

By: Representative Franks

To: Judiciary A

## HOUSE BILL NO. 1180

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE MINIMUM PENALTY FOR FIRST AND SECOND DUI OFFENSES IF  
3 BLOOD ALCOHOL CONCENTRATION IS .15% OR MORE; AND FOR RELATED  
4 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) or not less than Six Hundred  
36 Dollars (\$600.00) if the chemical test revealed a blood alcohol  
37 concentration of fifteen one-hundredths percent (.15%) or more,  
38 nor more than One Thousand Dollars (\$1,000.00), or imprisoned for  
39 not more than forty-eight (48) hours in jail or both; and the  
40 court shall order such person to attend and complete an alcohol  
41 safety education program as provided in Section 63-11-32. The  
42 court may substitute attendance at a victim impact panel instead  
43 of forty-eight (48) hours in jail. In addition, the Department of  
44 Public Safety, the Commissioner of Public Safety or his duly  
45 authorized agent shall, after conviction and upon receipt of the  
46 court abstract, suspend the driver's license and driving  
47 privileges of such person for a period of not less than ninety  
48 (90) days and until such person attends and successfully completes  
49 an alcohol safety education program as herein provided; provided,  
50 however, in no event shall such period of suspension exceed one  
51 (1) year. Commercial driving privileges shall be suspended as  
52 provided in Section 63-1-83.

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

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

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

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

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

98 (i) Continue his employment;

99 (ii) Continue attending school or an educational  
100 institution; or

101 (iii) Obtain necessary medical care.

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

105 (b) Except as otherwise provided in subsection (3),  
106 upon any second conviction of any person violating subsection (1)  
107 of this section, the offenses being committed within a period of  
108 five (5) years, such person shall be fined not less than Six  
109 Hundred Dollars (\$600.00) or not less than One Thousand Dollars  
110 (\$1,000.00) if the chemical test revealed a blood alcohol  
111 concentration of fifteen one-hundredths percent (.15%) or more,  
112 nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall  
113 be imprisoned not less than five (5) days nor more than one (1)  
114 year and sentenced to community service work for not less than ten  
115 (10) days nor more than one (1) year. The minimum penalties shall  
116 not be suspended or reduced by the court and no prosecutor shall  
117 offer any suspension or sentence reduction as part of a plea  
118 bargain. Except as may otherwise be provided by paragraph (d) of  
119 this subsection, the Commissioner of Public Safety shall suspend  
120 the driver's license of such person for two (2) years. Suspension  
121 of a commercial driver's license shall be governed by Section  
122 63-1-83. Upon any second conviction as described in this  
123 paragraph, the court shall ascertain whether the defendant is  
124 married, and if the defendant is married shall obtain the name and  
125 address of the defendant's spouse; the clerk of the court shall

126 submit this information to the Department of Public Safety.  
127 Further, the commissioner shall notify in writing, by certified  
128 mail, return receipt requested, the owner of the vehicle and the  
129 spouse, if any, of the person convicted of the second violation of  
130 the possibility of forfeiture of the vehicle if such person is  
131 convicted of a third violation of subsection (1) of this section.  
132 The owner of the vehicle and the spouse shall be considered  
133 notified under this paragraph if the notice is deposited in the  
134 United States mail and any claim that the notice was not in fact  
135 received by the addressee shall not affect a subsequent forfeiture  
136 proceeding.

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

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

159 by Sections 63-11-49 through 63-11-53. Except as may otherwise be  
160 provided by paragraph (e) of this subsection, the Commissioner of  
161 Public Safety shall suspend the driver's license of such person  
162 for five (5) years. The suspension of a commercial driver's  
163 license shall be governed by Section 63-1-83.

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

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

190 (f) The Department of Public Safety shall promulgate  
191 rules and regulations for the use of interlock ignition devices as

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

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

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

216 The court in the county in which the conviction was had or  
217 the circuit court of the person's county of residence may reduce  
218 the suspension of driving privileges under Section 63-11-30(2)(a)  
219 if the denial of which would constitute a hardship on the  
220 offender, except that no court may issue such an order reducing  
221 the suspension of driving privileges under this subsection until  
222 thirty (30) days have elapsed from the effective date of the  
223 suspension. Hardships shall only apply to first offenses under  
224 Section 63-11-30(1), and shall not apply to second, third or

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

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

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

256 At any time following at least thirty (30) days of suspension  
257 for a first offense violation of this section, the court may grant



258 the person hardship driving privileges upon written petition of  
259 the defendant, if it finds reasonable cause to believe that  
260 revocation would hinder the person's ability to:

261 (i) Continue his employment;

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

264 (iii) Obtain necessary medical care.

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

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

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

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

291 treatment after a period of six (6) months after such person's  
292 driver's license is suspended. Each person who receives a  
293 diagnostic assessment shall pay a fee representing the cost of  
294 such assessment. Each person who participates in a treatment  
295 program shall pay a fee representing the cost of such treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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