

## Senate Amendments to House Bill No. 615

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

### AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

12           **SECTION 1.** Section 63-11-23, Mississippi Code of 1972, is  
13 amended as follows:

14           \* \* \*

15           63-11-23. (1) **Administrative license suspension for test**  
16 **refusal.** The Commissioner of Public Safety, or his authorized  
17 agent, shall review the sworn report by a law enforcement officer  
18 as provided in Section 63-11-21.

19           (a) If upon review the Commissioner of Public Safety,  
20 or his authorized agent, finds (i) that the law enforcement  
21 officer had reasonable grounds and probable cause to believe the  
22 person had been operating a motor vehicle upon the public  
23 highways, public roads \* \* \* or streets of this state while under  
24 the influence of intoxicating liquor or any other substance that  
25 may impair a person's mental or physical ability; (ii) that the  
26 person refused to submit to the chemical test of the person's  
27 breath, blood or urine upon request of the officer; and (iii) that  
28 the person was informed that his license and driving privileges

29 would be suspended or denied if he refused to submit to the  
30 chemical test of his breath, blood or urine, then the Commissioner  
31 of Public Safety, or his authorized agent, shall give notice to  
32 the licensee that his license or permit to drive, or any  
33 nonresident operating privilege, shall be suspended thirty (30)  
34 days after the date of the notice for a period of ninety (90) days  
35 if the person has not previously been convicted of or  
36 nonadjudicated for a violation of Section 63-11-30, or, for a  
37 period of one (1) year if the person was previously convicted or  
38 nonadjudicated under Section 63-11-30. If the commissioner or his  
39 authorized agent determines that the license or permit should not  
40 be suspended, he shall return the license or permit to the  
41 licensee.

42 (b) The notice of suspension shall be in writing and  
43 conform to Section 63-1-52.

44 (c) A person may continue to drive on either an  
45 interlock-restricted license or under a drug-testing program if so  
46 ordered by a court in the course of a criminal proceeding for a  
47 violation of Section 63-11-30.

48 (2) **Extension or suspension of privilege to drive; request**  
49 **for trial.** (a) If the chemical testing of a person's breath  
50 indicates the blood alcohol concentration was eight one-hundredths  
51 percent (.08%) or more for persons who are above the legal age to  
52 purchase alcoholic beverages under state law, or two  
53 one-hundredths percent (.02%) or more for persons who are below  
54 the legal age to purchase alcoholic beverages under state law,

55 based upon grams of alcohol per one hundred (100) milliliters of  
56 blood or grams of alcohol per two hundred ten (210) liters of  
57 breath as shown by a chemical analysis of the person's blood,  
58 breath, or urine, the arresting officer shall seize the license  
59 and give the driver a receipt for his license on forms prescribed  
60 by the Commissioner of Public Safety and shall promptly forward  
61 the license together with a sworn report to the Commissioner of  
62 Public Safety. The receipt given a person shall be valid as a  
63 permit to operate a motor vehicle for thirty (30) days in order  
64 that the defendant may be processed through the court having  
65 original jurisdiction and a final disposition had.

66 (b) If the defendant requests a trial within thirty  
67 (30) days and trial is not commenced within thirty (30) days, then  
68 the court shall determine if the delay in the trial is the fault  
69 of the defendant or his counsel. If the court finds that it is  
70 not the fault of the defendant or his counsel, then the court  
71 shall order the defendant's privileges to operate a motor vehicle  
72 to be extended until the defendant is convicted upon final order  
73 of the court.

74 (c) If a receipt or permit to drive issued under this  
75 subsection expires without a trial having been requested as  
76 provided in this subsection, then the Commissioner of Public  
77 Safety, or his authorized agent, shall suspend the license or  
78 permit to drive or any nonresident operating privilege for the  
79 applicable period of time as provided in subsection (1) of this  
80 section.

81           (3) **Offenders driving without a license.** If the person is a  
82 resident without a license or permit to operate a motor vehicle in  
83 this state, the Commissioner of Public Safety, or his authorized  
84 agent, shall deny to the person the issuance of a license or  
85 permit for a period of one (1) year beginning thirty (30) days  
86 after the date of notice of the suspension.

