

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.