

By: Representatives Akins, Bondurant, Brown, Buck, Fleming, Gadd, Martinson, Mayo, Moak, Norquist, Parker, Rogers (14th), Shows, Stevens, Staples, Sullivan, Thomas, Upshaw, Vince

To: Judiciary A

## HOUSE BILL NO. 735

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO ALLOW THE ARRESTING LAW ENFORCEMENT OFFICER TO DETAIN A PERSON  
3 ARRESTED FOR A VIOLATION OF THE IMPLIED CONSENT LAW FOR A PERIOD  
4 OF UP TO SIX HOURS, IN ORDER TO PROTECT THE PERSON AND THE PUBLIC  
5 FROM THE DANGER INHERENT IN HAVING AN IMPAIRED PERSON OPERATE A  
6 MOTOR VEHICLE; TO PROVIDE AN EXCEPTION FOR A CHILD UNDER THE AGE  
7 OF 21 YEARS, WHO SHALL BE RELEASED TO HIS OR HER PARENT OR ADULT  
8 LEGAL GUARDIAN; AND FOR RELATED PURPOSES.

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

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

12 63-11-30. (1) It is unlawful for any person to drive or  
13 otherwise operate a vehicle within this state who:

14 (a) Is under the influence of intoxicating liquor;

15 (b) Is under the influence of any other substance which  
16 has impaired such person's ability to operate a motor vehicle;

17 (c) Has an alcohol concentration of eight  
18 one-hundredths percent (.08%) or more for persons who are above  
19 the legal age to purchase alcoholic beverages under state law, or  
20 two one-hundredths percent (.02%) or more for persons who are  
21 below the legal age to purchase alcoholic beverages under state  
22 law, in the person's blood based upon grams of alcohol per one  
23 hundred (100) milliliters of blood or grams of alcohol per two  
24 hundred ten (210) liters of breath as shown by a chemical analysis  
25 of such person's breath, blood or urine administered as authorized  
26 by this chapter;

27 (d) Is under the influence of any drug or controlled  
28 substance, the possession of which is unlawful under the  
29 Mississippi Controlled Substances Law; or

30           (e) Has an alcohol concentration of four one-hundredths  
31 percent (.04%) or more in the person's blood, based upon grams of  
32 alcohol per one hundred (100) milliliters of blood or grams of  
33 alcohol per two hundred ten (210) liters of breath as shown by a  
34 chemical analysis of such person's blood, breath or urine,  
35 administered as authorized by this chapter for persons operating a  
36 commercial motor vehicle.

37 Any person who is arrested for a violation of the provisions of  
38 this subsection, in the discretion of the arresting law  
39 enforcement officer, may be detained for a period of no more than  
40 six (6) hours in order to protect the person and the public from  
41 the danger inherent in having an impaired person operating a motor  
42 vehicle, except that if the person arrested is a child under  
43 twenty-one (21) years of age and his or her parent or adult legal  
44 guardian appears before the law enforcement officer and requests  
45 that the child be released to the parent, then the child shall be  
46 released into the custody of the parent or adult legal guardian  
47 before the expiration of the six-hour period.

48           (2) (a) Except as otherwise provided in subsection (3),  
49 upon conviction of any person for the first offense of violating  
50 subsection (1) of this section where chemical tests provided for  
51 under Section 63-11-5 were given, or where chemical test results  
52 are not available, such person shall be fined not less than Two  
53 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
54 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
55 hours in jail or both; and the court shall order such person to  
56 attend and complete an alcohol safety education program as  
57 provided in Section 63-11-32. The court may substitute attendance  
58 at a victim impact panel instead of forty-eight (48) hours in  
59 jail. In addition, the Department of Public Safety, the  
60 Commissioner of Public Safety or his duly authorized agent shall,  
61 after conviction and upon receipt of the court abstract, suspend  
62 the driver's license and driving privileges of such person for a

63 period of not less than ninety (90) days and until such person  
64 attends and successfully completes an alcohol safety education  
65 program as herein provided; provided, however, in no event shall  
66 such period of suspension exceed one (1) year. Commercial driving  
67 privileges shall be suspended as provided in Section 63-1-83.

