

By: Senator(s) Chamberlin, Chaney, King, Williamson, Carmichael, Tollison, Dawkins, Flowers, Kirby, Browning, Moffatt, Michel, Burton, Hyde-Smith, Clarke

To: Judiciary, Division A

SENATE BILL NO. 2198

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE AN ENHANCED PENALTY FOR DRIVING UNDER THE INFLUENCE
3 WHILE A CHILD OF A CERTAIN AGE IS A PASSENGER; 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) 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. Provided, however, any person convicted for a first offense
42 when a child aged eight (8) years or younger was a passenger in
43 the vehicle at the time of the violation shall be sentenced to not
44 less than forty-eight (48) hours nor more than thirty (30) days in
45 jail and a fine of not less than Five Hundred Dollars (\$500.00)
46 nor more than One Thousand Five Hundred Dollars (\$1,500.00). In
47 addition, the Department of Public Safety, the Commissioner of
48 Public Safety or his duly authorized agent shall, after conviction
49 and upon receipt of the court abstract, suspend the driver's
50 license and driving privileges of such person for a period of not
51 less than ninety (90) days and until such person attends and
52 successfully completes an alcohol safety education program as
53 herein provided; provided, however, in no event shall such period
54 of suspension exceed one (1) year. Commercial driving privileges
55 shall be suspended as provided in Section 63-1-83.

56 The circuit court having jurisdiction in the county in which
57 the conviction was had or the circuit court of the person's county
58 of residence may reduce the suspension of driving privileges under
59 Section 63-11-30(2)(a) if the denial of which would constitute a
60 hardship on the offender, except that no court may issue such an

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

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

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

94 address, street address, social security number and driver's
95 license number of the petitioner.

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

101 (i) Continue his employment;

102 (ii) Continue attending school or an educational
103 institution; or

104 (iii) Obtain necessary medical care.

105 Proof of the hardship shall be established by clear and
106 convincing evidence which shall be supported by independent
107 documentation.

108 (b) Except as otherwise provided in subsection (3),
109 upon any second conviction of any person violating subsection (1)
110 of this section, the offenses being committed within a period of
111 five (5) years, such person shall be fined not less than Six
112 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
113 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
114 days nor more than one (1) year and sentenced to community service
115 work for not less than ten (10) days nor more than one (1) year.
116 Any person convicted of a second offense when a child aged eight
117 (8) years or younger was a passenger in the vehicle at the time of
118 the second violation, regardless of whether such a child was
119 present for the first offense, shall be sentenced not less than
120 fifteen (15) days nor more than one (1) year in jail, and shall be
121 fined not less than One Thousand Dollars (\$1,000.00) nor more than
122 Two Thousand Dollars (\$2,000.00). The minimum penalties shall not
123 be suspended or reduced by the court and no prosecutor shall offer
124 any suspension or sentence reduction as part of a plea bargain.

125 Except as may otherwise be provided by paragraph (d) of this
126 subsection, the Commissioner of Public Safety shall suspend the

127 driver's license of such person for two (2) years. Suspension of
128 a commercial driver's license shall be governed by Section
129 63-1-83. Upon any second conviction as described in this
130 paragraph, the court shall ascertain whether the defendant is
131 married, and if the defendant is married shall obtain the name and
132 address of the defendant's spouse; the clerk of the court shall
133 submit this information to the Department of Public Safety.
134 Further, the commissioner shall notify in writing, by certified
135 mail, return receipt requested, the owner of the vehicle and the
136 spouse, if any, of the person convicted of the second violation of
137 the possibility of forfeiture of the vehicle if such person is
138 convicted of a third violation of subsection (1) of this section.
139 The owner of the vehicle and the spouse shall be considered
140 notified under this paragraph if the notice is deposited in the
141 United States mail and any claim that the notice was not in fact
142 received by the addressee shall not affect a subsequent forfeiture
143 proceeding.

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

147 (c) Except as otherwise provided in subsection (3), for
148 any third or subsequent conviction of any person violating
149 subsection (1) of this section, the offenses being committed
150 within a period of five (5) years, such person shall be guilty of
151 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
152 nor more than Five Thousand Dollars (\$5,000.00), shall be
153 imprisoned not less than one (1) year nor more than five (5) years
154 in the State Penitentiary. Any person convicted of a third or
155 subsequent offense when a child aged eight (8) years or younger
156 was a passenger in the vehicle at the time of the third or
157 subsequent violation, regardless of whether such a child was
158 present for any prior offense, shall be sentenced to not less than
159 one (1) nor more than seven (7) years and shall be fined not less

