

By: Representative Zuber

To: Judiciary A

HOUSE BILL NO. 886

1 AN ACT TO AMEND SECTIONS 63-11-30 AND 63-11-32, MISSISSIPPI
2 CODE OF 1972, TO REVISE PENALTIES FOR THE ZERO TOLERANCE FOR
3 MINORS PROVISIONS OF THE IMPLIED CONSENT LAW; TO REQUIRE PARENTS
4 OR GUARDIANS OF MINORS TO BE PRESENT AT ALL JUDICIAL PROCEEDINGS;
5 TO REQUIRE THE MINOR OR HIS PARENTS OR GUARDIANS TO BE LIABLE FOR
6 COURT COSTS; TO REVISE MASEP REQUIREMENTS AND FEES FOR MINORS; AND
7 FOR RELATED PURPOSES.

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

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

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

30 liters of breath as shown by a chemical analysis of such person's
31 blood, breath or urine, administered as authorized by this chapter
32 for persons operating a commercial motor vehicle.

33 (2) (a) Except as otherwise provided in subsection (3),
34 upon conviction of any person for the first offense of violating
35 subsection (1) of this section where chemical tests provided for
36 under Section 63-11-5 were given, or where chemical test results
37 are not available, such person shall be fined not less than Two
38 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
39 (\$1,000.00), or imprisoned for not more than forty-eight (48)
40 hours in jail or both; and the court shall order such person to
41 attend and complete an alcohol safety education program as
42 provided in Section 63-11-32. The court may substitute attendance
43 at a victim impact panel instead of forty-eight (48) hours in
44 jail. In addition, the Department of Public Safety, the
45 Commissioner of Public Safety or his duly authorized agent shall,
46 after conviction and upon receipt of the court abstract, suspend
47 the driver's license and driving privileges of such person for a
48 period of not less than ninety (90) days and until such person
49 attends and successfully completes an alcohol safety education
50 program as herein provided; provided, however, in no event shall
51 such period of suspension exceed one (1) year. Commercial driving
52 privileges shall be suspended as 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) nor more than One Thousand Five Hundred
110 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
111 days nor more than one (1) year and sentenced to community service
112 work for not less than ten (10) days nor more than one (1) year.
113 The minimum penalties shall not be suspended or reduced by the
114 court and no prosecutor shall offer any suspension or sentence
115 reduction as part of a plea bargain. Except as may otherwise be
116 provided by paragraph (d) of this subsection, the Commissioner of
117 Public Safety shall suspend the driver's license of such person
118 for two (2) years. Suspension of a commercial driver's license
119 shall be governed by Section 63-1-83. Upon any second conviction
120 as described in this paragraph, the court shall ascertain whether
121 the defendant is married, and if the defendant is married shall
122 obtain the name and address of the defendant's spouse; the clerk
123 of the court shall submit this information to the Department of
124 Public Safety. Further, the commissioner shall notify in writing,
125 by certified mail, return receipt requested, the owner of the
126 vehicle and the spouse, if any, of the person convicted of the
127 second violation of the possibility of forfeiture of the vehicle
128 if such person is convicted of a third violation of subsection (1)

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

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

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

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

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

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

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

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

195 (.02%) or more, but lower than eight one-hundredths percent
196 (.08%). If such person's blood alcohol concentration is eight
197 one-hundredths percent (.08%) or more, the provisions of
198 subsection (2) shall apply.

199 (b) Upon conviction of any person under the age of
200 twenty-one (21) years for the first offense of violating
201 subsection (1) of this section where chemical tests provided for
202 under Section 63-11-5 were given, or where chemical test results
203 are not available, such person shall have his driver's license
204 suspended for ninety (90) days, which shall be reported to the
205 Department of Public Safety, and shall be fined Two Hundred Fifty
206 Dollars (\$250.00); and the court shall order such person to attend
207 and complete an alcohol safety education program as provided in
208 Section 63-11-32. The court shall also order such person to
209 perform a minimum of sixteen (16) hours of community service. A
210 probation officer shall monitor the performance of community
211 service. The court may also require attendance at a victim impact
212 panel.

213 The circuit court having jurisdiction in the county in which
214 the conviction was had or the circuit court of the person's county
215 of residence may reduce the suspension of driving privileges under
216 Section 63-11-30(2)(a) if the denial of which would constitute a
217 hardship on the offender, except that no court may issue such an
218 order reducing the suspension of driving privileges under this
219 subsection until thirty (30) days have elapsed from the effective
220 date of the suspension. Hardships shall only apply to first
221 offenses under Section 63-11-30(1), and shall not apply to second,
222 third or subsequent convictions of any person violating subsection
223 (1) of this section. A reduction of suspension on the basis of
224 hardship shall not be available to any person who refused to
225 submit to a chemical test upon the request of a law enforcement
226 officer as provided in Section 63-11-5. When the petition is
227 filed, such person shall pay to the circuit clerk of the court

228 where the petition is filed a fee of Fifty Dollars (\$50.00), which
229 shall be deposited into the State General Fund to the credit of a
230 special fund hereby created in the State Treasury to be used for
231 alcohol or drug abuse treatment and education, upon appropriation
232 by the Legislature. This fee shall be in addition to any other
233 court costs or fees required for the filing of petitions.

