

By: Representative Fleming

To: Transportation

HOUSE BILL NO. 685

1 AN ACT TO AMEND SECTIONS 63-9-11 AND 63-9-17, MISSISSIPPI  
2 CODE OF 1972, TO REMOVE THE REPEALER ON THE TRAFFIC SAFETY  
3 VIOLATOR COURSE SENTENCE ALTERNATIVE; AND FOR RELATED PURPOSES.

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

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

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

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

24 (3) (a) Whenever a person not covered under Section 63-1-55  
25 is charged with a misdemeanor violation of any of the provisions  
26 of Chapter 3, 5 or 7 of this title, the person shall be eligible  
27 to participate in not less than four (4) hours of a traffic safety

28 violator course and thereby have no record of the violation on the  
29 person's driving record if the person meets all the following  
30 conditions:

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

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

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

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

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

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

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

57 (b) (i) 1. An eligible defendant may enter a plea of  
58 nolo contendere or guilty in person or in writing and present to  
59 the court, in person or by mail postmarked on or before the

60 appearance date on the citation, an oral or written request to  
61 participate in a course under this subsection (3).

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

72           (ii) If a person pleads not guilty to a  
73 misdemeanor offense under any of the provisions of Chapter 3, 5 or  
74 7 of this title but is convicted, and the person meets all the  
75 requirements under paragraph (a) of this subsection, upon request  
76 of the defendant the court shall suspend the sentence for such  
77 offense to allow the defendant forty-five (45) days to  
78 successfully complete not less than four (4) hours of a  
79 court-approved traffic safety violator course at his own cost.  
80 Upon successful completion by the defendant of the course, the  
81 court shall set the conviction aside, dismiss the prosecution and  
82 direct that the case be closed. The court on its own motion shall  
83 expunge the record of the conviction, and the only record  
84 maintained thereafter shall be the nonpublic record required under  
85 Section 63-9-17 solely for use by the courts in determining an  
86 offender's eligibility under this subsection (3).

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

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

98 (e) A court shall inform a defendant making inquiry or  
99 entering a personal appearance of the provisions of this  
100 subsection (3).

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

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

107 (h) No employee of the sentencing court shall  
108 personally benefit from a defendant's attendance of a traffic  
109 safety violator course. Violation of this prohibition shall  
110 result in termination of employment.

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

119 \* \* \*

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

122 63-9-17. (1) Every court shall keep a full record of the  
123 proceedings of every case in which a person is charged with any

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

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

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

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

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

156 exempt from the provisions of the Mississippi Public Records Act  
157 of 1983. \* \* \*

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

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

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