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

89 The petition filed under the provisions of this subsection  
90 shall contain the specific facts which the petitioner alleges to  
91 constitute a hardship and the driver's license number of the  
92 petitioner. A hearing may be held on any petition filed under  
93 this subsection only after ten (10) days' prior written notice to  
94 the Commissioner of Public Safety, or his designated agent, or the

95 attorney designated to represent the state. At such hearing, the  
96 court may enter an order reducing the period of suspension.

97 The order entered under the provisions of this subsection  
98 shall contain the specific grounds upon which hardship was  
99 determined, and shall order the petitioner to attend and complete  
100 an alcohol safety education program as provided in Section  
101 63-11-32. A certified copy of such order shall be delivered to  
102 the Commissioner of Public Safety by the clerk of the court within  
103 five (5) days of the entry of the order. The certified copy of  
104 such order shall contain information which will identify the  
105 petitioner, including, but not limited to, the name, mailing  
106 address, street address, social security number and driver's  
107 license number of the petitioner.

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

- 113 (i) Continue his employment;
- 114 (ii) Continue attending school or an educational  
115 institution; or
- 116 (iii) Obtain necessary medical care.

117 Proof of the hardship shall be established by clear and  
118 convincing evidence which shall be supported by independent  
119 documentation.

120 (b) Except as otherwise provided in subsection (3),  
121 upon any second conviction of any person violating subsection (1)  
122 of this section, the offenses being committed within a period of  
123 five (5) years, such person shall be fined not less than Six  
124 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
125 Dollars (\$1,500.00), shall be imprisoned not less than five (5)  
126 days nor more than one (1) year and sentenced to community service  
127 work for not less than ten (10) days nor more than one (1) year.

128 The minimum penalties shall not be suspended or reduced by the  
129 court and no prosecutor shall offer any suspension or sentence  
130 reduction as part of a plea bargain. Except as may otherwise be  
131 provided by paragraph (d) of this subsection, the Commissioner of  
132 Public Safety shall suspend the driver's license of such person  
133 for two (2) years. Suspension of a commercial driver's license  
134 shall be governed by Section 63-1-83. Upon any second conviction  
135 as described in this paragraph, the court shall ascertain whether  
136 the defendant is married, and if the defendant is married shall  
137 obtain the name and address of the defendant's spouse; the clerk  
138 of the court shall submit this information to the Department of  
139 Public Safety. Further, the commissioner shall notify in writing,  
140 by certified mail, return receipt requested, the owner of the  
141 vehicle and the spouse, if any, of the person convicted of the  
142 second violation of the possibility of forfeiture of the vehicle  
143 if such person is convicted of a third violation of subsection (1)  
144 of this section. The owner of the vehicle and the spouse shall be  
145 considered notified under this paragraph if the notice is  
146 deposited in the United States mail and any claim that the notice  
147 was not in fact received by the addressee shall not affect a  
148 subsequent forfeiture proceeding.

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

152 (c) Except as otherwise provided in subsection (3), for  
153 any third or subsequent conviction of any person violating  
154 subsection (1) of this section, the offenses being committed  
155 within a period of five (5) years, such person shall be guilty of  
156 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
157 nor more than Five Thousand Dollars (\$5,000.00), shall serve not  
158 less than one (1) year nor more than five (5) years in the custody  
159 of the Department of Corrections; provided, however, that for any  
160 such offense which does not result in serious injury or death to

161 any person, any sentence of incarceration may be served in the  
162 county jail rather than in the State Penitentiary at the  
163 discretion of the circuit court judge. The minimum penalties  
164 shall not be suspended or reduced by the court and no prosecutor  
165 shall offer any suspension or sentence reduction as part of a plea  
166 bargain. The law enforcement agency shall seize the vehicle  
167 operated by any person charged with a third or subsequent  
168 violation of subsection (1) of this section, if such convicted  
169 person was driving the vehicle at the time the offense was  
170 committed. Such vehicle may be forfeited in the manner provided  
171 by Sections 63-11-49 through 63-11-53. Except as may otherwise be  
172 provided by paragraph (e) of this subsection, the Commissioner of  
173 Public Safety shall suspend the driver's license of such person  
174 for five (5) years. The suspension of a commercial driver's  
175 license shall be governed by Section 63-1-83.

