

By: Senator(s) Walls

To: Judiciary, Division B

SENATE BILL NO. 2306

1 AN ACT TO AMEND SECTION 63-9-11, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE ALTERNATIVE SENTENCING OF CERTAIN FIRST- OR SECOND-TIME
 3 TRAFFIC VIOLATIONS AND TO PROVIDE THAT SUCH TRAFFIC VIOLATIONS
 4 WILL NOT BE ENTERED ON THE DRIVING RECORD OF ANY INDIVIDUAL; TO
 5 AMEND SECTION 63-9-17, MISSISSIPPI CODE OF 1972, IN CONFORMITY AND
 6 TO CORRECT A TECHNICAL ERROR IN THE CODE; AND FOR RELATED
 7 PURPOSES.

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

9 **SECTION 1.** Section 63-9-11, Mississippi Code of 1972, is
 10 amended as follows:

11 63-9-11. (1) It is a misdemeanor for any person to violate
 12 any of the provisions of Chapter 3, 5 or 7 of this title, unless
 13 such violation is by such chapters or other law of this state
 14 declared to be a felony.

15 (2) Every person convicted of a misdemeanor for a violation
 16 of any of the provisions of such chapters for which another
 17 penalty is not provided shall for first conviction thereof be
 18 punished by a fine of not more than One Hundred Dollars (\$100.00)
 19 or by imprisonment for not more than ten (10) days; for a second
 20 such conviction within one (1) year thereafter such person shall
 21 be punished by a fine of not more than Two Hundred Dollars
 22 (\$200.00) or by imprisonment for not more than twenty (20) days or
 23 by both such fine and imprisonment; upon a third or subsequent
 24 conviction within one (1) year after the first conviction such
 25 person shall be punished by a fine of not more than Five Hundred
 26 Dollars (\$500.00) or by imprisonment for not more than six (6)
 27 months or by both such fine and imprisonment.

28 (3) (a) Whenever a person not covered under Section 63-1-55
 29 is charged with a misdemeanor violation of any of the provisions

30 of Chapter 3, 5 or 7 of this title, the person shall be eligible
31 to participate in not less than four (4) hours of a traffic safety
32 violator course and thereby have no record of the violation on the
33 person's driving record if the person meets all the following
34 conditions:

35 (i) The defendant has a valid Mississippi driver's
36 license or permit.

37 (ii) The defendant has not had a conviction of a
38 violation under Chapter 3, 5 or 7 of this title within three (3)
39 years before the current offense; any conviction entered before
40 October 1, 2002, does not constitute a prior offense for the
41 purposes of this subsection (3).

42 (iii) The defendant's public and nonpublic driving
43 record as maintained by the Department of Public Safety does not
44 indicate successful completion of a traffic safety violator course
45 under this section in the three-year period before the offense.

46 (iv) The defendant files an affidavit with the
47 court stating that this is the defendant's first conviction in
48 more than three (3) years or since October 1, 2002, whichever is
49 the lesser period of time; the defendant is not in the process of
50 taking a course under this section; and the defendant has not
51 completed a course under this section that is not yet reflected on
52 the defendant's public or nonpublic driving record.

53 (v) The offense charged is for a misdemeanor
54 offense under Chapter 3, 5 or 7 of this title.

55 (vi) The defendant pays the applicable fine, costs
56 and any assessments required by law to be paid upon conviction of
57 such an offense.

58 (vii) The defendant pays to the court an
59 additional fee of Ten Dollars (\$10.00) to elect to proceed under
60 the provisions of this subsection (3).

61 (b) (i) 1. An eligible defendant may enter a plea of
62 nolo contendere or guilty in person or in writing and present to

63 the court, in person or by mail postmarked on or before the
64 appearance date on the citation, an oral or written request to
65 participate in a course under this subsection (3).

66 2. The court shall withhold acceptance of the
67 plea and defer sentencing in order to allow the eligible defendant
68 ninety (90) days to successfully complete not less than four (4)
69 hours of a court-approved traffic safety violator course at the
70 cost of the defendant. Upon proof of successful completion
71 entered with the court, the court shall dismiss the prosecution
72 and direct that the case be closed. The only record maintained
73 thereafter shall be the nonpublic record required under Section
74 63-9-17 solely for use by the courts in determining eligibility
75 under this subsection (3).

76 (ii) If a person pleads not guilty to a
77 misdemeanor offense under any of the provisions of Chapter 3, 5 or
78 7 of this title but is convicted, and the person meets all the
79 requirements under paragraph (a) of this subsection, upon request
80 of the defendant the court shall suspend the sentence for such
81 offense to allow the defendant forty-five (45) days to
82 successfully complete not less than four (4) hours of a
83 court-approved traffic safety violator course at his own cost.
84 Upon successful completion by the defendant of the course, the
85 court shall set the conviction aside, dismiss the prosecution and
86 direct that the case be closed. The court on its own motion shall
87 expunge the record of the conviction, and the only record
88 maintained thereafter shall be the nonpublic record required under
89 Section 63-9-17 solely for use by the courts in determining an
90 offender's eligibility under this subsection (3).

91 (c) An out-of-state resident shall be allowed to
92 complete a substantially similar program in his home state,
93 province or country provided the requirements of this subsection
94 (3) are met, except that the necessary valid driver's license or
95 permit shall be one issued by the home jurisdiction.

