

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1231
(As Passed the House)

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO REVISE LICENSE SUSPENSION TO INSURE COMPLETION OF DRIVER
3 IMPROVEMENT TRAINING BY OFFENDERS; 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 more than forty-eight (48)
36 hours in jail or both; and the court shall order such person to
37 attend and complete an alcohol safety education program as
38 provided in Section 63-11-32. The court may substitute attendance
39 at a victim impact panel instead of forty-eight (48) hours in
40 jail. In addition, the Department of Public Safety, the
41 Commissioner of Public Safety or his duly authorized agent shall,
42 after conviction and upon receipt of the court abstract, suspend
43 the driver's license and driving privileges of such person for a
44 period of not less than ninety (90) days and until such person
45 attends and successfully completes an alcohol safety education
46 program as herein provided * * *. Commercial driving privileges
47 shall be suspended as provided in Section 63-1-83.

48 The circuit court having jurisdiction in the county in which
49 the conviction was had or the circuit court of the person's county
50 of residence may reduce the suspension of driving privileges under
51 Section 63-11-30(2)(a) if the denial of which would constitute a
52 hardship on the offender, except that no court may issue such an
53 order reducing the suspension of driving privileges under this
54 subsection until thirty (30) days have elapsed from the effective
55 date of the suspension. Hardships shall only apply to first
56 offenses under Section 63-11-30(1), and shall not apply to second,
57 third or subsequent convictions of any person violating subsection
58 (1) of this section. A reduction of suspension on the basis of
59 hardship shall not be available to any person who refused to

60 submit to a chemical test upon the request of a law enforcement
61 officer as provided in Section 63-11-5. When the petition is
62 filed, such person shall pay to the circuit clerk of the court
63 where the petition is filed a fee of Fifty Dollars (\$50.00), which
64 shall be deposited into the State General Fund to the credit of a
65 special fund hereby created in the State Treasury to be used for
66 alcohol or drug abuse treatment and education, upon appropriation
67 by the Legislature. This fee shall be in addition to any other
68 court costs or fees required for the filing of petitions.

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

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

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

- 93 (i) Continue his employment;
- 94 (ii) Continue attending school or an educational
95 institution; or
- 96 (iii) Obtain necessary medical care.

97 Proof of the hardship shall be established by clear and
98 convincing evidence which shall be supported by independent
99 documentation.

100 (b) Except as otherwise provided in subsection (3),
101 upon any second conviction of any person violating subsection (1)
102 of this section, the offenses being committed within a period of
103 five (5) years, such person shall be fined not less than Six
104 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
105 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
106 days nor more than one (1) year and sentenced to community service
107 work for not less than ten (10) days nor more than one (1) year.
108 The minimum penalties shall not be suspended or reduced by the
109 court and no prosecutor shall offer any suspension or sentence
110 reduction as part of a plea bargain. Except as may otherwise be
111 provided by paragraph (d) of this subsection, the Commissioner of
112 Public Safety shall suspend the driver's license of such person
113 for two (2) years. Suspension of a commercial driver's license
114 shall be governed by Section 63-1-83. Upon any second conviction
115 as described in this paragraph, the court shall ascertain whether
116 the defendant is married, and if the defendant is married shall
117 obtain the name and address of the defendant's spouse; the clerk
118 of the court shall submit this information to the Department of
119 Public Safety. Further, the commissioner shall notify in writing,
120 by certified mail, return receipt requested, the owner of the
121 vehicle and the spouse, if any, of the person convicted of the
122 second violation of the possibility of forfeiture of the vehicle
123 if such person is convicted of a third violation of subsection (1)
124 of this section. The owner of the vehicle and the spouse shall be
125 considered notified under this paragraph if the notice is

126 deposited in the United States mail and any claim that the notice
127 was not in fact received by the addressee shall not affect a
128 subsequent forfeiture proceeding.

