

By: Representative Mims

To: Judiciary A

HOUSE BILL NO. 777

1 AN ACT TO AMEND SECTIONS 19-19-5, 63-11-5 AND 63-11-19,
2 MISSISSIPPI CODE OF 1972, TO AUTHORIZE CONSTABLES TO TEST FOR THE
3 PRESENCE OF ANY SUBSTANCE WHICH WOULD IMPAIR A PERSON'S ABILITY TO
4 OPERATE A MOTOR VEHICLE WHEN REASONABLE BELIEF IS PRESENT AND THE
5 CONSTABLE HAS BEEN CERTIFIED BY THE STATE CRIME LABORATORY AND
6 COMMISSIONER OF PUBLIC SAFETY TO ADMINISTER SUCH TEST; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** Section 19-19-5, Mississippi Code of 1972, is
10 amended as follows:

11 19-19-5. (1) (a) It shall be the duty of every constable
12 to keep and preserve the peace within his county, by faithfully
13 aiding and assisting in executing the criminal laws of the state;
14 to give information, without delay, to some justice court judge or
15 other proper officer, of all riots, routs and unlawful assemblies,
16 and of every violation of the penal laws which may come to his
17 knowledge in any manner whatsoever; to execute and return all
18 process, civil and criminal, lawfully directed to him, according
19 to the command thereof; and to pay over all monies, when collected
20 by him to the person lawfully authorized to receive the same. In
21 addition, the constable is authorized to serve process issued by
22 any county, chancery or circuit court, and shall receive the same
23 fee as he would receive for service of process in justice court.
24 No constable shall receive any fee provided by law for making an
25 arrest, or attending any trial, wherein the defendant has been
26 arrested, or is being tried for any violation of the motor vehicle
27 laws committed on any designated United States highway located
28 within the district or county of the constable.

29 (b) In fulfilling his duty of keeping and preserving
30 the peace within his county, a constable may conduct field
31 sobriety tests of persons suspected of driving under the influence
32 when the constable has reasonable grounds and probable cause to
33 believe that the person was driving or had under his actual
34 physical control a motor vehicle upon the public streets or
35 highways in his county while under the influence of intoxicating
36 liquor or any other substance.

37 (2) (a) During a constable's term of office, each constable
38 shall attend and, to the extent to which he is physically able,
39 participate in a curriculum having a duration of two (2) weeks
40 which addresses the nature and scope of specific duties and
41 responsibilities of a constable and which includes firearm use and
42 safety training, to be established by the Board on Law Enforcement
43 Officers Standards and Training in the field of law enforcement at
44 the Mississippi Law Enforcement Officers' Training Academy or such
45 other training programs that are approved by the Board on Law
46 Enforcement Officers Standards and Training pursuant to Section
47 45-6-9. No physical fitness test shall be required to be
48 successfully completed in order to complete the training program.

49 The board of supervisors of the county shall be responsible
50 for paying, only one (1) time, the tuition, living and travel
51 expenses incurred by any constable of that county in attendance at
52 such training program or curriculum. If such constable does not
53 attend and, to the extent to which he is physically able,
54 participate in the entirety of the required program or curriculum,
55 any further training which may be required by this section shall
56 be completed at the expense of such constable. No constable shall
57 be entitled to the receipt of any fees, costs or compensation
58 authorized by law after the first twenty-four (24) months in
59 office if he fails to attend the required training and, to the
60 extent to which he is physically able, participate in the entirety
61 of the appropriate program or curriculum. Any constable who does

62 not complete the required training when required may execute and
63 return civil process but thereafter shall not be paid any fees,
64 costs or compensation for executing such process and shall not be
65 allowed to exercise any law enforcement functions or to carry a
66 firearm in the performance of his duties until he has completed
67 such training.

68 (b) (i) The Board of Law Enforcement Officers
69 Standards and Training shall develop a program of continuing
70 education training for constables to attend consisting of eight
71 (8) hours annually. The program shall be divided equally between
72 firearms training and safety and instruction in both substantive
73 and procedural law. The training program shall be conducted by
74 the Mississippi Constables Association, and appropriate parts of
75 the program may be conducted by members who have been certified by
76 the board to conduct the training program. The cost of travel,
77 tuition and living expenses in attending the continuing training
78 shall be paid out of the Law Enforcement Officers Training Fund
79 created in Section 45-6-15.

80 (ii) No constable elected prior to January 1,
81 2000, shall be required to comply with the continuing education
82 requirements of this paragraph (b); however, any constable may
83 elect to attend the annual training and shall be reimbursed
84 therefor as provided in this paragraph (b).

85 (c) The provisions of this subsection shall not apply
86 to a constable who has received a certificate from the Board on
87 Law Enforcement Officers Standards and Training evidencing
88 satisfaction of subsections (2) and (3) of Section 45-6-11, or who
89 is exempt from the requirements of subsections (2) and (3) of
90 Section 45-6-11 by the provisions of subsection (1) of Section
91 45-6-11.

