

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 49

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT NONADJUDICATION SHALL NOT BE AVAILABLE TO PERSONS
3 WHO DO NOT TAKE A CHEMICAL TEST TO DETERMINE BLOOD ALCOHOL
4 CONCENTRATION; AND FOR RELATED PURPOSES.

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

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

8 63-11-30. (1) It is unlawful for any person to drive or
9 otherwise operate a vehicle within this state who (a) is under the
10 influence of intoxicating liquor; (b) is under the influence of
11 any other substance which has impaired such person's ability to
12 operate a motor vehicle; (c) has an alcohol concentration of eight
13 one-hundredths percent (.08%) or more for persons who are above
14 the legal age to purchase alcoholic beverages under state law, or
15 two one-hundredths percent (.02%) or more for persons who are
16 below the legal age to purchase alcoholic beverages under state
17 law, in the person's blood based upon grams of alcohol per one
18 hundred (100) milliliters of blood or grams of alcohol per two
19 hundred ten (210) liters of breath as shown by a chemical analysis
20 of such person's breath, blood or urine administered as authorized
21 by this chapter; (d) is under the influence of any drug or
22 controlled substance, the possession of which is unlawful under
23 the Mississippi Controlled Substances Law; or (e) has an alcohol
24 concentration of four one-hundredths percent (.04%) or more in the
25 person's blood, based upon grams of alcohol per one hundred (100)
26 milliliters of blood or grams of alcohol per two hundred ten (210)
27 liters of breath as shown by a chemical analysis of such person's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

255 (i) Continue his employment;

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

258 (iii) Obtain necessary medical care.

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

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

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

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

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

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

295 (g) The court shall have the discretion to rule that a
296 first offense of this subsection by a person under the age of
297 twenty-one (21) years shall be nonadjudicated. Such person shall
298 be eligible for nonadjudication only once. If a chemical test to
299 determine blood alcohol concentration was not given, such person
300 shall not be eligible for nonadjudication. The Department of
301 Public Safety shall maintain a confidential registry of all cases
302 which are nonadjudicated as provided in this paragraph. A judge
303 who rules that a case is nonadjudicated shall forward such ruling
304 to the Department of Public Safety. Judges and prosecutors
305 involved in implied consent violations shall have access to the
306 confidential registry for the purpose of determining
307 nonadjudication eligibility. A record of a person who has been
308 nonadjudicated shall be maintained for five (5) years or until
309 such person reaches the age of twenty-one (21) years. Any person
310 whose confidential record has been disclosed in violation of this
311 paragraph shall have a civil cause of action against the person
312 and/or agency responsible for such disclosure.

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

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

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

346 (6) Upon conviction of any violation of subsection (1) of
347 this section, the trial judge shall sign in the place provided on
348 the traffic ticket, citation or affidavit stating that the person
349 arrested either employed an attorney or waived his right to an
350 attorney after having been properly advised. If the person
351 arrested employed an attorney, the name, address and telephone
352 number of the attorney shall be written on the ticket, citation or

353 affidavit. The judge shall cause a copy of the traffic ticket,
354 citation or affidavit, and any other pertinent documents
355 concerning the conviction, to be sent to the Commissioner of
356 Public Safety. A copy of the traffic ticket, citation or
357 affidavit and any other pertinent documents, having been attested
358 as true and correct by the Commissioner of Public Safety, or his
359 designee, shall be sufficient proof of the conviction for purposes
360 of determining the enhanced penalty for any subsequent convictions
361 of violations of subsection (1) of this section.

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

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

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

385 (10) Suspension of driving privileges for any person
386 convicted of violations of Section 63-11-30(1) shall run
387 consecutively.

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

390 **SECTION 2.** This act shall take effect and be in force from
391 and after July 1, 2005.