

**Adopted  
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

**House Bill No. 96**

**BY: Committee**

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

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

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

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

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

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

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

100 (i) Continue his employment;

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

103 (iii) Obtain necessary medical care.

104 Proof of the hardship shall be established by clear and  
105 convincing evidence which shall be supported by independent  
106 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  
212 attend and complete an alcohol safety education program as  
213 provided in Section 63-11-32. The court may also require  
214 attendance at a victim impact panel.

215           The \* \* \* court \* \* \* in the county in which the conviction  
216 was had or the circuit court of the person's county of residence  
217 may reduce the suspension of driving privileges under Section  
218 63-11-30(2)(a) if the denial of which would constitute a hardship  
219 on the offender, except that no court may issue such an order  
220 reducing the suspension of driving privileges under this

221 subsection until thirty (30) days have elapsed from the effective  
222 date of the suspension. Hardships shall only apply to first  
223 offenses under Section 63-11-30(1), and shall not apply to second,  
224 third or subsequent convictions of any person violating subsection  
225 (1) of this section. A reduction of suspension on the basis of  
226 hardship shall not be available to any person who refused to  
227 submit to a chemical test upon the request of a law enforcement  
228 officer as provided in Section 63-11-5. When the petition is  
229 filed, such person shall pay to the circuit clerk of the court  
230 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
231 shall be deposited into the State General Fund to the credit of a  
232 special fund hereby created in the State Treasury to be used for  
233 alcohol or drug abuse treatment and education, upon appropriation  
234 by the Legislature. This fee shall be in addition to any other  
235 court costs or fees required for the filing of petitions.

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

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



253 address, street address, social security number and driver's  
254 license number of the petitioner.

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

260 (i) Continue his employment;

261 (ii) Continue attending school or an educational  
262 institution; or

263 (iii) Obtain necessary medical care.

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

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

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

280 (e) Any person under the age of twenty-one (21) years  
281 convicted of a second violation of subsection (1) of this section,  
282 may have the period that his driver's license is suspended reduced  
283 if such person receives an in-depth diagnostic assessment, and as  
284 a result of such assessment is determined to be in need of

285 treatment of his alcohol and/or drug abuse problem and  
286 successfully completes treatment of his alcohol and/or drug abuse  
287 problem at a program site certified by the Department of Mental  
288 Health. Such person shall be eligible for reinstatement of his  
289 driving privileges upon the successful completion of such  
290 treatment after a period of six (6) months after such person's  
291 driver's license is suspended. Each person who receives a  
292 diagnostic assessment shall pay a fee representing the cost of  
293 such assessment. Each person who participates in a treatment  
294 program shall pay a fee representing the cost of such treatment.

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

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

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

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

332 (5) Every person who operates any motor vehicle in violation  
333 of the provisions of subsection (1) of this section and who in a  
334 negligent manner causes the death of another or mutilates,  
335 disfigures, permanently disables or destroys the tongue, eye, lip,  
336 nose or any other limb, organ or member of another shall, upon  
337 conviction, be guilty of a separate felony for each such death,  
338 mutilation, disfigurement or other injury and shall be committed  
339 to the custody of the State Department of Corrections for a period  
340 of time of not less than five (5) years and not to exceed  
341 twenty-five (25) years for each such death, mutilation,  
342 disfigurement or other injury, and the imprisonment for the second  
343 or each subsequent conviction, in the discretion of the court,  
344 shall commence either at the termination of the imprisonment for  
345 the preceding conviction or run concurrently with the preceding  
346 conviction. Any person charged with causing the death of another

347 as described in this subsection shall be required to post bail  
348 before being released after arrest.

349 (6) Upon conviction of any violation of subsection (1) of  
350 this section, the trial judge shall sign in the place provided on  
351 the traffic ticket, citation or affidavit stating that the person  
352 arrested either employed an attorney or waived his right to an  
353 attorney after having been properly advised. If the person  
354 arrested employed an attorney, the name, address and telephone  
355 number of the attorney shall be written on the ticket, citation or  
356 affidavit. The judge shall cause a copy of the traffic ticket,  
357 citation or affidavit, and any other pertinent documents  
358 concerning the conviction, to be sent to the Commissioner of  
359 Public Safety. A copy of the traffic ticket, citation or  
360 affidavit and any other pertinent documents, having been attested  
361 as true and correct by the Commissioner of Public Safety, or his  
362 designee, shall be sufficient proof of the conviction for purposes  
363 of determining the enhanced penalty for any subsequent convictions  
364 of violations of subsection (1) of this section.

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

374 (8) For the purposes of determining how to impose the  
375 sentence for a second, third or subsequent conviction under this  
376 section, the indictment shall not be required to enumerate  
377 previous convictions. It shall only be necessary that the  
378 indictment state the number of times that the defendant has been

379 convicted and sentenced within the past five (5) years under this  
380 section to determine if an enhanced penalty shall be imposed. The  
381 amount of fine and imprisonment imposed in previous convictions  
382 shall not be considered in calculating offenses to determine a  
383 second, third or subsequent offense of this section.

384 (9) Any person under the legal age to obtain a license to  
385 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.