

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 291

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THAT SECOND OR SUBSEQUENT DUI SENTENCES SHALL NOT BE
3 REDUCED; AND FOR RELATED 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 The circuit court having jurisdiction in the county in which
50 the conviction was had or the circuit court of the person's county
51 of residence may reduce the suspension of driving privileges under
52 Section 63-11-30(2)(a) if the denial of which would constitute a
53 hardship on the offender, except that no court may issue such an
54 order reducing the suspension of driving privileges under this
55 subsection until thirty (30) days have elapsed from the effective
56 date of the suspension. Hardships shall only apply to first
57 offenses under Section 63-11-30(1), and shall not apply to second,
58 third or subsequent convictions of any person violating subsection
59 (1) of this section. A reduction of suspension on the basis of

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

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

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

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

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

94 (i) Continue his employment;

95 (ii) Continue attending school or an educational
96 institution; or

97 (iii) Obtain necessary medical care.

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

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

125 convicted of a third violation of subsection (1) of this section.
126 The owner of the vehicle and the spouse shall be considered
127 notified under this paragraph if the notice is deposited in the
128 United States mail and any claim that the notice was not in fact
129 received by the addressee shall not affect a subsequent forfeiture
130 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 sentence and penalties
146 for a third or subsequent offense shall not be suspended or
147 reduced by the court and no prosecutor shall offer any suspension
148 or sentence reduction as part of a plea bargain. The law
149 enforcement agency shall seize the vehicle operated by any person
150 charged with a third or subsequent violation of subsection (1) of
151 this section, if such convicted person was driving the vehicle at
152 the time the offense was committed. Such vehicle may be forfeited
153 in the manner provided by Sections 63-11-49 through 63-11-53.
154 Except as may otherwise be provided by paragraph (e) of this
155 subsection, the Commissioner of Public Safety shall suspend the
156 driver's license of such person for five (5) years. The

157 suspension of a commercial driver's license shall be governed by
158 Section 63-1-83.

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

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

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

190 use of such systems shall be borne by the offender. The
191 Department of Public Safety shall approve which vendors of such
192 devices shall be used to furnish such systems.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

319 The Commissioner of Public Safety or his authorized agent
320 shall suspend the driver's license or permit to drive or deny the
321 issuance of a license or permit to such person as provided for

322 first, second and third or subsequent offenders in subsection (2)
323 of this section. Such suspension shall be in addition to any
324 suspension imposed pursuant to subsection (1) of Section 63-11-23.
325 The minimum suspension imposed under this subsection shall not be
326 reduced and no prosecutor is authorized to offer a reduction of
327 such suspension as part of a plea bargain.

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

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

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

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

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

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

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

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

389 **SECTION 2.** This act shall take effect and be in force from
390 and after July 1, 2006.