

By: Representative Horan

To: Judiciary B

HOUSE BILL NO. 916

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY ELIGIBILITY FOR NONADJUDICATION OF THOSE HOLDING A
3 COMMERCIAL DRIVER'S LICENSE; 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 a person to drive or
8 otherwise operate a vehicle within this state if the person:

9 (a) Is under the influence of intoxicating liquor;

10 (b) Is under the influence of any other substance that
11 has impaired the person's ability to operate a motor vehicle;

12 (c) Is under the influence of any drug or controlled
13 substance, the possession of which is unlawful under the
14 Mississippi Controlled Substances Law; or

15 (d) Has an alcohol concentration in the person's blood,
16 based upon grams of alcohol per one hundred (100) milliliters of
17 blood, or grams of alcohol per two hundred ten (210) liters of



18 breath, as shown by a chemical analysis of the person's breath,
19 blood or urine administered as authorized by this chapter, of:

20 (i) Eight one-hundredths percent (.08%) or more
21 for a person who is above the legal age to purchase alcoholic
22 beverages under state law;

23 (ii) Two one-hundredths percent (.02%) or more for
24 a person who is below the legal age to purchase alcoholic
25 beverages under state law; or

26 (iii) Four one-hundredths percent (.04%) or more
27 for a person operating a commercial motor vehicle.

28 (2) Except as otherwise provided in subsection (3) of this
29 section (Zero Tolerance for Minors):

30 (a) **First offense DUI.** (i) Upon conviction of any
31 person for the first offense of violating subsection (1) of this
32 section where chemical tests under Section 63-11-5 were given, or
33 where chemical test results are not available, the person shall be
34 fined not less than Two Hundred Fifty Dollars (\$250.00) nor more
35 than One Thousand Dollars (\$1,000.00), or imprisoned for not more
36 than forty-eight (48) hours in jail, or both; the court shall
37 order the person to attend and complete an alcohol safety
38 education program as provided in Section 63-11-32 within six (6)
39 months of sentencing. The court may substitute attendance at a
40 victim impact panel instead of forty-eight (48) hours in jail.

41 (ii) Suspension of commercial driving privileges
42 is governed by Section 63-1-216.



(iii) A qualifying first offense may be nonadjudicated by the court under subsection (14) of this section. * * *

(iv) Eligibility for an interlock-restricted license is governed by Section 63-11-31 and suspension of regular driving privileges is governed by Section 63-11-23.

(b) **Second offense DUI.** (i) Upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a misdemeanor, fined not less than Six Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall be imprisoned not less than five (5) days nor more than six (6) months and sentenced to community service work for not less than ten (10) days nor more than six (6) months. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain.

(ii) Suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) Eligibility for an interlock-restricted license is governed by Section 63-11-31 and suspension of regular driving privileges is governed by Section 63-11-23.

(c) **Third offense DUI.** (i) For a third conviction of a person for violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the



68 person shall be guilty of a felony and fined not less than Two
69 Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars
70 (\$5,000.00), and shall serve not less than one (1) year nor more
71 than five (5) years in the custody of the Department of
72 Corrections. For any offense that does not result in serious
73 injury or death to any person, the sentence of incarceration may
74 be served in the county jail rather than in the State Penitentiary
75 at the discretion of the circuit court judge. The minimum
76 penalties shall not be suspended or reduced by the court and no
77 prosecutor shall offer any suspension or sentence reduction as
78 part of a plea bargain.

79 (ii) The suspension of commercial driving
80 privileges is governed by Section 63-1-216.

81 (iii) The suspension of regular driving privileges
82 is governed by Section 63-11-23.

83 (d) **Fourth and subsequent offense DUI.** (i) For any
84 fourth or subsequent conviction of a violation of subsection (1)
85 of this section, without regard to the time period within which
86 the violations occurred, the person shall be guilty of a felony
87 and fined not less than Three Thousand Dollars (\$3,000.00) nor
88 more than Ten Thousand Dollars (\$10,000.00), and shall serve not
89 less than two (2) years nor more than ten (10) years in the
90 custody of the Department of Corrections.

91 (ii) The suspension of commercial driving
92 privileges is governed by Section 63-1-216.



(iii) A person convicted of a fourth or subsequent offense is ineligible to exercise the privilege to operate a motor vehicle that is not equipped with an ignition-interlock device for ten (10) years.

(e) Any person convicted of a second or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse, the person must successfully complete treatment at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee representing the cost of the assessment. Each person who participates in a treatment program shall pay a fee representing the cost of treatment.

