

By: Senator(s) Dearing

To: Judiciary, Division B

SENATE BILL NO. 2368

1 AN ACT TO AMEND SECTIONS 63-9-11 AND 63-9-17, MISSISSIPPI
2 CODE OF 1972, TO REPEAL THE SUNSET PROVISIONS FOR THE ADULT
3 TRAFFIC VIOLATOR SAFETY COURSE PROGRAM; AND FOR RELATED PURPOSES.

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

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

7 63-9-11. (1) It is a misdemeanor for any person to violate
8 any of the provisions of Chapter 3, 5 or 7 of this title, unless
9 such violation is by such chapters or other law of this state
10 declared to be a felony.

11 (2) Every person convicted of a misdemeanor for a violation
12 of any of the provisions of such chapters for which another
13 penalty is not provided shall for first conviction thereof be
14 punished by a fine of not more than One Hundred Dollars (\$100.00)
15 or by imprisonment for not more than ten (10) days; for a second
16 such conviction within one (1) year thereafter such person shall
17 be punished by a fine of not more than Two Hundred Dollars
18 (\$200.00) or by imprisonment for not more than twenty (20) days or
19 by both such fine and imprisonment; upon a third or subsequent
20 conviction within one (1) year after the first conviction such
21 person shall be punished by a fine of not more than Five Hundred
22 Dollars (\$500.00) or by imprisonment for not more than six (6)
23 months or by both such fine and imprisonment.

24 (3) (a) Whenever a person not covered under Section 63-1-55
25 is charged with a misdemeanor violation of any of the provisions
26 of Chapter 3, 5 or 7 of this title, the person shall be eligible
27 to participate in not less than four (4) hours of a traffic safety

28 violator course and thereby have no record of the violation on the
29 person's driving record if the person meets all the following
30 conditions:

31 (i) The defendant has a valid Mississippi driver's
32 license or permit.

33 (ii) The defendant has not had a conviction of a
34 violation under Chapter 3, 5 or 7 of this title within three (3)
35 years before the current offense; any conviction entered before
36 October 1, 2002, does not constitute a prior offense for the
37 purposes of this subsection (3).

38 (iii) The defendant's public and nonpublic driving
39 record as maintained by the Department of Public Safety does not
40 indicate successful completion of a traffic safety violator course
41 under this section in the three-year period before the offense.

42 (iv) The defendant files an affidavit with the
43 court stating that this is the defendant's first conviction in
44 more than three (3) years or since October 1, 2002, whichever is
45 the lesser period of time; the defendant is not in the process of
46 taking a course under this section; and the defendant has not
47 completed a course under this section that is not yet reflected on
48 the defendant's public or nonpublic driving record.

49 (v) The offense charged is for a misdemeanor
50 offense under Chapter 3, 5 or 7 of this title.

51 (vi) The defendant pays the applicable fine, costs
52 and any assessments required by law to be paid upon conviction of
53 such an offense.

54 (vii) The defendant pays to the court an
55 additional fee of Ten Dollars (\$10.00) to elect to proceed under
56 the provisions of this subsection (3).

57 (b) (i) 1. An eligible defendant may enter a plea of
58 nolo contendere or guilty in person or in writing and present to
59 the court, in person or by mail postmarked on or before the

60 appearance date on the citation, an oral or written request to
61 participate in a course under this subsection (3).

62 2. The court shall withhold acceptance of the
63 plea and defer sentencing in order to allow the eligible defendant
64 ninety (90) days to successfully complete not less than four (4)
65 hours of a court-approved traffic safety violator course at the
66 cost of the defendant. Upon proof of successful completion
67 entered with the court, the court shall dismiss the prosecution
68 and direct that the case be closed. The only record maintained
69 thereafter shall be the nonpublic record required under Section
70 63-9-17 solely for use by the courts in determining eligibility
71 under this subsection (3).

72 (ii) If a person pleads not guilty to a
73 misdemeanor offense under any of the provisions of Chapter 3, 5 or
74 7 of this title but is convicted, and the person meets all the
75 requirements under paragraph (a) of this subsection, upon request
76 of the defendant the court shall suspend the sentence for such
77 offense to allow the defendant forty-five (45) days to
78 successfully complete not less than four (4) hours of a
79 court-approved traffic safety violator course at his own cost.
80 Upon successful completion by the defendant of the course, the
81 court shall set the conviction aside, dismiss the prosecution and
82 direct that the case be closed. The court on its own motion shall
83 expunge the record of the conviction, and the only record
84 maintained thereafter shall be the nonpublic record required under
85 Section 63-9-17 solely for use by the courts in determining an
86 offender's eligibility under this subsection (3).