87           (4) **Appeal.** It shall be the duty of the municipal  
88 prosecuting attorney, county prosecuting attorney, an attorney  
89 employed under the provisions of Section 19-3-49, or if there is  
90 not a prosecuting attorney for the municipality or county, the  
91 duty of the district attorney to represent the state in any  
92 hearing on a de novo appeal held under the provisions of Section  
93 63-11-25, Section 63-11-37 or Section 63-11-30.

94           (5) **Suspension subsequent to conviction.** Unless the person  
95 obtains an interlock-restricted license or the court orders the  
96 person to exercise the privilege to operate a motor vehicle only  
97 under an interlock-restricted license or while participating in a  
98 court-ordered drug-testing program, thirty (30) days after receipt  
99 of the court abstract documenting a person's conviction under  
100 Section 63-11-30, the Department of Public Safety shall suspend  
101 the driver's license and privileges of the person to operate a  
102 motor vehicle as follows:

103                   (a) When sentenced under Section 63-11-30(2):

104                           (i) For a first offense: one hundred twenty (120)  
105 days;

106                           (ii) For a second offense: one (1) year;

107                   (iii) For a third offense: for the full period of  
108 the person's sentence; upon release from incarceration, the person  
109 will be eligible for only an interlock-restricted license for  
110 three (3) years;

111                   (iv) For a fourth or subsequent offense: for the  
112 full period of the person's sentence; upon release from  
113 incarceration, the person will be eligible for only an  
114 interlock-restricted license for ten (10) years and will further  
115 be subject to court-ordered drug testing if the original offense  
116 involved operating a motor vehicle under the influence of a drug  
117 other than alcohol.

118                   (b) When sentenced under Section 63-11-30(3) (Zero  
119 Tolerance for Minors):

120                   (i) For a first offense: one hundred twenty (120)  
121 days;

122                   (ii) For a second offense: one (1) year;

123                   (iii) For a third offense occurring within five  
124 (5) years, suspend or deny the driving privilege for two (2) years  
125 or until the person reaches the age of twenty-one (21), whichever  
126 is longer.

127                   (6) **Suspensions.** (a) Notices of suspension given under  
128 this section shall be in writing and conform to Section 63-1-52.

129                   (b) Suspensions under this and any other chapter shall  
130 run consecutively and not concurrently.

131           (c) The first day of any one-hundred-twenty-day period  
132 shall begin to run on the date the judge signs an order for  
133 suspension.

134           (7) **License reinstatement.** A person is eligible for an  
135 unrestricted license when the person has completed an alcohol  
136 safety education program as provided in Section 63-11-32, has  
137 satisfied all other conditions of law and of the person's sentence  
138 or nonadjudication, and is not otherwise barred from obtaining an  
139 unrestricted license.

140           **SECTION 2.** Section 63-11-30, Mississippi Code of 1972, is  
141 amended as follows:

142           63-11-30. (1) It is unlawful for a person to drive or  
143 otherwise operate a vehicle within this state if the person:

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

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

147                   (c) Is under the influence of any drug or controlled  
148 substance, the possession of which is unlawful under the  
149 Mississippi Controlled Substances Law; or

150                   (d) Has an alcohol concentration in the person's blood,  
151 based upon grams of alcohol per one hundred (100) milliliters of  
152 blood, or grams of alcohol per two hundred ten (210) liters of  
153 breath, as shown by a chemical analysis of the person's breath,  
154 blood or urine administered as authorized by this chapter, of:

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

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

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

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

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

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

178 (iii) A qualifying first offense may be  
179 nonadjudicated by the court under subsection (14) of this section.  
180 The holder of a commercial driver's license or a commercial

181 learning permit at the time of the offense is ineligible for  
182 nonadjudication.

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

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

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

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

202 (c) **Third offense DUI.** (i) For a third conviction of  
203 a person for violating subsection (1) of this section, the  
204 offenses being committed within a period of five (5) years, the  
205 person shall be guilty of a felony and fined not less than Two  
206 Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars



207 (\$5,000.00), and shall serve not less than one (1) year nor more  
208 than five (5) years in the custody of the Department of  
209 Corrections. For any offense that does not result in serious  
210 injury or death to any person, the sentence of incarceration may  
211 be served in the county jail rather than in the State Penitentiary  
212 at the discretion of the circuit court judge. The minimum  
213 penalties shall not be suspended or reduced by the court and no  
214 prosecutor shall offer any suspension or sentence reduction as  
215 part of a plea bargain.