(f) The use of ignition-interlock devices is governed by Section 63-11-31.

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



117 (b) (i) A person under the age of twenty-one (21) is
118 eligible for nonadjudication of a qualifying first offense by the
119 court pursuant to subsection (14) of this section.

120 (ii) Upon conviction of any person under the age
121 of twenty-one (21) years for the first offense of violating
122 subsection (1) of this section where chemical tests provided for
123 under Section 63-11-5 were given, or where chemical test results
124 are not available, the person shall be fined Two Hundred Fifty
125 Dollars (\$250.00); the court shall order the person to attend and
126 complete an alcohol safety education program as provided in
127 Section 63-11-32 within six (6) months. The court may also
128 require attendance at a victim impact panel.

129 (c) A person under the age of twenty-one (21) years who
130 is convicted of a second violation of subsection (1) of this
131 section, the offenses being committed within a period of five (5)
132 years, shall be fined not more than Five Hundred Dollars
133 (\$500.00).

134 (d) A person under the age of twenty-one (21) years who
135 is convicted of a third or subsequent violation of subsection (1)
136 of this section, the offenses being committed within a period of
137 five (5) years, shall be fined not more than One Thousand Dollars
138 (\$1,000.00).

139 (e) License suspension is governed by Section 63-11-23
140 and ignition interlock is governed by Section 63-11-31.



141 (f) Any person under the age of twenty-one (21) years
142 convicted of a third or subsequent violation of subsection (1) of
143 this section must complete treatment of an alcohol or drug abuse
144 program at a site certified by the Department of Mental Health.

145 (4) **DUI test refusal.** In addition to the other penalties
146 provided in this section, every person refusing a law enforcement
147 officer's request to submit to a chemical test of the person's
148 breath as provided in this chapter, or who was unconscious at the
149 time of a chemical test and refused to consent to the introduction
150 of the results of the test in any prosecution, shall suffer an
151 additional administrative suspension of driving privileges as set
152 forth in Section 63-11-23.

153 (5) **Aggravated DUI.** (a) Every person who operates any
154 motor vehicle in violation of the provisions of subsection (1) of
155 this section and who in a negligent manner causes the death of
156 another or mutilates, disfigures, permanently disables or destroys
157 the tongue, eye, lip, nose or any other limb, organ or member of
158 another shall, upon conviction, be guilty of a separate felony for
159 each victim who suffers death, mutilation, disfigurement or other
160 injury and shall be committed to the custody of the State
161 Department of Corrections for a period of time of not less than
162 five (5) years and not to exceed twenty-five (25) years for each
163 death, mutilation, disfigurement or other injury, and the
164 imprisonment for the second or each subsequent conviction, in the
165 discretion of the court, shall commence either at the termination



of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(b) A holder of a commercial driver's license who is convicted of operating a commercial motor vehicle with an alcohol concentration of eight one-hundredths percent (.08%) or more shall be guilty of a felony and shall be committed to the custody of the Department of Corrections for not less than two (2) years and not more than ten (10) years.

(c) The court shall order an ignition-interlock restriction on the offender's privilege to drive as a condition of probation or post-release supervision not to exceed five (5) years unless a longer restriction is required under other law. The ignition-interlock restriction shall not be applied to commercial license privileges until the driver serves the full disqualification period required by Section 63-1-216.

(6) **DUI citations.** (a) Upon conviction of a violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The court clerk must



191 immediately send a copy of the traffic ticket, citation or
192 affidavit, and any other pertinent documents concerning the
193 conviction or other order of the court, to the Department of
194 Public Safety as provided in Section 63-11-37.

195 (b) A copy of the traffic ticket, citation or affidavit
196 and any other pertinent documents, having been attested as true
197 and correct by the Commissioner of Public Safety, or his designee,
198 shall be sufficient proof of the conviction for purposes of
199 determining the enhanced penalty for any subsequent convictions of
200 violations of subsection (1) of this section. The Department of
201 Public Safety shall maintain a central database for verification
202 of prior offenses and convictions.

203 (7) **Out-of-state prior convictions.** Convictions in another
204 state, territory or possession of the United States, or under the
205 law of a federally recognized Native American tribe, of violations
206 for driving or operating a vehicle while under the influence of an
207 intoxicating liquor or while under the influence of any other
208 substance that has impaired the person's ability to operate a
209 motor vehicle occurring within five (5) years before an offense
210 shall be counted for the purposes of determining if a violation of
211 subsection (1) of this section is a second, third, fourth or
212 subsequent offense and the penalty that shall be imposed upon
213 conviction for a violation of subsection (1) of this section.