160 than Three Thousand Dollars (\$3,000.00) nor more than Seven
161 Thousand Five Hundred Dollars (\$7,500.00). The minimum penalties
162 shall not be suspended or reduced by the court and no prosecutor
163 shall offer any suspension or sentence reduction as part of a plea
164 bargain. The law enforcement agency shall seize the vehicle
165 operated by any person charged with a third or subsequent
166 violation of subsection (1) of this section, if such convicted
167 person was driving the vehicle at the time the offense was
168 committed. Such vehicle may be forfeited in the manner provided
169 by Sections 63-11-49 through 63-11-53. Except as may otherwise be
170 provided by paragraph (e) of this subsection, the Commissioner of
171 Public Safety shall suspend the driver's license of such person
172 for five (5) years. The suspension of a commercial driver's
173 license shall be governed by Section 63-1-83.

174 (d) Except as otherwise provided in subsection (3), any
175 person convicted of a second violation of subsection (1) of this
176 section shall receive an in-depth diagnostic assessment, and if as
177 a result of such assessment is determined to be in need of
178 treatment of his alcohol and/or drug abuse problem, such person
179 shall successfully complete treatment of his alcohol and/or drug
180 abuse problem at a program site certified by the Department of
181 Mental Health. Such person shall be eligible for reinstatement of
182 his driving privileges upon the successful completion of such
183 treatment after a period of one (1) year after such person's
184 driver's license is suspended. Each person who receives a
185 diagnostic assessment shall pay a fee representing the cost of
186 such assessment. Each person who participates in a treatment
187 program shall pay a fee representing the cost of such treatment.

188 (e) Except as otherwise provided in subsection (3), any
189 person convicted of a third or subsequent violation of subsection
190 (1) of this section shall receive an in-depth diagnostic
191 assessment, and if as a result of such assessment is determined to
192 be in need of treatment of his alcohol and/or drug abuse problem,

193 such person shall enter an alcohol and/or drug abuse program
194 approved by the Department of Mental Health for treatment of such
195 person's alcohol and/or drug abuse problem. If such person
196 successfully completes such treatment, such person shall be
197 eligible for reinstatement of his driving privileges after a
198 period of three (3) years after such person's driver's license is
199 suspended.

200 (f) The Department of Public Safety shall promulgate
201 rules and regulations for the use of interlock ignition devices as
202 provided in Section 63-11-31 and consistent with the provisions
203 therein. Such rules and regulations shall provide for the
204 calibration of such devices and shall provide that the cost of the
205 use of such systems shall be borne by the offender. The
206 Department of Public Safety shall approve which vendors of such
207 devices shall be used to furnish such systems.

208 (3) (a) This subsection shall be known and may be cited as
209 Zero Tolerance for Minors. The provisions of this subsection
210 shall apply only when a person under the age of twenty-one (21)
211 years has a blood alcohol concentration two one-hundredths percent
212 (.02%) or more, but lower than eight one-hundredths percent
213 (.08%). If such person's blood alcohol concentration is eight
214 one-hundredths percent (.08%) or more, the provisions of
215 subsection (2) shall apply.

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

226 The circuit court having jurisdiction in the county in which
227 the conviction was had or the circuit court of the person's county
228 of residence may reduce the suspension of driving privileges under
229 Section 63-11-30(2)(a) if the denial of which would constitute a
230 hardship on the offender, except that no court may issue such an
231 order reducing the suspension of driving privileges under this
232 subsection until thirty (30) days have elapsed from the effective
233 date of the suspension. Hardships shall only apply to first
234 offenses under Section 63-11-30(1), and shall not apply to second,
235 third or subsequent convictions of any person violating subsection
236 (1) of this section. A reduction of suspension on the basis of
237 hardship shall not be available to any person who refused to
238 submit to a chemical test upon the request of a law enforcement
239 officer as provided in Section 63-11-5. When the petition is
240 filed, such person shall pay to the circuit clerk of the court
241 where the petition is filed a fee of Fifty Dollars (\$50.00), which
242 shall be deposited into the State General Fund to the credit of a
243 special fund hereby created in the State Treasury to be used for
244 alcohol or drug abuse treatment and education, upon appropriation
245 by the Legislature. This fee shall be in addition to any other
246 court costs or fees required for the filing of petitions.

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

255 The order entered under the provisions of this subsection
256 shall contain the specific grounds upon which hardship was
257 determined, and shall order the petitioner to attend and complete
258 an alcohol safety education program as provided in Section

259 63-11-32. A certified copy of such order shall be delivered to
260 the Commissioner of Public Safety by the clerk of the court within
261 five (5) days of the entry of the order. The certified copy of
262 such order shall contain information which will identify the
263 petitioner, including, but not limited to, the name, mailing
264 address, street address, social security number and driver's
265 license number of the petitioner.