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

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

220 (d) **Fourth and subsequent offense DUI.** (i) For any  
221 fourth or subsequent conviction of a violation of subsection (1)  
222 of this section, without regard to the time period within which  
223 the violations occurred, the person shall be guilty of a felony  
224 and fined not less than Three Thousand Dollars (\$3,000.00) nor  
225 more than Ten Thousand Dollars (\$10,000.00), and shall serve not  
226 less than two (2) years nor more than ten (10) years in the  
227 custody of the Department of Corrections.

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

230 (iii) A person convicted of a fourth or subsequent  
231 offense is ineligible to exercise the privilege to operate a motor

232 vehicle that is not equipped with an ignition-interlock device for  
233 ten (10) years.

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

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

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

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

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

266                   (c) A person under the age of twenty-one (21) years who  
267 is convicted of a second violation of subsection (1) of this  
268 section, the offenses being committed within a period of five (5)  
269 years, shall be fined not more than Five Hundred Dollars  
270 (\$500.00).

271                   (d) A person under the age of twenty-one (21) years who  
272 is convicted of a third or subsequent violation of subsection (1)  
273 of this section, the offenses being committed within a period of  
274 five (5) years, shall be fined not more than One Thousand Dollars  
275 (\$1,000.00).

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

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

282           (4) **DUI test refusal.** In addition to the other penalties  
283 provided in this section, every person refusing a law enforcement  
284 officer's request to submit to a chemical test of the person's  
285 breath as provided in this chapter, or who was unconscious at the  
286 time of a chemical test and refused to consent to the introduction  
287 of the results of the test in any prosecution, shall suffer an  
288 additional administrative suspension of driving privileges as set  
289 forth in Section 63-11-23.

290           (5) **Aggravated DUI.** (a) Every person who operates any  
291 motor vehicle in violation of the provisions of subsection (1) of  
292 this section and who in a negligent manner causes the death of  
293 another or mutilates, disfigures, permanently disables or destroys  
294 the tongue, eye, lip, nose or any other limb, organ or member of  
295 another shall, upon conviction, be guilty of a separate felony for  
296 each victim who suffers death, mutilation, disfigurement or other  
297 injury and shall be committed to the custody of the State  
298 Department of Corrections for a period of time of not less than  
299 five (5) years and not to exceed twenty-five (25) years for each  
300 death, mutilation, disfigurement or other injury, and the  
301 imprisonment for the second or each subsequent conviction, in the  
302 discretion of the court, shall commence either at the termination  
303 of the imprisonment for the preceding conviction or run  
304 concurrently with the preceding conviction. Any person charged  
305 with causing the death of another as described in this subsection  
306 shall be required to post bail before being released after arrest.

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

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

320 (6) **DUI citations.** (a) Upon conviction of a violation of  
321 subsection (1) of this section, the trial judge shall sign in the  
322 place provided on the traffic ticket, citation or affidavit  
323 stating that the person arrested either employed an attorney or  
324 waived his right to an attorney after having been properly  
325 advised. If the person arrested employed an attorney, the name,  
326 address and telephone number of the attorney shall be written on  
327 the ticket, citation or affidavit. The court clerk must  
328 immediately send a copy of the traffic ticket, citation or  
329 affidavit, and any other pertinent documents concerning the  
330 conviction or other order of the court, to the Department of  
331 Public Safety as provided in Section 63-11-37.

332 (b) A copy of the traffic ticket, citation or affidavit  
333 and any other pertinent documents, having been attested as true  
334 and correct by the Commissioner of Public Safety, or his designee,  
335 shall be sufficient proof of the conviction for purposes of  
336 determining the enhanced penalty for any subsequent convictions of  
337 violations of subsection (1) of this section. The Department of  
338 Public Safety shall maintain a central database for verification  
339 of prior offenses and convictions.

