

By: Representative Reeves

To: Judiciary A

## HOUSE BILL NO. 627

1 AN ACT TO AMEND SECTION 63-11-5, MISSISSIPPI CODE OF 1972, TO  
2 AUTHORIZE OFFICERS FROM THE DEPARTMENT OF TRANSPORTATION AND THE  
3 DEPARTMENT OF CORRECTIONS TO ADMINISTER DUI TESTS; TO AMEND  
4 SECTION 63-11-15, MISSISSIPPI CODE OF 1972, TO CLARIFY FULL  
5 INFORMATION; TO AMEND SECTION 63-11-19, MISSISSIPPI CODE OF 1972,  
6 TO REVISE TESTING REQUIREMENTS FOR CHEMICAL ANALYSIS DEVICES; TO  
7 CONFORM TO THE PROVISIONS OF THIS ACT; TO AMEND SECTION 63-11-23,  
8 MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF LICENSE SUSPENSION  
9 TO BE SERVED UPON THE PROSECUTING ATTORNEY; AND FOR RELATED  
10 PURPOSES.

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

12 **SECTION 1.** Section 63-11-5, Mississippi Code of 1972, is  
13 amended as follows:

14 63-11-5. (1) Any person who operates a motor vehicle upon  
15 the public highways, public roads and streets of this state shall  
16 be deemed to have given his consent, subject to the provisions of  
17 this chapter, to a chemical test or tests of his breath for the  
18 purpose of determining alcohol concentration. A person shall give  
19 his consent to a chemical test or tests of his breath, blood or  
20 urine for the purpose of determining the presence in his body of  
21 any other substance which would impair a person's ability to  
22 operate a motor vehicle. The test or tests shall be administered  
23 at the direction of any highway patrol officer, any sheriff or his  
24 duly commissioned deputies, any police officer in any incorporated  
25 municipality, any national park ranger, any Department of  
26 Corrections officer, any Department of Transportation officer, any  
27 officer of a state-supported institution of higher learning campus  
28 police force if such officer is exercising this authority in  
29 regard to a violation that occurred on campus property, or any  
30 security officer appointed and commissioned pursuant to the Pearl  
31 River Valley Water Supply District Security Officer Law of 1978 if

32 such officer is exercising this authority in regard to a violation  
33 that occurred within the limits of the Pearl River Valley Water  
34 Supply District, when such officer has reasonable grounds and  
35 probable cause to believe that the person was driving or had under  
36 his actual physical control a motor vehicle upon the public  
37 streets or highways of this state while under the influence of  
38 intoxicating liquor or any other substance which had impaired such  
39 person's ability to operate a motor vehicle. No such test shall  
40 be administered by any person who has not met all the educational  
41 and training requirements of the appropriate course of study  
42 prescribed by the Board on Law Enforcement Officers Standards and  
43 Training; provided, however, that sheriffs and elected chiefs of  
44 police shall be exempt from such educational and training  
45 requirement. No such tests shall be given by any officer or any  
46 agency to any person within fifteen (15) minutes of consumption of  
47 any substance by mouth.

48 (2) If the officer has reasonable grounds and probable cause  
49 to believe such person to have been driving a motor vehicle upon  
50 the public highways, public roads, and streets of this state while  
51 under the influence of intoxicating liquor or any other substances  
52 in violation of Section 63-11-30, such officer shall inform such  
53 person that his failure to submit to such chemical test or tests  
54 of his breath shall result in the suspension of his privilege to  
55 operate a motor vehicle upon the public streets and highways of  
56 this state for a period of ninety (90) days in the event such  
57 person has not previously been convicted of a violation of Section  
58 63-11-30, or, for a period of one (1) year in the event of any  
59 previous conviction of such person under Section 63-11-30.

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

63 (4) Any person arrested under the provisions of this chapter  
64 shall be informed that he has the right to telephone for the

65 purpose of requesting legal or medical assistance immediately  
66 after being booked for a violation under this chapter.

67 (5) The Commissioner of Public Safety and the State Crime  
68 Laboratory created pursuant to Section 45-1-17 are hereby  
69 authorized from and after the passage of this section to adopt  
70 procedures, rules and regulations, applicable to the Implied  
71 Consent Law.

72 **SECTION 2.** Section 63-11-15, Mississippi Code of 1972, is  
73 amended as follows:

74 63-11-15. Upon the written request of the person tested, or  
75 his attorney, full information concerning the test taken at the  
76 direction of the law enforcement officer shall be made available  
77 to him or to his attorney. Full information is limited to the  
78 following:

79 (a) The type of test administered and the procedures  
80 followed;

81 (b) The time of the collection of the blood or breath  
82 sample analyzed;

83 (c) The numerical results of the test indicating the  
84 alcohol content of the blood and breath; and

85 (d) The type and status of any permit issued by the  
86 Mississippi Crime Lab which was held by the person who performed  
87 the test.

88 Full information does not include manuals, schematics or  
89 software of the instrument used to test the person or any other  
90 material that is not in the actual possession of the state.

91 Additionally, full information does not include information  
92 in the possession of the manufacturer of the test instrument.

