

By: Representative Franks

To: Judiciary A

HOUSE BILL NO. 1256

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT A MINOR WHO REFUSES TO SUBMIT TO A BREATH OR  
3 CHEMICAL TEST FOR A SECOND OR SUBSEQUENT IMPLIED CONSENT VIOLATION  
4 SHALL BE CONSIDERED AN ADULT OFFENDER; AND FOR RELATED 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) nor more than One Thousand Dollars  
36 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
37 hours in jail or both; and the court shall order such person to  
38 attend and complete an alcohol safety education program as  
39 provided in Section 63-11-32. The court may substitute attendance  
40 at a victim impact panel instead of forty-eight (48) hours in  
41 jail. In addition, the Department of Public Safety, the  
42 Commissioner of Public Safety or his duly authorized agent shall,  
43 after conviction and upon receipt of the court abstract, suspend  
44 the driver's license and driving privileges of such person for a  
45 period of not less than ninety (90) days and until such person  
46 attends and successfully completes an alcohol safety education  
47 program as herein provided; provided, however, in no event shall  
48 such period of suspension exceed one (1) year. Commercial driving  
49 privileges shall be suspended as provided in Section 63-1-83.

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

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

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

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

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

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

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

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

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

126 of this section. The owner of the vehicle and the spouse shall be  
127 considered notified under this paragraph if the notice is  
128 deposited in the United States mail and any claim that the notice  
129 was not in fact received by the addressee shall not affect a  
130 subsequent forfeiture 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 minimum penalties shall not be  
142 suspended or reduced by the court and no prosecutor shall offer  
143 any suspension or sentence reduction as part of a plea bargain.  
144 The law enforcement agency shall seize the vehicle operated by any  
145 person charged with a third or subsequent violation of subsection  
146 (1) of this section, if such convicted person was driving the  
147 vehicle at the time the offense was committed. Such vehicle may  
148 be forfeited in the manner provided by Sections 63-11-49 through  
149 63-11-53. Except as may otherwise be provided by paragraph (e) of  
150 this subsection, the Commissioner of Public Safety shall suspend  
151 the driver's license of such person for five (5) years. The  
152 suspension of a commercial driver's license shall be governed by  
153 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 (h) Any person under the age of twenty-one (21) years  
308 who refuses to submit to a breath test or a chemical test for a  
309 second or subsequent offense shall not be subject to this  
310 subsection (3) but shall be considered an adult offender.

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

318 The Commissioner of Public Safety or his authorized agent  
319 shall suspend the driver's license or permit to drive or deny the  
320 issuance of a license or permit to such person as provided for  
321 first, second and third or subsequent offenders in subsection (2)  
322 of this section. Such suspension shall be in addition to any  
323 suspension imposed pursuant to subsection (1) of Section 63-11-23.

324 The minimum suspension imposed under this subsection shall not be  
325 reduced and no prosecutor is authorized to offer a reduction of  
326 such suspension as part of a plea bargain.

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

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

352 (7) Convictions in other states of violations for driving or  
353 operating a vehicle while under the influence of an intoxicating  
354 liquor or while under the influence of any other substance that  
355 has impaired the person's ability to operate a motor vehicle  
356 occurring after July 1, 1992, shall be counted for the purposes of

357 determining if a violation of subsection (1) of this section is a  
358 first, second, third or subsequent offense and the penalty that  
359 shall be imposed upon conviction for a violation of subsection (1)  
360 of this section.

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

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

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

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

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