

By: Representative Franks

To: Judiciary A

HOUSE BILL NO. 811

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE MINIMUM PENALTY FOR FIRST AND SECOND DUI OFFENSES IF
3 BLOOD ALCOHOL CONCENTRATION IS .15% OR MORE; AND FOR RELATED
4 PURPOSES.

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

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

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

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

30 (2) (a) Except as otherwise provided in subsection (3),
31 upon conviction of any person for the first offense of violating
32 subsection (1) of this section where chemical tests provided for
33 under Section 63-11-5 were given, or where chemical test results
34 are not available, such person shall be fined not less than Two
35 Hundred Fifty Dollars (\$250.00) or not less than Six Hundred
36 Dollars (\$600.00) if the chemical test revealed a blood alcohol
37 concentration of fifteen one-hundredths percent (.15%) or more,
38 nor more than One Thousand Dollars (\$1,000.00), or imprisoned for
39 not more than forty-eight (48) hours in jail or both; and the
40 court shall order such person to attend and complete an alcohol
41 safety education program as provided in Section 63-11-32. The
42 court may substitute attendance at a victim impact panel instead
43 of forty-eight (48) hours in jail. In addition, the Department of
44 Public Safety, the Commissioner of Public Safety or his duly
45 authorized agent shall, after conviction and upon receipt of the
46 court abstract, suspend the driver's license and driving
47 privileges of such person for a period of not less than ninety
48 (90) days and until such person attends and successfully completes
49 an alcohol safety education program as herein provided; provided,
50 however, in no event shall such period of suspension exceed one
51 (1) year. Commercial driving privileges shall be suspended as
52 provided in Section 63-1-83.

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

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

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

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

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

98 (i) Continue his employment;

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

101 (iii) Obtain necessary medical care.

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

105 (b) Except as otherwise provided in subsection (3),
106 upon any second conviction of any person violating subsection (1)
107 of this section, the offenses being committed within a period of
108 five (5) years, such person shall be fined not less than Six
109 Hundred Dollars (\$600.00) or not less than One Thousand Dollars
110 (\$1,000.00) if the chemical test revealed a blood alcohol
111 concentration of fifteen one-hundredths percent (.15%) or more,
112 nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall
113 be imprisoned not less than five (5) days nor more than one (1)
114 year and sentenced to community service work for not less than ten
115 (10) days nor more than one (1) year. The minimum penalties shall
116 not be suspended or reduced by the court and no prosecutor shall
117 offer any suspension or sentence reduction as part of a plea
118 bargain. Except as may otherwise be provided by paragraph (d) of
119 this subsection, the Commissioner of Public Safety shall suspend
120 the driver's license of such person for two (2) years. Suspension
121 of a commercial driver's license shall be governed by Section
122 63-1-83. Upon any second conviction as described in this
123 paragraph, the court shall ascertain whether the defendant is
124 married, and if the defendant is married shall obtain the name and
125 address of the defendant's spouse; the clerk of the court shall

126 submit this information to the Department of Public Safety.
127 Further, the commissioner shall notify in writing, by certified
128 mail, return receipt requested, the owner of the vehicle and the
129 spouse, if any, of the person convicted of the second violation of
130 the possibility of forfeiture of the vehicle if such person is
131 convicted of a third violation of subsection (1) of this section.
132 The owner of the vehicle and the spouse shall be considered
133 notified under this paragraph if the notice is deposited in the
134 United States mail and any claim that the notice was not in fact
135 received by the addressee shall not affect a subsequent forfeiture
136 proceeding.

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

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

159 by Sections 63-11-49 through 63-11-53. Except as may otherwise be
160 provided by paragraph (e) of this subsection, the Commissioner of
161 Public Safety shall suspend the driver's license of such person
162 for five (5) years. The suspension of a commercial driver's
163 license shall be governed by Section 63-1-83.

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

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

190 (f) The Department of Public Safety shall promulgate
191 rules and regulations for the use of interlock ignition devices as

192 provided in Section 63-11-31 and consistent with the provisions
193 therein. Such rules and regulations shall provide for the
194 calibration of such devices and shall provide that the cost of the
195 use of such systems shall be borne by the offender. The
196 Department of Public Safety shall approve which vendors of such
197 devices shall be used to furnish such systems.

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

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

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

225 subsequent convictions of any person violating subsection (1) of
226 this section. A reduction of suspension on the basis of hardship
227 shall not be available to any person who refused to submit to a
228 chemical test upon the request of a law enforcement officer as
229 provided in Section 63-11-5. When the petition is filed, such
230 person shall pay to the circuit clerk of the court where the
231 petition is filed a fee of Fifty Dollars (\$50.00), which shall be
232 deposited into the State General Fund to the credit of a special
233 fund hereby created in the State Treasury to be used for alcohol
234 or drug abuse treatment and education, upon appropriation by the
235 Legislature. This fee shall be in addition to any other court
236 costs or fees required for the filing of petitions.

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

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

256 At any time following at least thirty (30) days of suspension
257 for a first offense violation of this section, the court may grant

258 the person hardship driving privileges upon written petition of
259 the defendant, if it finds reasonable cause to believe that
260 revocation would hinder the person's ability to:

261 (i) Continue his employment;

262 (ii) Continue attending school or an educational
263 institution; or

264 (iii) Obtain necessary medical care.

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

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

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

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

291 treatment after a period of six (6) months after such person's
292 driver's license is suspended. Each person who receives a
293 diagnostic assessment shall pay a fee representing the cost of
294 such assessment. Each person who participates in a treatment
295 program shall pay a fee representing the cost of such treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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