

By: Representative Mayo

To: Judiciary A

HOUSE BILL NO. 346

1 AN ACT TO AMEND SECTIONS 63-11-30 AND 63-11-32, MISSISSIPPI
2 CODE OF 1972, TO REVISE THE PENALTIES IN THE IMPLIED CONSENT LAW;
3 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 less than forty-eight (48)
36 hours nor more than six (6) months in jail or both; and the court
37 shall order such person to attend and complete an alcohol safety
38 education program as provided in Section 63-11-32 and perform
39 fifty (50) hours of community service. The court may substitute
40 attendance at a victim impact panel instead of forty-eight (48)
41 hours in jail. The court is authorized to impound the vehicle of
42 such person for ten (10) days. In addition, the Department of
43 Public Safety, the Commissioner of Public Safety or his duly
44 authorized agent shall, after conviction and upon receipt of the
45 court abstract, suspend the driver's license and driving
46 privileges of such person for a period of not less than one
47 hundred eighty (180) days and until such person attends and
48 successfully completes an alcohol safety education program as
49 herein provided; provided, however, in no event shall such period
50 of suspension exceed one (1) year. Commercial driving privileges
51 shall be suspended as provided in Section 63-1-83.

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

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

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

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

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

97 (i) Continue his employment;

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

100 (iii) Obtain necessary medical care.

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

104 (b) Except as otherwise provided in subsection (3),
105 upon any second conviction of any person violating subsection (1)
106 of this section, the offenses being committed within a period of
107 five (5) years, such person shall be fined not less than Six
108 Hundred Dollars (\$600.00) nor more than Two Thousand Dollars
109 (\$2,000.00), shall be imprisoned not less than ten (10) days nor
110 more than one (1) year and sentenced to community service work for
111 not less than twenty (20) days nor more than one (1) year. The
112 minimum penalties shall not be suspended or reduced by the court
113 and no prosecutor shall offer any suspension or sentence reduction
114 as part of a plea bargain. Except as may otherwise be provided by
115 paragraph (d) of this subsection, the Commissioner of Public
116 Safety shall suspend the driver's license of such person for not
117 less than two (2) years nor more than five (5) years. Suspension
118 of a commercial driver's license shall be governed by Section
119 63-1-83. Upon any second conviction as described in this
120 paragraph, the court shall ascertain whether the defendant is
121 married, and if the defendant is married shall obtain the name and
122 address of the defendant's spouse; the clerk of the court shall
123 submit this information to the Department of Public Safety.
124 Further, the commissioner shall notify in writing, by certified

125 mail, return receipt requested, the owner of the vehicle and the
126 spouse, if any, of the person convicted of the second violation of
127 the possibility of forfeiture of the vehicle if such person is
128 convicted of a third violation of subsection (1) of this section.
129 The court shall impound the vehicle for up to thirty (30) days.

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

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

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

158 provided by paragraph (e) of this subsection, the Commissioner of
159 Public Safety shall suspend the driver's license of such person
160 for ten (10) years. The suspension of a commercial driver's
161 license shall be governed by Section 63-1-83.

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

176 (e) Except as otherwise provided in subsection (3), any
177 person convicted of a third or subsequent violation of subsection
178 (1) of this section shall receive an in-depth diagnostic
179 assessment, and if as a result of such assessment is determined to
180 be in need of treatment of his alcohol and/or drug abuse problem,
181 such person shall enter an alcohol and/or drug abuse program
182 approved by the Department of Mental Health for treatment of such
183 person's alcohol and/or drug abuse problem. If such person
184 successfully completes such treatment, such person shall be
185 eligible for reinstatement of his driving privileges after a
186 period of five (5) years after such person's driver's license is
187 suspended.

188 (f) The Department of Public Safety shall promulgate
189 rules and regulations for the use of interlock ignition devices as
190 provided in Section 63-11-31 and consistent with the provisions

191 therein. Such rules and regulations shall provide for the
192 calibration of such devices and shall provide that the cost of the
193 use of such systems shall be borne by the offender. The
194 Department of Public Safety shall approve which vendors of such
195 devices shall be used to furnish such systems.

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

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

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

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

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

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

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

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

259 (i) Continue his employment;

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

262 (iii) Obtain necessary medical care.

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

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

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

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

290 driver's license is suspended. Each person who receives a
291 diagnostic assessment shall pay a fee representing the cost of
292 such assessment. Each person who participates in a treatment
293 program shall pay a fee representing the cost of such treatment.

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

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

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

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

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

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

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

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

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

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

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

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

392 **SECTION 2.** Section 63-11-32, Mississippi Code of 1972, is
393 amended as follows:

394 63-11-32. (1) The State Department of Public Safety in
395 conjunction with the Governor's Highway Safety Program, the State
396 Board of Health, or any other state agency or institution shall
397 develop and implement a driver improvement program for persons
398 identified as first offenders convicted of driving while under the
399 influence of intoxicating liquor or another substance which had
400 impaired such person's ability to operate a motor vehicle,
401 including provision for referral to rehabilitation facilities.

402 (2) The program shall consist of a minimum of twelve (12)
403 hours of instruction for a first offense and twenty-one (21) hours
404 for a second or subsequent offense. Each person who participates
405 shall pay a nominal fee to defray a portion of the cost of the
406 program.

407 (3) Such assessments as are collected under subsection (2)
408 of Section 99-19-73 shall be deposited in a special fund hereby
409 created in the State Treasury and designated the "Mississippi
410 Alcohol Safety Education Program Fund." Monies deposited in such
411 fund shall be expended by the Board of Trustees of State
412 Institutions of Higher Learning as authorized and appropriated by
413 the Legislature to defray the costs of the Mississippi Alcohol
414 Safety Education Program operated pursuant to the provisions of
415 this section. Any revenue in the fund which is not encumbered at
416 the end of the fiscal year shall lapse to the General Fund.

417 (4) Such assessments as are collected under subsection (2)
418 of Section 99-19-73 shall be deposited in a special fund hereby
419 created in the State Treasury and designated the "Federal-State

420 Alcohol Program Fund." Monies deposited in such fund shall be
421 expended by the Department of Public Safety as authorized and
422 appropriated by the Legislature to defray the costs of alcohol and
423 traffic safety programs. Any revenue in the fund which is not
424 encumbered at the end of the fiscal year shall lapse to the
425 General Fund.

426 (5) Such assessments as are collected under subsection (2)
427 of Section 99-19-73 shall be deposited in a special fund hereby
428 created in the State Treasury and designated the "Mississippi
429 Crime Laboratory Implied Consent Law Fund." Monies deposited in
430 such fund shall be expended by the Department of Public Safety as
431 authorized and appropriated by the Legislature to defray the costs
432 of equipment replacement and operational support of the
433 Mississippi Crime Laboratory relating to enforcement of the
434 Implied Consent Law. Any revenue in the fund which is not
435 encumbered at the end of the fiscal year shall not lapse to the
436 General Fund but shall remain in the fund.

437 **SECTION 3.** This act shall take effect and be in force from
438 and after July 1, 2006.