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

132 (c) Except as otherwise provided in subsection (3), for
133 any third or subsequent conviction of any person violating
134 subsection (1) of this section, the offenses being committed
135 within a period of five (5) years, such person shall be guilty of
136 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
137 nor more than Five Thousand Dollars (\$5,000.00), shall serve not
138 less than one (1) year nor more than five (5) years in the custody
139 of the Department of Corrections; provided, however, that for any
140 such offense which does not result in serious injury or death to
141 any person, any sentence of incarceration may be served in the
142 county jail rather than in the State Penitentiary at the
143 discretion of the circuit court judge. The minimum penalties
144 shall not be suspended or reduced by the court and no prosecutor
145 shall offer any suspension or sentence reduction as part of a plea
146 bargain. The law enforcement agency shall seize the vehicle
147 operated by any person charged with a third or subsequent
148 violation of subsection (1) of this section, if such convicted
149 person was driving the vehicle at the time the offense was
150 committed. Such vehicle may be forfeited in the manner provided
151 by Sections 63-11-49 through 63-11-53. Except as may otherwise be
152 provided by paragraph (e) of this subsection, the Commissioner of
153 Public Safety shall suspend the driver's license of such person
154 for five (5) years. The suspension of a commercial driver's
155 license shall be governed by Section 63-1-83.

156 (d) Except as otherwise provided in subsection (3), any
157 person convicted of a second violation of subsection (1) of this
158 section shall receive an in-depth diagnostic assessment, and if as

159 a result of such assessment is determined to be in need of
160 treatment of his alcohol and/or drug abuse problem, such person
161 shall successfully complete treatment of his alcohol and/or drug
162 abuse problem at a program site certified by the Department of
163 Mental Health. Such person shall be eligible for reinstatement of
164 his driving privileges upon the successful completion of such
165 treatment after a period of one (1) year after such person's
166 driver's license is suspended. Each person who receives a
167 diagnostic assessment shall pay a fee representing the cost of
168 such assessment. Each person who participates in a treatment
169 program shall pay a fee representing the cost of such treatment.

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

182 (f) The Department of Public Safety shall promulgate
183 rules and regulations for the use of interlock ignition devices as
184 provided in Section 63-11-31 and consistent with the provisions
185 therein. Such rules and regulations shall provide for the
186 calibration of such devices and shall provide that the cost of the
187 use of such systems shall be borne by the offender. The
188 Department of Public Safety shall approve which vendors of such
189 devices shall be used to furnish such systems.

190 (3) (a) This subsection shall be known and may be cited as
191 Zero Tolerance for Minors. The provisions of this subsection

192 shall apply only when a person under the age of twenty-one (21)
193 years has a blood alcohol concentration of two one-hundredths
194 percent (.02%) or more, but lower than eight one-hundredths
195 percent (.08%). If such person's blood alcohol concentration is
196 eight one-hundredths percent (.08%) or more, the provisions of
197 subsection (2) shall apply.

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

208 The court in the county in which the conviction was had or
209 the circuit court of the person's county of residence may reduce
210 the suspension of driving privileges under Section 63-11-30(2)(a)
211 if the denial of which would constitute a hardship on the
212 offender, except that no court may issue such an order reducing
213 the suspension of driving privileges under this subsection until
214 thirty (30) days have elapsed from the effective date of the
215 suspension. Hardships shall only apply to first offenses under
216 Section 63-11-30(1), and shall not apply to second, third or
217 subsequent convictions of any person violating subsection (1) of
218 this section. A reduction of suspension on the basis of hardship
219 shall not be available to any person who refused to submit to a
220 chemical test upon the request of a law enforcement officer as
221 provided in Section 63-11-5. When the petition is filed, such
222 person shall pay to the circuit clerk of the court where the
223 petition is filed a fee of Fifty Dollars (\$50.00), which shall be
224 deposited into the State General Fund to the credit of a special

225 fund hereby created in the State Treasury to be used for alcohol
226 or drug abuse treatment and education, upon appropriation by the
227 Legislature. This fee shall be in addition to any other court
228 costs or fees required for the filing of petitions.