214 (8) **Charging of subsequent offenses.** (a) For the purposes
215 of determining how to impose the sentence for a second, third,



fourth or subsequent conviction under this section, the affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or indictment states the number of times that the defendant has been convicted and sentenced within the past five (5) years for a second or third offense, or without a time limitation for a fourth or subsequent offense, under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third, fourth or subsequent offense of this section.

(b) Before a defendant enters a plea of guilty to an offense under this section, law enforcement must submit certification to the prosecutor that the defendant's driving record, the confidential registry and National Crime Information Center record have been searched for all prior convictions, nonadjudications, pretrial diversions and arrests for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle. The results of the search must be included in the certification.

(9) **License eligibility for underage offenders.** A person who is under the legal age to obtain a license to operate a motor vehicle at the time of the offense and who is convicted under this



section shall not be eligible to receive a driver's license until the person reaches the age of eighteen (18) years.

(10) **License suspensions and restrictions to run consecutively.** Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of subsection (1) of this section shall run consecutively to and not concurrently with any other administrative license suspension.

(11) **Ignition interlock.** If the court orders installation and use of an ignition-interlock device as provided in Section 63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section, each device shall be installed, maintained and removed as provided in Section 63-11-31.

(12) **DUI child endangerment.** A person over the age of twenty-one (21) who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:



265 (a) A person who commits a violation of this subsection
266 which does not result in the serious injury or death of a child
267 and which is a first conviction shall be guilty of a misdemeanor
268 and, upon conviction, shall be fined not more than One Thousand
269 Dollars (\$1,000.00) or shall be imprisoned for not more than
270 twelve (12) months, or both;

271 (b) A person who commits a violation of this subsection
272 which does not result in the serious injury or death of a child
273 and which is a second conviction shall be guilty of a misdemeanor
274 and, upon conviction, shall be fined not less than One Thousand
275 Dollars (\$1,000.00) nor more than Five Thousand Dollars
276 (\$5,000.00) or shall be imprisoned for one (1) year, or both;

277 (c) A person who commits a violation of this subsection
278 which does not result in the serious injury or death of a child
279 and which is a third or subsequent conviction shall be guilty of a
280 felony and, upon conviction, shall be fined not less than Ten
281 Thousand Dollars (\$10,000.00) or shall be imprisoned for not less
282 than one (1) year nor more than five (5) years, or both; and

283 (d) A person who commits a violation of this subsection
284 which results in the serious injury or death of a child, without
285 regard to whether the offense was a first, second, third or
286 subsequent offense, shall be guilty of a felony and, upon
287 conviction, shall be punished by a fine of not less than Ten
288 Thousand Dollars (\$10,000.00) and shall be imprisoned for not less
289 than five (5) years nor more than twenty-five (25) years.



290 (13) **Expunction.** (a) Any person convicted under subsection
291 (2) or (3) of this section of a first offense of driving under the
292 influence and who was not the holder of a commercial driver's
293 license or a commercial learning permit at the time of the offense
294 may petition the circuit court of the county in which the
295 conviction was had for an order to expunge the record of the
296 conviction at least five (5) years after successful completion of
297 all terms and conditions of the sentence imposed for the
298 conviction. Expunction under this subsection will only be
299 available to a person:

300 (i) Who has successfully completed all terms and
301 conditions of the sentence imposed for the conviction;

302 (ii) Who did not refuse to submit to a test of his
303 blood or breath;

304 (iii) Whose blood alcohol concentration tested
305 below sixteen one-hundredths percent (.16%) if test results are
306 available;

307 (iv) Who has not been convicted of and does not
308 have pending any other offense of driving under the influence;

309 (v) Who has provided the court with justification
310 as to why the conviction should be expunged; and

311 (vi) Who has not previously had a nonadjudication
312 or expunction of a violation of this section.

313 (b) A person is eligible for only one (1) expunction
314 under this subsection, and the Department of Public Safety shall



maintain a permanent confidential registry of all cases of
expunction under this subsection for the sole purpose of
determining a person's eligibility for expunction, for
nonadjudication, or as a first offender under this section.

(c) The court in its order of expunction shall state in
writing the justification for which the expunction was granted and
forward the order to the Department of Public Safety within five
(5) days of the entry of the order.