340 (7) **Out-of-state prior convictions.** Convictions in another  
341 state, territory or possession of the United States, or under the  
342 law of a federally recognized Native American tribe, of violations  
343 for driving or operating a vehicle while under the influence of an  
344 intoxicating liquor or while under the influence of any other  
345 substance that has impaired the person's ability to operate a  
346 motor vehicle occurring within five (5) years before an offense  
347 shall be counted for the purposes of determining if a violation of  
348 subsection (1) of this section is a second, third, fourth or  
349 subsequent offense and the penalty that shall be imposed upon  
350 conviction for a violation of subsection (1) of this section.

351 (8) **Charging of subsequent offenses.** (a) For the purposes  
352 of determining how to impose the sentence for a second, third,  
353 fourth or subsequent conviction under this section, the affidavit  
354 or indictment shall not be required to enumerate previous  
355 convictions. It shall only be necessary that the affidavit or  
356 indictment states the number of times that the defendant has been  
357 convicted and sentenced within the past five (5) years for a

358 second or third offense, or without a time limitation for a fourth  
359 or subsequent offense, under this section to determine if an  
360 enhanced penalty shall be imposed. The amount of fine and  
361 imprisonment imposed in previous convictions shall not be  
362 considered in calculating offenses to determine a second, third,  
363 fourth or subsequent offense of this section.

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

374 (9) **License eligibility for underage offenders.** A person  
375 who is under the legal age to obtain a license to operate a motor  
376 vehicle at the time of the offense and who is convicted under this  
377 section shall not be eligible to receive a driver's license until  
378 the person reaches the age of eighteen (18) years.

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

384           (11) **Ignition interlock.** If the court orders installation  
385 and use of an ignition-interlock device as provided in Section  
386 63-11-31 for every vehicle operated by a person convicted or  
387 nonadjudicated under this section, each device shall be installed,  
388 maintained and removed as provided in Section 63-11-31.

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

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

408                   (b) A person who commits a violation of this subsection  
409 which does not result in the serious injury or death of a child



410 and which is a second conviction shall be guilty of a misdemeanor  
411 and, upon conviction, shall be fined not less than One Thousand  
412 Dollars (\$1,000.00) nor more than Five Thousand Dollars  
413 (\$5,000.00) or shall be imprisoned for one (1) year, or both;

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

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

427 (13) **Expunction.** (a) Any person convicted under subsection  
428 (2) or (3) of this section of a first offense of driving under the  
429 influence and who was not the holder of a commercial driver's  
430 license or a commercial learning permit at the time of the offense  
431 may petition the circuit court of the county in which the  
432 conviction was had for an order to expunge the record of the  
433 conviction at least five (5) years after successful completion of  
434 all terms and conditions of the sentence imposed for the

435 conviction. Expunction under this subsection will only be  
436 available to a person:

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

439 \* \* \*

440 ( \* \* \*ii) Who has not been convicted of and does  
441 not have pending any other offense of driving under the influence;

442 ( \* \* \*iii) Who has provided the court with  
443 justification as to why the conviction should be expunged; and

444 ( \* \* \*iv) Who has not previously had a  
445 nonadjudication or expunction of a violation of this section.

446 (b) A person is eligible for only one (1) expunction  
447 under this subsection, and the Department of Public Safety shall  
448 maintain a permanent confidential registry of all cases of  
449 expunction under this subsection for the sole purpose of  
450 determining a person's eligibility for expunction, for  
451 nonadjudication, or as a first offender under this section.

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

456 (14) **Nonadjudication.** (a) For the purposes of this  
457 chapter, "nonadjudication" means that the court withholds  
458 adjudication of guilt and sentencing, either at the conclusion of  
459 a trial on the merits or upon the entry of a plea of guilt by a  
460 defendant, and places the defendant in a nonadjudication program

461 conditioned upon the successful completion of the requirements  
462 imposed by the court under this subsection.

