall obtain the name and
119 address of the defendant's spouse; the clerk of the court shall
120 submit this information to the Department of Public Safety.
121 Further, the commissioner shall notify in writing, by certified
122 mail, return receipt requested, the owner of the vehicle and the
123 spouse, if any, of the person convicted of the second violation of
124 the possibility of forfeiture of the vehicle if such person is

125 convicted of a third violation of subsection (1) of this section.
126 The owner of the vehicle and the spouse shall be considered
127 notified under this paragraph if the notice is deposited in the
128 United States mail and any claim that the notice was not in fact
129 received by the addressee shall not affect a subsequent forfeiture
130 proceeding.

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

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

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

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

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

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

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

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

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

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

224 alcohol or drug abuse treatment and education, upon appropriation
225 by the Legislature. This fee shall be in addition to any other
226 court costs or fees required for the filing of petitions.

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

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

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

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

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

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

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

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

286 (f) Any person under the age of twenty-one (21) years
287 convicted of a third or subsequent violation of subsection (1) of

288 this section shall complete treatment of an alcohol and/or drug
289 abuse program at a site certified by the Department of Mental
290 Health.

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

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

314 The Commissioner of Public Safety or his authorized agent
315 shall suspend the driver's license or permit to drive or deny the
316 issuance of a license or permit to such person as provided for
317 first, second and third or subsequent offenders in subsection (2)
318 of this section. Such suspension shall be in addition to any
319 suspension imposed pursuant to subsection (1) of Section 63-11-23.
320 The minimum suspension imposed under this subsection shall not be

321 reduced and no prosecutor is authorized to offer a reduction of
322 such suspension as part of a plea bargain.

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

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

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

354 first, second, third or subsequent offense and the penalty that
355 shall be imposed upon conviction for a violation of subsection (1)
356 of this section.

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

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

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

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

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