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

- 271 (i) Continue his employment;
- 272 (ii) Continue attending school or an educational
273 institution; or
- 274 (iii) Obtain necessary medical care.

275 Proof of the hardship shall be established by clear and
276 convincing evidence which shall be supported by independent
277 documentation.

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

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

291 (e) Any person under the age of twenty-one (21) years
292 convicted of a second violation of subsection (1) of this section,
293 may have the period that his driver's license is suspended reduced
294 if such person receives an in-depth diagnostic assessment, and as
295 a result of such assessment is determined to be in need of
296 treatment of his alcohol and/or drug abuse problem and
297 successfully completes treatment of his alcohol and/or drug abuse
298 problem at a program site certified by the Department of Mental
299 Health. Such person shall be eligible for reinstatement of his
300 driving privileges upon the successful completion of such
301 treatment after a period of six (6) months after such person's
302 driver's license is suspended. Each person who receives a
303 diagnostic assessment shall pay a fee representing the cost of
304 such assessment. Each person who participates in a treatment
305 program shall pay a fee representing the cost of such treatment.

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

311 (g) The court shall have the discretion to rule that a
312 first offense of this subsection by a person under the age of
313 twenty-one (21) years shall be nonadjudicated. Such person shall
314 be eligible for nonadjudication only once. The Department of
315 Public Safety shall maintain a confidential registry of all cases
316 which are nonadjudicated as provided in this paragraph. A judge
317 who rules that a case is nonadjudicated shall forward such ruling
318 to the Department of Public Safety. Judges and prosecutors
319 involved in implied consent violations shall have access to the
320 confidential registry for the purpose of determining
321 nonadjudication eligibility. A record of a person who has been
322 nonadjudicated shall be maintained for five (5) years or until
323 such person reaches the age of twenty-one (21) years. Any person

324 whose confidential record has been disclosed in violation of this
325 paragraph shall have a civil cause of action against the person
326 and/or agency responsible for such disclosure.

327 (4) In addition to the other penalties provided in this
328 section, every person refusing a law enforcement officer's request
329 to submit to a chemical test of his breath as provided in this
330 chapter, or who was unconscious at the time of a chemical test and
331 refused to consent to the introduction of the results of such test
332 in any prosecution, shall suffer an additional suspension of
333 driving privileges as follows:

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

343 (5) Every person who operates any motor vehicle in violation
344 of the provisions of subsection (1) of this section and who in a
345 negligent manner causes the death of another or mutilates,
346 disfigures, permanently disables or destroys the tongue, eye, lip,
347 nose or any other limb, organ or member of another shall, upon
348 conviction, be guilty of a felony and shall be committed to the
349 custody of the Mississippi Department of Corrections for a period
350 of time of not less than five (5) years and not to exceed
351 twenty-five (25) years.

352 (6) Upon conviction of any violation of subsection (1) of
353 this section, the trial judge shall sign in the place provided on
354 the traffic ticket, citation or affidavit stating that the person
355 arrested either employed an attorney or waived his right to an
356 attorney after having been properly advised. If the person

357 arrested employed an attorney, the name, address and telephone
358 number of the attorney shall be written on the ticket, citation or
359 affidavit. The judge shall cause a copy of the traffic ticket,
360 citation or affidavit, and any other pertinent documents
361 concerning the conviction, to be sent to the Commissioner of
362 Public Safety. A copy of the traffic ticket, citation or
363 affidavit and any other pertinent documents, having been attested
364 as true and correct by the Commissioner of Public Safety, or his
365 designee, shall be sufficient proof of the conviction for purposes
366 of determining the enhanced penalty for any subsequent convictions
367 of violations of subsection (1) of this section.

368 (7) Convictions in other states of violations for driving or
369 operating a vehicle while under the influence of an intoxicating
370 liquor or while under the influence of any other substance that
371 has impaired the person's ability to operate a motor vehicle
372 occurring after July 1, 1992, shall be counted for the purposes of
373 determining if a violation of subsection (1) of this section is a
374 first, second, third or subsequent offense and the penalty that
375 shall be imposed upon conviction for a violation of subsection (1)
376 of this section.

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

387 (9) Any person under the legal age to obtain a license to
388 operate a motor vehicle convicted under this section shall not be

389 eligible to receive such license until the person reaches the age
390 of eighteen (18) years.

391 (10) Suspension of driving privileges for any person
392 convicted of violations of Section 63-11-30(1) shall run
393 consecutively.

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

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