

Senate Amendments to House Bill No. 96

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

35 (2) (a) Except as otherwise provided in subsection (3),
36 upon conviction of any person for the first offense of violating

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

The circuit court having jurisdiction in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under Section 63-11-30(2)(a) if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under Section 63-11-30(1), and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars (\$50.00), which shall be deposited into the State General Fund to the credit of a

special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

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

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

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

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

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

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

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

139 (c) Except as otherwise provided in subsection (3), for
140 any third or subsequent conviction of any person violating
141 subsection (1) of this section, the offenses being committed

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

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

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

189 (f) The Department of Public Safety shall promulgate
190 rules and regulations for the use of interlock ignition devices as
191 provided in Section 63-11-31 and consistent with the provisions
192 therein. Such rules and regulations shall provide for the
193 calibration of such devices and shall provide that the cost of the
194 use of such systems shall be borne by the offender. The
195 Department of Public Safety shall approve which vendors of such
196 devices shall be used to furnish such systems.

197 (3) (a) This subsection shall be known and may be cited as
198 Zero Tolerance for Minors. The provisions of this subsection
199 shall apply only when a person under the age of twenty-one (21)
200 years has a blood alcohol concentration two one-hundredths percent
201 (.02%) or more, but lower than eight one-hundredths percent
202 (.08%). If such person's blood alcohol concentration is eight
203 one-hundredths percent (.08%) or more, the provisions of
204 subsection (2) shall apply.

205 (b) Upon conviction of any person under the age of
206 twenty-one (21) years for the first offense of violating
207 subsection (1) of this section where chemical tests provided for
208 under Section 63-11-5 were given, or where chemical test results
209 are not available, such person shall have his driver's license
210 suspended for ninety (90) days and shall be fined Two Hundred
211 Fifty Dollars (\$250.00); and the court shall order such person to

attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may also require attendance at a victim impact panel.

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

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

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete

an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

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

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

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

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

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

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section,

may have the period that his driver's license is suspended reduced if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of six (6) months after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

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

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

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

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

(5) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each such death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(6) Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on

the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The judge shall cause a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction, to be sent to the Commissioner of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

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

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

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

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

388 (10) Suspension of driving privileges for any person
389 convicted of violations of Section 63-11-30(1) shall run
390 consecutively.

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

393 **SECTION 2.** This act shall take effect and be in force from
394 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR SEPARATE CONVICTIONS FOR SEPARATE INJURIES OR
3 DEATHS CAUSED BY AGGRAVATED DUI, EVEN THOUGH ARISING BUT FROM ONE
4 ACT OF DRIVING WHILE UNDER THE INFLUENCE, TO ALLOW THE HARDSHIP
5 EXCEPTION TO BE GRANTED BY THE COURT OF CONVICTION, TO PROVIDE
6 THAT THOSE CONVICTED OF FELONY DUI WHERE NO SERIOUS DEATH OR
7 INJURY RESULTS MAY SERVE ANY PRISON TIME IMPOSED IN THE COUNTY
8 JAIL AT THE DISCRETION OF THE COURT, AND TO REQUIRE THE POSTING OF
9 BAIL IN CASES OF VEHICULAR MANSLAUGHTER; AND FOR RELATED PURPOSES.

SS02\HB96A.1J

John O. Gilbert
Secretary of the Senate