

By: Senator(s) Jackson (32nd)

To: Judiciary, Division A

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2206

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THOSE CONVICTED OF FELONY DUI WHERE NO SERIOUS  
3 INJURY OR DEATH RESULTS FROM THE CHARGED INCIDENT MAY SERVE ANY  
4 PRISON TIME IMPOSED IN A COUNTY JAIL AT THE DISCRETION OF THE  
5 COURT; AND FOR RELATED PURPOSES.

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

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

9 63-11-30. (1) It is unlawful for any person to drive or  
10 otherwise operate a vehicle within this state who (a) is under the  
11 influence of intoxicating liquor; (b) is under the influence of  
12 any other substance which has impaired such person's ability to  
13 operate a motor vehicle; (c) has an alcohol concentration of eight  
14 one-hundredths percent (.08%) or more for persons who are above  
15 the legal age to purchase alcoholic beverages under state law, or  
16 two one-hundredths percent (.02%) or more for persons who are  
17 below the legal age to purchase alcoholic beverages under state  
18 law, in the person's blood based upon grams of alcohol per one  
19 hundred (100) milliliters of blood or grams of alcohol per two  
20 hundred ten (210) liters of breath as shown by a chemical analysis  
21 of such person's breath, blood or urine administered as authorized  
22 by this chapter; (d) is under the influence of any drug or  
23 controlled substance, the possession of which is unlawful under  
24 the Mississippi Controlled Substances Law; or (e) has an alcohol  
25 concentration of four one-hundredths percent (.04%) or more in the  
26 person's blood, based upon grams of alcohol per one hundred (100)  
27 milliliters of blood or grams of alcohol per two hundred ten (210)  
28 liters of breath as shown by a chemical analysis of such person's

29 blood, breath or urine, administered as authorized by this chapter  
30 for persons operating a commercial motor vehicle.

31 (2) (a) Except as otherwise provided in subsection (3),  
32 upon conviction of any person for the first offense of violating  
33 subsection (1) of this section where chemical tests provided for  
34 under Section 63-11-5 were given, or where chemical test results  
35 are not available, such person shall be fined not less than Two  
36 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
37 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
38 hours in jail or both; and the court shall order such person to  
39 attend and complete an alcohol safety education program as  
40 provided in Section 63-11-32. The court may substitute attendance  
41 at a victim impact panel instead of forty-eight (48) hours in  
42 jail. In addition, the Department of Public Safety, the  
43 Commissioner of Public Safety or his duly authorized agent shall,  
44 after conviction and upon receipt of the court abstract, suspend  
45 the driver's license and driving privileges of such person for a  
46 period of not less than ninety (90) days and until such person  
47 attends and successfully completes an alcohol safety education  
48 program as herein provided; provided, however, in no event shall  
49 such period of suspension exceed one (1) year. Commercial driving  
50 privileges shall be suspended as provided in Section 63-1-83.

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

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

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

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

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

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

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

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

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

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

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

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

159           (d) Except as otherwise provided in subsection (3), any  
160 person convicted of a second violation of subsection (1) of this  
161 section shall receive an in-depth diagnostic assessment, and if as  
162 a result of such assessment is determined to be in need of  
163 treatment of his alcohol and/or drug abuse problem, such person  
164 shall successfully complete treatment of his alcohol and/or drug  
165 abuse problem at a program site certified by the Department of  
166 Mental Health. Such person shall be eligible for reinstatement of  
167 his driving privileges upon the successful completion of such  
168 treatment after a period of one (1) year after such person's  
169 driver's license is suspended. Each person who receives a  
170 diagnostic assessment shall pay a fee representing the cost of  
171 such assessment. Each person who participates in a treatment  
172 program shall pay a fee representing the cost of such treatment.

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

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

191 Department of Public Safety shall approve which vendors of such  
192 devices shall be used to furnish such systems.

193 (3) (a) This subsection shall be known and may be cited as  
194 Zero Tolerance for Minors. The provisions of this subsection  
195 shall apply only when a person under the age of twenty-one (21)  
196 years has a blood alcohol concentration two one-hundredths percent  
197 (.02%) or more, but lower than eight one-hundredths percent  
198 (.08%). If such person's blood alcohol concentration is eight  
199 one-hundredths percent (.08%) or more, the provisions of  
200 subsection (2) shall apply.

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

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

224 officer as provided in Section 63-11-5. When the petition is  
225 filed, such person shall pay to the circuit clerk of the court  
226 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
227 shall be deposited into the State General Fund to the credit of a  
228 special fund hereby created in the State Treasury to be used for  
229 alcohol or drug abuse treatment and education, upon appropriation  
230 by the Legislature. This fee shall be in addition to any other  
231 court costs or fees required for the filing of petitions.

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

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

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

256 (i) Continue his employment;



257                   (ii) Continue attending school or an educational  
258 institution; or

259                   (iii) Obtain necessary medical care.

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

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

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

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

289 such assessment. Each person who participates in a treatment  
290 program shall pay a fee representing the cost of such treatment.

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

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

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

319 The Commissioner of Public Safety or his authorized agent  
320 shall suspend the driver's license or permit to drive or deny the  
321 issuance of a license or permit to such person as provided for

322 first, second and third or subsequent offenders in subsection (2)  
323 of this section. Such suspension shall be in addition to any  
324 suspension imposed pursuant to subsection (1) of Section 63-11-23.  
325 The minimum suspension imposed under this subsection shall not be  
326 reduced and no prosecutor is authorized to offer a reduction of  
327 such suspension as part of a plea bargain.

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

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

353 (7) Convictions in other states of violations for driving or  
354 operating a vehicle while under the influence of an intoxicating

355 liquor or while under the influence of any other substance that  
356 has impaired the person's ability to operate a motor vehicle  
357 occurring after July 1, 1992, shall be counted for the purposes of  
358 determining if a violation of subsection (1) of this section is a  
359 first, second, third or subsequent offense and the penalty that  
360 shall be imposed upon conviction for a violation of subsection (1)  
361 of this section.

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

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

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

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

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