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

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

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

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

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

478 (c) Nonadjudication may be initiated upon the filing of  
479 a petition for nonadjudication or at any stage of the proceedings  
480 in the discretion of the court; the court may withhold  
481 adjudication of guilt, defer sentencing, and upon the agreement of  
482 the offender to participate in a nonadjudication program, enter an  
483 order imposing requirements on the offender for a period of court  
484 supervision before the order of nonadjudication is entered.  
485 Failure to successfully complete a nonadjudication program  
486 subjects the person to adjudication of the charges against him and

487 to imposition of all penalties previously withheld due to entrance  
488 into a nonadjudication program. The court shall immediately  
489 inform the commissioner of the conviction as required in Section  
490 63-11-37.

491 (i) The court shall order the person to:

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

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

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

499 4. a. If the court determines that the  
500 person violated this section with respect to alcohol or  
501 intoxicating liquor, the person must install an ignition-interlock  
502 device on every motor vehicle operated by the person, obtain an  
503 interlock-restricted license, and maintain that license for one  
504 hundred twenty (120) days or suffer a one-hundred-twenty-day  
505 suspension of the person's regular driver's license, during which  
506 time the person must not operate any vehicle. For purposes of  
507 this subparagraph 4., the first day of the one-hundred-twenty-day  
508 period shall begin the date the judge signs an order to maintain  
509 such license or suspend such license.

510 b. If the court determines that the  
511 person violated this section by operating a vehicle when under the  
512 influence of a substance other than alcohol that has impaired the

513 person's ability to operate a motor vehicle, including any drug or  
514 controlled substance which is unlawful to possess under the  
515 Mississippi Controlled Substances Law, the person must submit to a  
516 one-hundred-twenty-day period of a nonadjudication program that  
517 includes court-ordered drug testing at the person's own expense  
518 not less often than every thirty (30) days, during which time the  
519 person may drive if compliant with the terms of the program, or  
520 suffer a one-hundred-twenty-day suspension of the person's regular  
521 driver's license, during which time the person will not operate  
522 any vehicle.

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

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

536           (e) (i) The clerk shall immediately forward a record  
537 of every person placed in a nonadjudication program and of every  
538 nonadjudication order to the Department of Public Safety for

539 inclusion in the permanent confidential registry of all cases that  
540 are nonadjudicated under this subsection (14).

541 (ii) Judges, clerks and prosecutors involved in  
542 the trial of implied consent violations and law enforcement  
543 officers involved in the issuance of citations for implied consent  
544 violations shall have secure online access to the confidential  
545 registry for the purpose of determining whether a person has  
546 previously been the subject of a nonadjudicated case and 1. is  
547 therefore ineligible for another nonadjudication; 2. is ineligible  
548 as a first offender for a violation of this section; or 3. is  
549 ineligible for expunction of a conviction of a violation of this  
550 section.

551 (iii) The Driver Services Bureau of the department  
552 shall have access to the confidential registry for the purpose of  
553 determining whether a person is eligible for a form of license not  
554 restricted to operating a vehicle equipped with an  
555 ignition-interlock device.

556 (iv) The Mississippi Alcohol Safety Education  
557 Program shall have secure online access to the confidential  
558 registry for research purposes only.

559 **SECTION 3.** Section 63-11-31, Mississippi Code of 1972, is  
560 brought forward as follows:

561 63-11-31. (1) (a) The provisions of this section are  
562 supplemental to the provisions of Section 63-11-30.

563 (b) (i) "Ignition-interlock device" means a device  
564 approved by the Department of Public Safety that connects a motor

565 vehicle ignition system to a breath-alcohol analyzer and prevents  
566 a motor vehicle ignition from starting if the driver's blood  
567 alcohol level exceeds the calibrated setting on the device.

568 (ii) "Interlock-restricted license" means a  
569 driver's license bearing a restriction that limits the person to  
570 operation of vehicles equipped with an ignition-interlock device.

571 (iii) "Court-ordered drug-testing program" means a  
572 program that qualifies under Section 63-11-31.1.

573 (c) A person who can exercise the privilege of driving  
574 only under an interlock-restricted license must have an  
575 ignition-interlock device installed and operating on all motor  
576 vehicles owned or operated by the person.

577 (d) A person who installs an ignition-interlock device  
578 may obtain an interlock-restricted license.