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

237 The order entered under the provisions of this subsection
238 shall contain the specific grounds upon which hardship was
239 determined, and shall order the petitioner to attend and complete
240 an alcohol safety education program as provided in Section
241 63-11-32. A certified copy of such order shall be delivered to
242 the Commissioner of Public Safety by the clerk of the court within
243 five (5) days of the entry of the order. The certified copy of
244 such order shall contain information which will identify the
245 petitioner, including, but not limited to, the name, mailing
246 address, street address, social security number and driver's
247 license number of the petitioner.

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

- 253 (i) Continue his employment;
- 254 (ii) Continue attending school or an educational
255 institution; or
- 256 (iii) Obtain necessary medical care.

257 Proof of the hardship shall be established by clear and
258 convincing evidence which shall be supported by independent
259 documentation.

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

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

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

288 (f) Any person under the age of twenty-one (21) years
289 convicted of a third or subsequent violation of subsection (1) of

290 this section shall complete treatment of an alcohol and/or drug
291 abuse program at a site certified by the Department of Mental
292 Health.

293 (g) The court shall have the discretion to rule that a
294 first offense of this subsection by a person under the age of
295 twenty-one (21) years shall be nonadjudicated whether or not there
296 was submission to a chemical breath test, but only when subsection
297 (4) herein is complied with and subsection (2) is complied with if
298 relief is sought by the person. Such person shall be eligible for
299 nonadjudication only once. The Department of Public Safety shall
300 maintain a confidential registry of all cases which are
301 nonadjudicated as provided in this paragraph. A judge who rules
302 that a case is nonadjudicated shall forward such ruling to the
303 Department of Public Safety. Judges and prosecutors involved in
304 implied consent violations shall have access to the confidential
305 registry for the purpose of determining nonadjudication
306 eligibility. A record of a person who has been nonadjudicated
307 shall be maintained for five (5) years or until such person
308 reaches the age of twenty-one (21) years. Any person whose
309 confidential record has been disclosed in violation of this
310 paragraph shall have a civil cause of action against the person
311 and/or agency responsible for such disclosure.

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

319 The Commissioner of Public Safety or his authorized agent
320 shall suspend the driver's license or permit to drive or deny the
321 issuance of a license or permit to such person as provided for
322 first, second and third or subsequent offenders in subsection (2)

323 of this section. Such suspension shall be in addition to any
324 suspension imposed pursuant to subsection (1) of Section 63-11-23.
325 The minimum suspension imposed under this subsection shall not be
326 reduced and no prosecutor is authorized to offer a reduction of
327 such suspension as part of a plea bargain.

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

345 (6) Upon conviction of any violation of subsection (1) of
346 this section, the trial judge shall sign in the place provided on
347 the traffic ticket, citation or affidavit stating that the person
348 arrested either employed an attorney or waived his right to an
349 attorney after having been properly advised. If the person
350 arrested employed an attorney, the name, address and telephone
351 number of the attorney shall be written on the ticket, citation or
352 affidavit. The judge shall cause a copy of the traffic ticket,
353 citation or affidavit, and any other pertinent documents
354 concerning the conviction, to be sent to the Commissioner of
355 Public Safety. A copy of the traffic ticket, citation or

356 affidavit and any other pertinent documents, having been attested
357 as true and correct by the Commissioner of Public Safety, or his
358 designee, shall be sufficient proof of the conviction for purposes
359 of determining the enhanced penalty for any subsequent convictions
360 of violations of subsection (1) of this section.

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

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

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

384 (10) Suspension of driving privileges for any person
385 convicted of violations of Section 63-11-30(1) shall run
386 consecutively.

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

389 **SECTION 2.** This act shall take effect and be in force from
390 and after its passage.