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

190 (e) Except as otherwise provided in subsection (3), any  
191 person convicted of a third or subsequent violation of subsection  
192 (1) of this section shall receive an in-depth diagnostic  
193 assessment, and if as a result of such assessment is determined to

194 be in need of treatment of his alcohol and/or drug abuse problem,  
195 such person shall enter an alcohol and/or drug abuse program  
196 approved by the Department of Mental Health for treatment of such  
197 person's alcohol and/or drug abuse problem. If such person  
198 successfully completes such treatment, such person shall be  
199 eligible for reinstatement of his driving privileges after a  
200 period of three (3) years after such person's driver's license is  
201 suspended.

202 (f) The Department of Public Safety shall promulgate  
203 rules and regulations for the use of interlock ignition devices as  
204 provided in Section 63-11-31 and consistent with the provisions  
205 therein. Such rules and regulations shall provide for the  
206 calibration of such devices and shall provide that the cost of the  
207 use of such systems shall be borne by the offender. The  
208 Department of Public Safety shall approve which vendors of such  
209 devices shall be used to furnish such systems.

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

218 (b) Upon conviction of any person under the age of  
219 twenty-one (21) years for the first offense of violating  
220 subsection (1) of this section where chemical tests provided for  
221 under Section 63-11-5 were given, or where chemical test results  
222 are not available, such person shall have his driver's license  
223 suspended for ninety (90) days and shall be fined Two Hundred  
224 Fifty Dollars (\$250.00); and the court shall order such person to  
225 attend and complete an alcohol safety education program as

226 provided in Section 63-11-32. The court may also require  
227 attendance at a victim impact panel.

228 The court in the county in which the conviction was had or  
229 the circuit court of the person's county of residence may reduce  
230 the suspension of driving privileges under Section 63-11-30(2)(a)  
231 if the denial of which would constitute a hardship on the  
232 offender, except that no court may issue such an order reducing  
233 the suspension of driving privileges under this subsection until  
234 thirty (30) days have elapsed from the effective date of the  
235 suspension. Hardships shall only apply to first offenses under  
236 Section 63-11-30(1), and shall not apply to second, third or  
237 subsequent convictions of any person violating subsection (1) of  
238 this section. A reduction of suspension on the basis of hardship  
239 shall not be available to any person who refused to submit to a  
240 chemical test upon the request of a law enforcement officer as  
241 provided in Section 63-11-5. When the petition is filed, such  
242 person shall pay to the circuit clerk of the court where the  
243 petition is filed a fee of Fifty Dollars (\$50.00), which shall be  
244 deposited into the State General Fund to the credit of a special  
245 fund hereby created in the State Treasury to be used for alcohol  
246 or drug abuse treatment and education, upon appropriation by the  
247 Legislature. This fee shall be in addition to any other court  
248 costs or fees required for the filing of petitions.

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

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

259 determined, and shall order the petitioner to attend and complete  
260 an alcohol safety education program as provided in Section  
261 63-11-32. A certified copy of such order shall be delivered to  
262 the Commissioner of Public Safety by the clerk of the court within  
263 five (5) days of the entry of the order. The certified copy of  
264 such order shall contain information which will identify the  
265 petitioner, including, but not limited to, the name, mailing  
266 address, street address, social security number and driver's  
267 license number of the petitioner.

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

- 273 (i) Continue his employment;
- 274 (ii) Continue attending school or an educational  
275 institution; or
- 276 (iii) Obtain necessary medical care.

277 Proof of the hardship shall be established by clear and  
278 convincing evidence which shall be supported by independent  
279 documentation.