579 (2) (a) (i) The cost of installation and operation of an  
580 ignition-interlock device shall be borne by the person to whom an  
581 interlock-restricted driver's license is issued, and the costs of  
582 court-ordered drug testing shall be borne by the person so  
583 ordered, unless the person is determined by the court to be  
584 indigent.

585 (ii) The cost of participating in a court-ordered  
586 drug-testing program shall be borne by the person, unless the  
587 person is determined by the court to be indigent.

588 (b) (i) A person convicted under Section 63-11-30  
589 shall be assessed by the court, in addition to the criminal fines,  
590 penalties and assessments provided by law for violations of

591 Section 63-11-30, a fee of Fifty Dollars (\$50.00), to be deposited  
592 in the Interlock Device Fund in the State Treasury unless the  
593 person is determined by the court to be indigent.

594 (ii) A person nonadjudicated under Section  
595 63-11-30 shall be assessed by the court, in addition to the  
596 criminal fines, penalties and assessments provided by law for  
597 violations of Section 63-11-30, a fee of Two Hundred Fifty Dollars  
598 (\$250.00) to be deposited in the Interlock Device Fund in the  
599 State Treasury unless the person is determined by the court to be  
600 indigent.

601 (3) (a) The Department of Public Safety shall promulgate  
602 rules and regulations for the use of an ignition-interlock device.  
603 The Department of Public Safety shall approve which vendors shall  
604 be used to furnish the systems, may assess fees to the vendors,  
605 and shall prescribe the maximum costs to the offender for  
606 installation, removal, monthly operation, periodic inspections,  
607 calibrations and repairs.

608 (b) A person who has an ignition-interlock device  
609 installed in a vehicle shall:

610 (i) Provide proof of the installation of the  
611 device and periodic reporting for verification of the proper  
612 operation of the device;

613 (ii) Have the system monitored for proper use and  
614 accuracy as required by departmental regulation;



615                   (iii) Pay the reasonable cost of leasing or  
616 buying, monitoring, and maintaining the device unless the person  
617 is determined to be indigent; and

618                   (iv) Obtain an ignition-interlock driver's  
619 license.

620           (4)   (a)   (i) A person who is limited to driving only under  
621 an interlock-restricted driver's license shall not operate a  
622 vehicle that is not equipped with an ignition-interlock device.

623                   (ii) A person prohibited from operating a motor  
624 vehicle that is not equipped with an ignition-interlock device may  
625 not solicit or have another person attempt to start or start a  
626 motor vehicle equipped with such a device.

627                   (iii) A person may not start or attempt to start a  
628 motor vehicle equipped with an ignition-interlock device for the  
629 purpose of providing an operable motor vehicle to a person who is  
630 prohibited from operating a motor vehicle that is not equipped  
631 with an ignition-interlock device.

632                   (iv) A person may not tamper with, or in any way  
633 attempt to circumvent, the operation of an ignition-interlock  
634 device that has been installed in a motor vehicle.

635                   (v) A person may not knowingly provide a motor  
636 vehicle not equipped with a functioning ignition-interlock device  
637 to another person who the provider of the vehicle knows or should  
638 know is prohibited from operating a motor vehicle not equipped  
639 with an ignition-interlock device.

640           (b) A violation of this subsection (4) is a misdemeanor  
641 and upon conviction the violator shall be fined an amount not less  
642 than Two Hundred Fifty Dollars (\$250.00) nor more than One  
643 Thousand Dollars (\$1,000.00) or imprisoned for not more than six  
644 (6) months, or both, unless the starting of a motor vehicle  
645 equipped with an ignition-interlock device is done for the purpose  
646 of safety or mechanical repair of the device or the vehicle, and  
647 the person subject to the restriction does not operate the  
648 vehicle.

649           (5) In order to obtain an interlock-restricted license, a  
650 person must:

651           (a) Be otherwise qualified to operate a motor vehicle,  
652 and will be subject to all other restrictions on the privilege to  
653 drive provided by law;

654           (b) Submit proof that an ignition-interlock device is  
655 installed and operating on all motor vehicles operated by the  
656 person; and

657           (c) Pay the fee set forth in Section 63-1-43 to obtain  
658 the license without regard to indigence; no license reinstatement  
659 fee under Section 63-1-46 shall be charged for a person obtaining  
660 an interlock-restricted license.