92 **SECTION 2.** Section 63-11-5, Mississippi Code of 1972, is
93 amended as follows:

94 63-11-5. (1) Any person who operates a motor vehicle upon
95 the public highways, public roads and streets of this state shall
96 be deemed to have given his consent, subject to the provisions of
97 this chapter, to a chemical test or tests of his breath for the
98 purpose of determining alcohol concentration. A person shall give
99 his consent to a chemical test or tests of his breath, blood or
100 urine for the purpose of determining the presence in his body of
101 any other substance which would impair a person's ability to
102 operate a motor vehicle. The test or tests shall be administered
103 at the direction of any highway patrol officer, any sheriff or his
104 duly commissioned deputies, any police officer in any incorporated
105 municipality, any national park ranger, any officer of a
106 state-supported institution of higher learning campus police force
107 if such officer is exercising this authority in regard to a
108 violation that occurred on campus property, or any security
109 officer appointed and commissioned pursuant to the Pearl River
110 Valley Water Supply District Security Officer Law of 1978 if such
111 officer is exercising this authority in regard to a violation that
112 occurred within the limits of the Pearl River Valley Water Supply
113 District, or any constable if such constable is exercising this
114 authority in regard to a violation that occurred within boundaries
115 of the county to which the constable has been elected, when such
116 officer has reasonable grounds and probable cause to believe that
117 the person was driving or had under his actual physical control a
118 motor vehicle upon the public streets or highways of this state
119 while under the influence of intoxicating liquor or any other
120 substance which had impaired such person's ability to operate a
121 motor vehicle. No such test shall be administered by any person
122 who has not met all the educational and training requirements of
123 the appropriate course of study prescribed by the Board on Law
124 Enforcement Officers Standards and Training; provided, however,
125 that sheriffs and elected chiefs of police shall be exempt from
126 such educational and training requirement. No such tests shall be

127 given by any officer or any agency to any person within fifteen
128 (15) minutes of consumption of any substance by mouth.

129 (2) If the officer has reasonable grounds and probable cause
130 to believe such person to have been driving a motor vehicle upon
131 the public highways, public roads, and streets of this state while
132 under the influence of intoxicating liquor, such officer shall
133 inform such person that his failure to submit to such chemical
134 test or tests of his breath shall result in the suspension of his
135 privilege to operate a motor vehicle upon the public streets and
136 highways of this state for a period of ninety (90) days in the
137 event such person has not previously been convicted of a violation
138 of Section 63-11-30, or, for a period of one (1) year in the event
139 of any previous conviction of such person under Section 63-11-30.

140 (3) The traffic ticket, citation or affidavit issued to a
141 person arrested for a violation of this chapter shall conform to
142 the requirements of Section 63-9-21(3)(b).

143 (4) Any person arrested under the provisions of this chapter
144 shall be informed that he has the right to telephone for the
145 purpose of requesting legal or medical assistance immediately
146 after being booked for a violation under this chapter.

147 (5) The Commissioner of Public Safety and the State Crime
148 Laboratory created pursuant to Section 45-1-17 are hereby
149 authorized from and after the passage of this section to adopt
150 procedures, rules and regulations, applicable to the Implied
151 Consent Law.

152 **SECTION 3.** Section 63-11-19, Mississippi Code of 1972, is
153 amended as follows:

154 63-11-19. A chemical analysis of the person's breath, blood
155 or urine, to be considered valid under the provisions of this
156 section, shall have been performed according to methods approved
157 by the State Crime Laboratory created pursuant to Section 45-1-17
158 and the Commissioner of Public Safety and performed by an
159 individual possessing a valid permit issued by the State Crime

160 Laboratory for making such analysis. The State Crime Laboratory
161 and the Commissioner of Public Safety are authorized to approve
162 satisfactory techniques or methods, to ascertain the
163 qualifications and competence of individuals to conduct such
164 analyses, and to issue permits which shall be subject to
165 termination or revocation at the discretion of the State Crime
166 Laboratory. The State Crime Laboratory shall not approve the
167 permit required herein for any law enforcement officer other than
168 a member of the State Highway Patrol, a sheriff or his deputies, a
169 city policeman, an officer of a state-supported institution of
170 higher learning campus police force, a security officer appointed
171 and commissioned pursuant to the Pearl River Valley Water Supply
172 District Security Officer Law of 1978, constable, a national park
173 ranger, a national park ranger technician, a military policeman
174 stationed at a United States military base located within this
175 state other than a military policeman of the Army or Air National
176 Guard or of Reserve Units of the Army, Air Force, Navy or Marine
177 Corps, a marine law enforcement officer employed by the Department
178 of Marine Resources, or a conservation officer employed by the
179 Mississippi Department of Wildlife, Fisheries and Parks. The
180 permit given a conservation officer or a marine law enforcement
181 officer shall authorize such officer to administer tests only for
182 violations of Sections 59-23-1 through 59-23-7.

183 The State Crime Laboratory shall make periodic, but not less
184 frequently than quarterly, tests of the methods, machines or
185 devices used in making chemical analysis of a person's breath as
186 shall be necessary to ensure the accuracy thereof, and shall issue
187 its certificate to verify the accuracy of the same.

188 **SECTION 4.** This act shall take effect and be in force from
189 and after July 1, 2006.