

By: Senator(s) Hyde-Smith

To: Judiciary, Division A

SENATE BILL NO. 2881

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE ENHANCED PENALTIES FOR TEST REFUSAL; AND FOR RELATED
3 PURPOSES.

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

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

7 63-11-30. (1) It is unlawful for any person to drive or
8 otherwise operate a vehicle within this state who (a) is under the
9 influence of intoxicating liquor; (b) is under the influence of
10 any other substance which has impaired such person's ability to
11 operate a motor vehicle; (c) has an alcohol concentration of eight
12 one-hundredths percent (.08%) or more for persons who are above
13 the legal age to purchase alcoholic beverages under state law, or
14 two one-hundredths percent (.02%) or more for persons who are
15 below the legal age to purchase alcoholic beverages under state
16 law, in the person's blood based upon grams of alcohol per one
17 hundred (100) milliliters of blood or grams of alcohol per two
18 hundred ten (210) liters of breath as shown by a chemical analysis
19 of such person's breath, blood or urine administered as authorized
20 by this chapter; (d) is under the influence of any drug or
21 controlled substance, the possession of which is unlawful under
22 the Mississippi Controlled Substances Law; or (e) has an alcohol
23 concentration of four one-hundredths percent (.04%) or more in the
24 person's blood, based upon grams of alcohol per one hundred (100)
25 milliliters of blood or grams of alcohol per two hundred ten (210)
26 liters of breath as shown by a chemical analysis of such person's

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

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

49 Any person refusing to submit to a chemical test upon the
50 request of a law enforcement officer as provided in Section
51 63-11-5 shall be punished, in addition to any other penalty
52 imposed or allowed under law, as follows: for a first offense of
53 refusal without a prior conviction for driving under the
54 influence, if the person convicted holds a regular driver's
55 license, Three Hundred Dollars (\$300.00), and if the person
56 convicted holds a commercial driver's license, Three Hundred Fifty
57 Dollars (\$350.00); for a first offense of refusal when the person
58 convicted has a prior conviction for driving under the influence,

59 Seven Hundred Fifty Dollars (\$750.00); for a second or subsequent
60 offense of refusal, Seven Hundred Fifty Dollars (\$750.00).

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

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

90 The order entered under the provisions of this subsection
91 shall contain the specific grounds upon which hardship was

92 determined, and shall order the petitioner to attend and complete
93 an alcohol safety education program as provided in Section
94 63-11-32. A certified copy of such order shall be delivered to
95 the Commissioner of Public Safety by the clerk of the court within
96 five (5) days of the entry of the order. The certified copy of
97 such order shall contain information which will identify the
98 petitioner, including, but not limited to, the name, mailing
99 address, street address, social security number and driver's
100 license number of the petitioner.

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

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

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

113 (b) Except as otherwise provided in subsection (3),
114 upon any second conviction of any person violating subsection (1)
115 of this section, the offenses being committed within a period of
116 five (5) years, such person shall be fined not less than Six
117 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
118 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
119 days nor more than one (1) year and sentenced to community service
120 work for not less than ten (10) days nor more than one (1) year.
121 The minimum penalties shall not be suspended or reduced by the
122 court and no prosecutor shall offer any suspension or sentence
123 reduction as part of a plea bargain. Except as may otherwise be
124 provided by paragraph (d) of this subsection, the Commissioner of

125 Public Safety shall suspend the driver's license of such person
126 for two (2) years. Suspension of a commercial driver's license
127 shall be governed by Section 63-1-83. Upon any second conviction
128 as described in this paragraph, the court shall ascertain whether
129 the defendant is married, and if the defendant is married shall
130 obtain the name and address of the defendant's spouse; the clerk
131 of the court shall submit this information to the Department of
132 Public Safety. Further, the commissioner shall notify in writing,
133 by certified mail, return receipt requested, the owner of the
134 vehicle and the spouse, if any, of the person convicted of the
135 second violation of the possibility of forfeiture of the vehicle
136 if such person is convicted of a third violation of subsection (1)
137 of this section. The owner of the vehicle and the spouse shall be
138 considered notified under this paragraph if the notice is
139 deposited in the United States mail and any claim that the notice
140 was not in fact received by the addressee shall not affect a
141 subsequent forfeiture proceeding.

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

145 (c) Except as otherwise provided in subsection (3), for
146 any third or subsequent conviction of any person violating
147 subsection (1) of this section, the offenses being committed
148 within a period of five (5) years, such person shall be guilty of
149 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
150 nor more than Five Thousand Dollars (\$5,000.00), shall serve not
151 less than one (1) year nor more than five (5) years in the custody
152 of the Department of Corrections; provided, however, that for any
153 such offense which does not result in serious injury or death to
154 any person, any sentence of incarceration may be served in the
155 county jail rather than in the State Penitentiary at the
156 discretion of the circuit court judge. The minimum penalties
157 shall not be suspended or reduced by the court and no prosecutor

158 shall offer any suspension or sentence reduction as part of a plea
159 bargain. The law enforcement agency shall seize the vehicle
160 operated by any person charged with a third or subsequent
161 violation of subsection (1) of this section, if such convicted
162 person was driving the vehicle at the time the offense was
163 committed. Such vehicle may be forfeited in the manner provided
164 by Sections 63-11-49 through 63-11-53. Except as may otherwise be
165 provided by paragraph (e) of this subsection, the Commissioner of
166 Public Safety shall suspend the driver's license of such person
167 for five (5) years. The suspension of a commercial driver's
168 license shall be governed by Section 63-1-83.

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

183 (e) Except as otherwise provided in subsection (3), any
184 person convicted of a third or subsequent violation of subsection
185 (1) of this section shall receive an in-depth diagnostic
186 assessment, and if as a result of such assessment is determined to
187 be in need of treatment of his alcohol and/or drug abuse problem,
188 such person shall enter an alcohol and/or drug abuse program
189 approved by the Department of Mental Health for treatment of such
190 person's alcohol and/or drug abuse problem. If such person

191 successfully completes such treatment, such person shall be
192 eligible for reinstatement of his driving privileges after a
193 period of three (3) years after such person's driver's license is
194 suspended.

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

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

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

221 The court in the county in which the conviction was had or
222 the circuit court of the person's county of residence may reduce
223 the suspension of driving privileges under Section 63-11-30(2)(a)

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

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

250 The order entered under the provisions of this subsection
251 shall contain the specific grounds upon which hardship was
252 determined, and shall order the petitioner to attend and complete
253 an alcohol safety education program as provided in Section
254 63-11-32. A certified copy of such order shall be delivered to
255 the Commissioner of Public Safety by the clerk of the court within
256 five (5) days of the entry of the order. The certified copy of

257 such order shall contain information which will identify the
258 petitioner, including, but not limited to, the name, mailing
259 address, street address, social security number and driver's
260 license number of the petitioner.

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

266 (i) Continue his employment;

267 (ii) Continue attending school or an educational
268 institution; or

269 (iii) Obtain necessary medical care.

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

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

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

286 (e) Any person under the age of twenty-one (21) years
287 convicted of a second violation of subsection (1) of this section,
288 may have the period that his driver's license is suspended reduced
289 if such person receives an in-depth diagnostic assessment, and as

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

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

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

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

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

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

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

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

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

388 shall not be considered in calculating offenses to determine a
389 second, third or subsequent offense of this section.

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

394 (10) Suspension of driving privileges for any person
395 convicted of violations of Section 63-11-30(1) shall run
396 consecutively.

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

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