96 (d) A court shall not approve a traffic safety violator
97 course under this subsection (3) that does not supply at least
98 four (4) hours of instruction, an instructor's manual setting
99 forth an appropriate curriculum, student workbooks, some
100 scientifically verifiable analysis of the effectiveness of the
101 curriculum and provide minimum qualifications for instructors.

102 (e) A court shall inform a defendant making inquiry or
103 entering a personal appearance of the provisions of this
104 subsection (3).

105 (f) The Department of Public Safety shall cause notice
106 of the provisions of this subsection (3) to be available on its
107 official Web site.

108 (g) Failure of a defendant to elect to come under the
109 provisions of this subsection (3) for whatever reason, in and of
110 itself, shall not invalidate a conviction.

111 (h) No employee of the sentencing court shall
112 personally benefit from a defendant's attendance of a traffic
113 safety violator course. Violation of this prohibition shall
114 result in termination of employment.

115 (i) The additional fee of Ten Dollars (\$10.00) imposed
116 under this subsection (3) shall be forwarded by the court clerk to
117 the State Treasurer for deposit into a special fund created in the
118 State Treasury. Monies in the special fund may be expended by the
119 Department of Public Safety, upon legislative appropriation, to
120 defray the costs incurred by the department in maintaining the
121 nonpublic record of persons who are eligible for participation
122 under the provisions of this subsection (3).

123 (4) Whenever, in a misdemeanor case, a person is convicted
124 of violating any of the provisions of Chapter 3, 5 or 7 of this
125 title, has not had more than one (1) such violation within the
126 past three (3) years, and pleads guilty to the violation, the
127 court imposing sentence is authorized to impose a double fine and

128 withhold reporting of the conviction to the Department of Public
129 Safety from inclusion in the person's driving record.

130 (5) The provisions of subsections (3) and (4) of this
131 section shall not be applicable to violation of any of the
132 provisions of Chapter 3, 5 or 7 of this title committed by the
133 holder of a commercial driver's license issued under the
134 Mississippi Commercial Driver's License Law, regardless of whether
135 the violation occurred while operating a commercial motor vehicle
136 or some other motor vehicle.

137 **SECTION 2.** Section 63-9-17, Mississippi Code of 1972, is
138 amended as follows:

139 63-9-17. (1) Every court shall keep a full record of the
140 proceedings of every case in which a person is charged with any
141 violation of law regulating the operation of vehicles on the
142 highways, streets or roads of this state.

143 (2) Unless otherwise sooner required by law, within five (5)
144 days after the conviction of a person upon a charge of violating
145 any law regulating the operation of vehicles on the highways,
146 streets or roads of this state, every court in which such
147 conviction was had shall prepare and immediately forward to the
148 Department of Public Safety an abstract of the record of said
149 court covering the case in which said person was so convicted,
150 which abstract must be certified by the person so authorized to
151 prepare the same to be true and correct.

152 (3) Said abstract must be made upon a form approved by the
153 Department of Public Safety, and shall include the name and
154 address of the party charged, the registration number of the
155 vehicle involved, the nature of the offense, the date of hearing,
156 the plea, the judgment, and if the fine was satisfied by
157 prepayment or appearance bond forfeiture, and the amount of the
158 fine or forfeiture, as the case may be.

159 (4) Every court shall also forward a like report to the
160 Department of Public Safety upon the conviction of any person of

161 manslaughter or other felony in the commission of which a vehicle
162 was used.

163 (5) Every court shall also forward a like report to the
164 Department of Public Safety after the satisfactory completion by a
165 defendant of an approved traffic safety violator course under
166 Section 63-9-11, and the department shall make and maintain a
167 private, nonpublic record to be kept for a period of ten (10)
168 years. The record shall be solely for the use of the courts in
169 determining eligibility under Section 63-9-11, as a first-time
170 offender, and shall not constitute a criminal record for the
171 purpose of private or administrative inquiry. Reports forwarded
172 to the Department of Public Safety under this subsection shall be
173 exempt from the provisions of the Mississippi Public Records Act
174 of 1983.

175 (6) Every court shall also forward a like report to the
176 Department of Public Safety upon the entry of a plea of guilty
177 under Section 63-9-11(4), and the department shall make and
178 maintain a private, nonpublic record solely for the use of the
179 courts in determining eligibility under Section 63-9-11(4) as a
180 first- or second-time offender, which shall not constitute a
181 criminal record for the purpose of private or administrative
182 inquiry. Reports forwarded to the Department of Public Safety
183 under this subsection shall be exempt from the provisions of the
184 Mississippi Public Records Act of 1983.

185 (7) The failure by refusal or neglect of any such judicial
186 officer to comply with any of the requirements of this section
187 shall constitute misconduct in office and shall be grounds for
188 removal therefrom.

189 (8) The Department of Public Safety shall keep copies of all
190 abstracts received hereunder for a period of three (3) years at
191 its main office and the same shall be open to public inspection
192 during reasonable business hours. This subsection shall not apply

193 to nonpublic records maintained solely for the use of the courts
194 in determining offender eligibility.

195 **SECTION 3.** This act shall take effect and be in force from
196 and after July 1, 2007.