661           (6) (a) In addition to the penalties authorized for any  
662 second or subsequent conviction under Section 63-11-30, the court  
663 shall order that all vehicles owned by the offender that are not  
664 equipped with an ignition-interlock device must be either  
665 impounded or immobilized pending further order of the court

666 lifting the offender's driving restriction. However, no county,  
667 municipality, sheriff's department or the Department of Public  
668 Safety shall be required to keep, store, maintain, serve as a  
669 bailee or otherwise exercise custody over a motor vehicle  
670 impounded under the provisions of this section. The cost  
671 associated with any impoundment or immobilization shall be paid by  
672 the person convicted without regard to ability to pay.

673 (b) A person may not tamper with, or in any way attempt  
674 to circumvent, vehicle immobilization or impoundment ordered by  
675 the court under this section. A violation of this paragraph (b)  
676 is a misdemeanor and, upon conviction, the violator shall be fined  
677 an amount not less than Two Hundred Fifty Dollars (\$250.00) nor  
678 more than One Thousand Dollars (\$1,000.00) or imprisoned for not  
679 more than six (6) months, or both.

680 (7) (a) The Department of Public Safety shall promulgate  
681 rules and regulations for the use of monies in the Interlock  
682 Device Fund to offset the cost of interlock device installation  
683 and operation by and court-ordered drug testing of indigent  
684 offenders.

685 (b) The court shall determine a defendant's indigence  
686 based upon whether the defendant has access to adequate resources  
687 to pay the ignition-interlock fee and the costs of installation  
688 and maintenance of an ignition-interlock device, or the costs of  
689 court-ordered drug testing or both, and may further base the  
690 determination of indigence on proof of enrollment in one or more  
691 of the following types of public assistance:

692 (i) Temporary Assistance for Needy Families  
693 (TANF);  
694 (ii) Medicaid assistance;  
695 (iii) The Supplemental Nutritional Assistance  
696 Program (SNAP), also known as "food stamps";  
697 (iv) Supplemental security income (SSI);  
698 (v) Participation in a federal food distribution  
699 program;  
700 (vi) Federal housing assistance;  
701 (vii) Unemployment compensation; or  
702 (viii) Other criteria determined appropriate by  
703 the court.

704 (c) No more than ten percent (10%) of the money in the  
705 Interlock Device Fund in any fiscal year shall be expended by the  
706 department for the purpose of administering the fund.

707 (d) The Commissioner of the Department of Public Safety  
708 must promulgate regulations for the program and for vendors,  
709 including at a minimum:

710 (i) That the offender must pay the cost of the  
711 testing program or, if the court finds the offender to be  
712 indigent, that the cost be paid from the Interlock Device Fund.

713 (ii) How indigent funds will be accessed by the  
714 vendors, and the maximum cost to the offender or the fund.

715 (e) (i) Money in the Interlock Device Fund will be  
716 appropriated to the department to cover part of the costs of  
717 court-ordered drug testing and installing, removing and leasing

718 ignition-interlock devices for indigent people who are required,  
719 because of a conviction or nonadjudication under Section 63-11-30,  
720 to install an ignition-interlock device in all vehicles operated  
721 by the person.

722 (ii) If money is available in the Interlock Device  
723 Fund, the department shall pay to the vendor, for one (1) vehicle  
724 per offender, up to Fifty Dollars (\$50.00) for the cost of  
725 installation, up to Fifty Dollars (\$50.00) for the cost of  
726 removal, and up to Thirty Dollars (\$30.00) monthly for verified  
727 active usage of the ignition-interlock device. The department  
728 shall not pay any amount above what an offender would be required  
729 to pay for the installation, removal or usage of an  
730 ignition-interlock device.

731 (iii) If money is available in the Interlock  
732 Device Fund, the department shall pay to the vendor an amount not  
733 to exceed that promulgated by the Forensics Laboratory for  
734 court-ordered drug testing. The department shall not pay any  
735 amount above what an offender would be required to pay  
736 individually.