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

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

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

- 258 (i) Continue his employment;
- 259 (ii) Continue attending school or an educational
260 institution; or

261 (iii) Obtain necessary medical care.

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

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

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

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

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

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

314 (h) The parents or guardians of any person accused of a
315 violation of this section as a minor under the zero tolerance for
316 minors subsection shall be present at all judicial proceedings
317 involving such minor. The minor and his parents or guardians
318 shall be liable for all court costs involved in such proceedings.

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

326 The Commissioner of Public Safety or his authorized agent
327 shall suspend the driver's license or permit to drive or deny the
328 issuance of a license or permit to such person as provided for
329 first, second and third or subsequent offenders in subsection (2)
330 of this section. Such suspension shall be in addition to any
331 suspension imposed pursuant to subsection (1) of Section 63-11-23.
332 The minimum suspension imposed under this subsection shall not be
333 reduced and no prosecutor is authorized to offer a reduction of
334 such suspension as part of a plea bargain.

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

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

358 of determining the enhanced penalty for any subsequent convictions
359 of violations of subsection (1) of this section.

360 (7) Convictions in other states of violations for driving or
361 operating a vehicle while under the influence of an intoxicating
362 liquor or while under the influence of any other substance that
363 has impaired the person's ability to operate a motor vehicle
364 occurring after July 1, 1992, shall be counted for the purposes of
365 determining if a violation of subsection (1) of this section is a
366 first, second, third or subsequent offense and the penalty that
367 shall be imposed upon conviction for a violation of subsection (1)
368 of this section.

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

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

383 (10) Suspension of driving privileges for any person
384 convicted of violations of Section 63-11-30(1) shall run
385 consecutively.

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

388 **SECTION 2.** Section 63-11-32, Mississippi Code of 1972, is
389 amended as follows:

390 63-11-32. (1) The State Department of Public Safety in
391 conjunction with the Governor's Highway Safety Program, the State
392 Board of Health, or any other state agency or institution shall
393 develop and implement a driver improvement program for persons
394 identified as first offenders convicted of driving while under the
395 influence of intoxicating liquor or another substance which had
396 impaired such person's ability to operate a motor vehicle,
397 including provision for referral to rehabilitation facilities.

398 (2) The program shall consist of a minimum of ten (10) hours
399 of instruction. Each person who participates shall pay a nominal
400 fee to defray a portion of the cost of the program. The program
401 shall consist of a minimum of twelve (12) hours for minors who
402 violate the zero tolerance for minors provision of Section
403 63-11-30 and such minors shall pay a fee of One Hundred Fifty
404 Dollars (\$150.00) to defray the cost of the program.

405 (3) Such assessments as are collected under subsection (2)
406 of Section 99-19-73 shall be deposited in a special fund hereby
407 created in the State Treasury and designated the "Mississippi
408 Alcohol Safety Education Program Fund." Monies deposited in such
409 fund shall be expended by the Board of Trustees of State
410 Institutions of Higher Learning as authorized and appropriated by
411 the Legislature to defray the costs of the Mississippi Alcohol
412 Safety Education Program operated pursuant to the provisions of
413 this section. Any revenue in the fund which is not encumbered at
414 the end of the fiscal year shall lapse to the General Fund.

415 (4) Such assessments as are collected under subsection (2)
416 of Section 99-19-73 shall be deposited in a special fund hereby
417 created in the State Treasury and designated the "Federal-State
418 Alcohol Program Fund." Monies deposited in such fund shall be
419 expended by the Department of Public Safety as authorized and
420 appropriated by the Legislature to defray the costs of alcohol and
421 traffic safety programs. Any revenue in the fund which is not

422 encumbered at the end of the fiscal year shall lapse to the
423 General Fund.

424 (5) Such assessments as are collected under subsection (2)
425 of Section 99-19-73 shall be deposited in a special fund hereby
426 created in the State Treasury and designated the "Mississippi
427 Crime Laboratory Implied Consent Law Fund." Monies deposited in
428 such fund shall be expended by the Department of Public Safety as
429 authorized and appropriated by the Legislature to defray the costs
430 of equipment replacement and operational support of the
431 Mississippi Crime Laboratory relating to enforcement of the
432 Implied Consent Law. Any revenue in the fund which is not
433 encumbered at the end of the fiscal year shall not lapse to the
434 General Fund but shall remain in the fund.

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