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

286 (d) For any third or subsequent conviction of any  
287 person under the age of twenty-one (21) years violating subsection  
288 (1) of this section, the offenses being committed within a period  
289 of five (5) years, such person shall be fined not more than One  
290 Thousand Dollars (\$1,000.00) and shall have his driver's license

291 suspended until he reaches the age of twenty-one (21) or for two  
292 (2) years, whichever is longer.

293 (e) Any person under the age of twenty-one (21) years  
294 convicted of a second violation of subsection (1) of this section,  
295 may have the period that his driver's license is suspended reduced  
296 if such person receives an in-depth diagnostic assessment, and as  
297 a result of such assessment is determined to be in need of  
298 treatment of his alcohol and/or drug abuse problem and  
299 successfully completes treatment of his alcohol and/or drug abuse  
300 problem at a program site certified by the Department of Mental  
301 Health. Such person shall be eligible for reinstatement of his  
302 driving privileges upon the successful completion of such  
303 treatment after a period of six (6) months after such person's  
304 driver's license is suspended. Each person who receives a  
305 diagnostic assessment shall pay a fee representing the cost of  
306 such assessment. Each person who participates in a treatment  
307 program shall pay a fee representing the cost of such treatment.

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

313 (g) The court shall have the discretion to rule that a  
314 first offense of this subsection by a person under the age of  
315 twenty-one (21) years shall be nonadjudicated. Such person shall  
316 be eligible for nonadjudication only once. The Department of  
317 Public Safety shall maintain a confidential registry of all cases  
318 which are nonadjudicated as provided in this paragraph. A judge  
319 who rules that a case is nonadjudicated shall forward such ruling  
320 to the Department of Public Safety. Judges and prosecutors  
321 involved in implied consent violations shall have access to the  
322 confidential registry for the purpose of determining  
323 nonadjudication eligibility. A record of a person who has been

324 nonadjudicated shall be maintained for five (5) years or until  
325 such person reaches the age of twenty-one (21) years. Any person  
326 whose confidential record has been disclosed in violation of this  
327 paragraph shall have a civil cause of action against the person  
328 and/or agency responsible for such disclosure.

329 (4) In addition to the other penalties provided in this  
330 section, every person refusing a law enforcement officer's request  
331 to submit to a chemical test of his breath as provided in this  
332 chapter, or who was unconscious at the time of a chemical test and  
333 refused to consent to the introduction of the results of such test  
334 in any prosecution, shall suffer an additional suspension of  
335 driving privileges as follows:

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

345 (5) Every person who operates any motor vehicle in violation  
346 of the provisions of subsection (1) of this section and who in a  
347 negligent manner causes the death of another or mutilates,  
348 disfigures, permanently disables or destroys the tongue, eye, lip,  
349 nose or any other limb, organ or member of another shall, upon  
350 conviction, be guilty of a separate felony for each such death,  
351 mutilation, disfigurement or other injury and shall be committed  
352 to the custody of the State Department of Corrections for a period  
353 of time of not less than five (5) years and not to exceed  
354 twenty-five (25) years for each such death, mutilation,  
355 disfigurement or other injury, and the imprisonment for the second  
356 or each subsequent conviction, in the discretion of the court,

357 shall commence either at the termination of the imprisonment for  
358 the preceding conviction or run concurrently with the preceding  
359 conviction. Any person charged with causing the death of another  
360 as described in this subsection shall be required to post bail  
361 before being released after arrest.

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

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

387 (8) For the purposes of determining how to impose the  
388 sentence for a second, third or subsequent conviction under this  
389 section, the indictment shall not be required to enumerate

390 previous convictions. It shall only be necessary that the  
391 indictment state the number of times that the defendant has been  
392 convicted and sentenced within the past five (5) years under this  
393 section to determine if an enhanced penalty shall be imposed. The  
394 amount of fine and imprisonment imposed in previous convictions  
395 shall not be considered in calculating offenses to determine a  
396 second, third or subsequent offense of this section.

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

401 (10) Suspension of driving privileges for any person  
402 convicted of violations of Section 63-11-30(1) shall run  
403 consecutively.

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

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