737 (8) In order to reinstate a form of driver's license that is  
738 not restricted to operation of an ignition-interlock equipped  
739 vehicle, the person must submit proof to the Department of Public  
740 Safety to substantiate the person's eligibility for an  
741 unrestricted license, which may be a court order indicating  
742 completion of sentence or final order of nonadjudication; in the  
743 absence of a court order, the proof may consist of the following

744 or such other proof as the commissioner may set forth by  
745 regulation duly adopted under the Administrative Procedures Act:

746 (a) Proof of successful completion of an alcohol safety  
747 program as provided in Section 63-11-32 if so ordered by the  
748 court;

749 (b) Payment of the reinstatement fee required under  
750 Section 63-1-46(1) (a);

751 (c) Payment of the driver's license fee required under  
752 Section 63-1-43;

753 (d) A certificate of liability insurance or proof of  
754 financial responsibility; and

755 (e) (i) For those driving under an  
756 interlock-restricted license, a declaration from the vendor, in a  
757 form provided or approved by the Department of Public Safety,  
758 certifying that there have been none of the following incidents in  
759 the last thirty (30) days:

760 1. An attempt to start the vehicle with a  
761 breath alcohol concentration of 0.04 or more;

762 2. Failure to take or pass any required  
763 retest; or

764 3. Failure of the person to appear at the  
765 ignition-interlock device vendor when required for maintenance,  
766 repair, calibration, monitoring, inspection, or replacement of the  
767 device; or

768                   (ii) For a person who violated Section 63-11-30  
769 with respect to drugs other than alcohol, proof of successful  
770 compliance with all court-ordered drug testing; or

771                   (iii) Both subparagraphs (i) and (ii) of this  
772 paragraph (e) if applicable.

773           (9) The court may extend the interlock-restricted period if  
774 the person had a violation in the last thirty (30) days.

775           (10) The court that originally ordered installation of the  
776 ignition-interlock device for a violation of Section 63-11-30 and  
777 a court in the municipality or county in which the violation  
778 occurred have jurisdiction over an offense under this section.

779           (11) A person who voluntarily obtains an  
780 interlock-restricted license may convert at any time to any other  
781 form of license for which the person is qualified.

782           (12) (a) The Department of Public Safety shall require all  
783 manufacturers of ignition-interlock devices to report  
784 ignition-interlock data in a consistent and uniform format as  
785 prescribed by the Department of Public Safety. Ignition-interlock  
786 vendors must also use the uniform format when sharing data with  
787 courts ordering an ignition interlock, with alcohol safety  
788 education programs, or with other treatment providers.

789           (b) The Department of Public Safety shall require all  
790 vendors of drug testing programs approved under Section 63-11-31.1  
791 to report test results in a consistent and uniform format as  
792 prescribed by the Forensics Laboratory. Vendors must report test  
793 results to the court on a monthly basis, except that a positive

794 test or failure of the testing participant to submit to  
795 verification must be reported to the court within five (5) days of  
796 verification of the positive test or the failure to submit.

797         **SECTION 4.** This act shall take effect and be in force from  
798 and after July 1, 2021, and shall stand repealed on June 30, 2021.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

1           AN ACT TO AMEND SECTION 63-11-23, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THE 120-DAY SUSPENSION FOR DUI VIOLATIONS BEGINS  
3 ON THE DATE THE JUDGE SIGNS THE ORDER FOR SUSPENSION; TO AMEND  
4 SECTION 63-11-30, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE  
5 120-DAY SUSPENSION FOR DUI VIOLATIONS BEGINS ON THE DATE THE JUDGE  
6 SIGNS THE ORDER FOR SUSPENSION; TO REVISE ELIGIBILITY FOR  
7 EXPUNCTION OF A FIRST OFFENSE; TO BRING FORWARD SECTION 63-11-31,  
8 MISSISSIPPI CODE OF 1972, WHICH REGULATES IGNITION INTERLOCK FOR  
9 DUI VIOLATIONS, FOR PURPOSES OF AMENDMENT; AND FOR RELATED  
10 PURPOSES.

SS08\HB615A.J

Eugene S. Clarke  
Secretary of the Senate