(14) **Nonadjudication.** (a) For the purposes of this
chapter, "nonadjudication" means that the court withholds
adjudication of guilt and sentencing, either at the conclusion of
a trial on the merits or upon the entry of a plea of guilt by a
defendant, and places the defendant in a nonadjudication program
conditioned upon the successful completion of the requirements
imposed by the court under this subsection.

(b) A person is eligible for nonadjudication of an
offense under this Section 63-11-30 only one (1) time under any
provision of a law that authorizes nonadjudication and only for an
offender:

(i) Who has successfully completed all terms and
conditions imposed by the court after placement of the defendant
in a nonadjudication program;

(ii) Who was not the holder of a commercial
driver's license or a commercial learning permit at the time of
the offense;



(iii) Who has not previously been convicted of and does not have pending any former or subsequent charges under this section; and

(iv) Who has provided the court with justification as to why nonadjudication is appropriate.

(c) Nonadjudication may be initiated upon the filing of a petition for nonadjudication or at any stage of the proceedings in the discretion of the court; the court may withhold adjudication of guilt, defer sentencing, and upon the agreement of the offender to participate in a nonadjudication program, enter an order imposing requirements on the offender for a period of court supervision before the order of nonadjudication is entered. Failure to successfully complete a nonadjudication program subjects the person to adjudication of the charges against him and to imposition of all penalties previously withheld due to entrance into a nonadjudication program. The court shall immediately inform the commissioner of the conviction as required in Section 63-11-37.

(i) The court shall order the person to:

1. Pay the nonadjudication fee imposed under Section 63-11-31 if applicable;

2. Pay all fines, penalties and assessments that would have been imposed for conviction;



363 3. Attend and complete an alcohol safety
364 education program as provided in Section 63-11-32 within six (6)
365 months of the date of the order;

366 4. a. If the court determines that the
367 person violated this section with respect to alcohol or
368 intoxicating liquor, the person must install an ignition-interlock
369 device on every motor vehicle operated by the person, obtain an
370 interlock-restricted license, and maintain that license for one
371 hundred twenty (120) days or suffer a one-hundred-twenty-day
372 suspension of the person's regular driver's license, during which
373 time the person must not operate any vehicle.

374 b. If the court determines that the
375 person violated this section by operating a vehicle when under the
376 influence of a substance other than alcohol that has impaired the
377 person's ability to operate a motor vehicle, including any drug or
378 controlled substance which is unlawful to possess under the
379 Mississippi Controlled Substances Law, the person must submit to a
380 one-hundred-twenty-day period of a nonadjudication program that
381 includes court-ordered drug testing at the person's own expense
382 not less often than every thirty (30) days, during which time the
383 person may drive if compliant with the terms of the program, or
384 suffer a one-hundred-twenty-day suspension of the person's regular
385 driver's license, during which time the person will not operate
386 any vehicle.



(ii) Other conditions that may be imposed by the court include, but are not limited to, alcohol or drug screening, or both, proof that the person has not committed any other traffic violations while under court supervision, proof of immobilization or impoundment of vehicles owned by the offender if required, and attendance at a victim-impact panel.

(d) The court may enter an order of nonadjudication only if the court finds, after a hearing or after ex parte examination of reliable documentation of compliance, that the offender has successfully completed all conditions imposed by law and previous orders of the court. The court shall retain jurisdiction over cases involving nonadjudication for a period of not more than two (2) years.

(e) (i) The clerk shall immediately forward a record of every person placed in a nonadjudication program and of every nonadjudication order to the Department of Public Safety for inclusion in the permanent confidential registry of all cases that are nonadjudicated under this subsection (14).

(ii) Judges, clerks and prosecutors involved in the trial of implied consent violations and law enforcement officers involved in the issuance of citations for implied consent violations shall have secure online access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and 1. is therefore ineligible for another nonadjudication; 2. is ineligible



412 as a first offender for a violation of this section; or 3. is
413 ineligible for expunction of a conviction of a violation of this
414 section.

415 (iii) The Driver Services Bureau of the department
416 shall have access to the confidential registry for the purpose of
417 determining whether a person is eligible for a form of license not
418 restricted to operating a vehicle equipped with an
419 ignition-interlock device.

420 (iv) The Mississippi Alcohol Safety Education
421 Program shall have secure online access to the confidential
422 registry for research purposes only.

423 **SECTION 2.** This act shall take effect and be in force from
424 and after July 1, 2018.