87 (c) An out-of-state resident shall be allowed to
88 complete a substantially similar program in his home state,
89 province or country provided the requirements of this subsection
90 (3) are met, except that the necessary valid driver's license or
91 permit shall be one issued by the home jurisdiction.

92 (d) A court shall not approve a traffic safety violator
93 course under this subsection (3) that does not supply at least
94 four (4) hours of instruction, an instructor's manual setting
95 forth an appropriate curriculum, student workbooks, some
96 scientifically verifiable analysis of the effectiveness of the
97 curriculum and provide minimum qualifications for instructors.

98 (e) A court shall inform a defendant making inquiry or
99 entering a personal appearance of the provisions of this
100 subsection (3).

101 (f) The Department of Public Safety shall cause notice
102 of the provisions of this subsection (3) to be available on its
103 official website.

104 (g) Failure of a defendant to elect to come under the
105 provisions of this subsection (3) for whatever reason, in and of
106 itself, shall not invalidate a conviction.

107 (h) No employee of the sentencing court shall
108 personally benefit from a defendant's attendance of a traffic
109 safety violator course. Violation of this prohibition shall
110 result in termination of employment.

111 (i) The additional fee of Ten Dollars (\$10.00) imposed
112 under this subsection (3) shall be forwarded by the court clerk to
113 the State Treasurer for deposit into a special fund created in the
114 State Treasury. Monies in the special fund may be expended by the
115 Department of Public Safety, upon legislative appropriation, to
116 defray the costs incurred by the department in maintaining the
117 nonpublic record of persons who are eligible for participation
118 under the provisions of this subsection (3).

119 * * *

120 **SECTION 2.** Section 63-9-17, Mississippi Code of 1972, is
121 amended as follows:

122 63-9-17. (1) Every court shall keep a full record of the
123 proceedings of every case in which a person is charged with any

124 violation of law regulating the operation of vehicles on the
125 highways, streets or roads of this state.

126 (2) Unless otherwise sooner required by law, within
127 forty-five (45) days after the conviction of a person upon a
128 charge of violating any law regulating the operation of vehicles
129 on the highways, streets or roads of this state, every court in
130 which such conviction was had shall prepare and immediately
131 forward to the Department of Public Safety an abstract of the
132 record of said court covering the case in which said person was so
133 convicted, which abstract must be certified by the person so
134 authorized to prepare the same to be true and correct.

135 (3) Said abstract must be made upon a form approved by the
136 Department of Public Safety, and shall include the name and
137 address of the party charged, the registration number of the
138 vehicle involved, the nature of the offense, the date of hearing,
139 the plea, the judgment, and if the fine was satisfied by
140 prepayment or appearance bond forfeiture, and the amount of the
141 fine or forfeiture, as the case may be.

142 (4) Every court shall also forward a like report to the
143 Department of Public Safety upon the conviction of any person of
144 manslaughter or other felony in the commission of which a vehicle
145 was used.

146 (5) Every court shall also forward a like report to the
147 Department of Public Safety after the satisfactory completion by a
148 defendant of an approved traffic safety violator course under
149 Section 63-9-11, and the department shall make and maintain a
150 private, nonpublic record to be kept for a period of three (3)
151 years. The record shall be solely for the use of the courts in
152 determining eligibility under Section 63-9-11, as a first-time
153 offender, and shall not constitute a criminal record for the
154 purpose of private or administrative inquiry. Reports forwarded
155 to the Department of Public Safety under this subsection shall be

156 exempt from the provisions of the Mississippi Public Records Act
157 of 1983. * * *

158 (6) The failure by refusal or neglect of any such judicial
159 officer to comply with any of the requirements of this section
160 shall constitute misconduct in office and shall be grounds for
161 removal therefrom.

162 (7) The Department of Public Safety shall keep copies of all
163 abstracts received hereunder for a period of three (3) years at
164 its main office and the same shall be open to public inspection
165 during reasonable business hours. This subsection shall not apply
166 to nonpublic records maintained solely for the use of the courts
167 in determining offender eligibility.

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