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

95 63-11-19. A chemical analysis of the person's breath, blood  
96 or urine, to be considered valid under the provisions of this  
97 section, shall have been performed according to methods approved

by the State Crime Laboratory created pursuant to Section 45-1-17 and the Commissioner of Public Safety and performed by an individual possessing a valid permit issued by the State Crime Laboratory for making such analysis. The State Crime Laboratory and the Commissioner of Public Safety are authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Crime Laboratory. The State Crime Laboratory shall not approve the permit required herein for any law enforcement officer other than a member of the State Highway Patrol, a sheriff or his deputies, a city policeman, any Department of Corrections officer, any Department of Transportation officer, an officer of a state-supported institution of higher learning campus police force, a security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law of 1978, a national park ranger, a national park ranger technician, a military policeman stationed at a United States military base located within this state other than a military policeman of the Army or Air National Guard or of Reserve Units of the Army, Air Force, Navy or Marine Corps, a marine law enforcement officer employed by the Department of Marine Resources, or a conservation officer employed by the Mississippi Department of Wildlife, Fisheries and Parks. \* \* \*

The State Crime Laboratory shall provide annually a document that is self-authenticating showing the accuracy of the testing devices or machines in operation.

**SECTION 4.** Section 63-11-23, Mississippi Code of 1972, is amended as follows:

63-11-23. (1) The Commissioner of Public Safety, or his authorized agent, shall review the sworn report by a law enforcement officer as provided in Section 63-11-21. If upon such

131 review the Commissioner of Public Safety, or his authorized agent,  
132 finds (a) that the law enforcement officer had reasonable grounds  
133 and probable cause to believe the person had been driving a motor  
134 vehicle upon the public highways, public roads and streets of this  
135 state while under the influence of intoxicating liquor or any  
136 other substance which may impair a person's mental or physical  
137 ability; (b) that he refused to submit to the test upon request of  
138 the officer; and (c) that the person was informed that his license  
139 and/or driving privileges would be suspended or denied if he  
140 refused to submit to the chemical test, then the Commissioner of  
141 Public Safety, or his authorized agent, shall give notice to the  
142 licensee that his license or permit to drive, or any nonresident  
143 operating privilege, shall be suspended thirty (30) days after the  
144 date of such notice for a period of ninety (90) days in the event  
145 such person has not previously been convicted of a violation of  
146 Section 63-11-30, or, for a period of one (1) year in the event of  
147 any previous conviction of such person under Section 63-11-30. In  
148 the event the commissioner or his authorized agent determines that  
149 the license should not be suspended, he shall return the license  
150 or permit to the licensee.

151 The notice of suspension shall be in writing and given in the  
152 manner provided in Section 63-1-52(2)(a) and shall also be served  
153 upon the prosecuting attorney.

154 (2) If the chemical testing of a person's breath indicates  
155 the blood alcohol concentration was eight one-hundredths percent  
156 (.08%) or more for persons who are above the legal age to purchase  
157 alcoholic beverages under state law, or two one-hundredths percent  
158 (.02%) or more for persons who are below the legal age to purchase  
159 alcoholic beverages under state law, based upon grams of alcohol  
160 per one hundred (100) milliliters of blood or grams of alcohol per  
161 two hundred ten (210) liters of breath as shown by a chemical  
162 analysis of such person's blood, or breath, or urine, the  
163 arresting officer shall seize the license and give the driver a

164 receipt for his license on forms prescribed by the Commissioner of  
165 Public Safety and shall promptly forward the license together with  
166 a sworn report to the Commissioner of Public Safety. The receipt  
167 given a person as provided herein shall be valid as a permit to  
168 operate a motor vehicle for a period of thirty (30) days in order  
169 that the defendant be processed through the court having original  
170 jurisdiction and a final disposition had. If the defendant  
171 requests a trial within thirty (30) days and such trial is not  
172 commenced within thirty (30) days, then the court shall determine  
173 if the delay in the trial is the fault of the defendant or his  
174 counsel. If the court finds that such is not the fault of the  
175 defendant or his counsel, then the court shall order the  
176 defendant's driving privileges to be extended until such time as  
177 the defendant is convicted. If a receipt or permit to drive  
178 issued pursuant to the provisions of this subsection expires  
179 without a trial having been requested as provided for in this  
180 subsection, then the Commissioner of Public Safety or his  
181 authorized agent shall suspend the license or permit to drive or  
182 any nonresident operating privilege for the applicable period of  
183 time as provided for in subsection (1) of this section.

184 (3) If the person is a resident without a license or permit  
185 to operate a motor vehicle in this state, the Commissioner of  
186 Public Safety, or his authorized agent, shall deny to the person  
187 the issuance of a license or permit for a period of one (1) year  
188 beginning thirty (30) days after the date of notice of such  
189 suspension.

190 (4) It shall be the duty of the county prosecuting attorney,  
191 an attorney employed under the provisions of Section 19-3-49, or  
192 in the event there is no such prosecuting attorney for the county,  
193 the duty of the district attorney to represent the state in any  
194 hearing held under the provisions of Section 63-11-25, under the  
195 provisions of Section 63-11-37(2) or under the provisions of  
196 Section 63-11-30(2)(a).

197           **SECTION 5.** This act shall take effect and be in force from  
198 and after July 1, 2007.