

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 414

1 AN ACT TO AMEND SECTION 9-23-23, MISSISSIPPI CODE OF 1972, TO
2 REMOVE THE PROHIBITION FOR EXPUNCTION OF IMPLIED CONSENT
3 VIOLATIONS UPON COMPLETION OF DRUG COURT; TO AMEND SECTION
4 63-11-30, MISSISSIPPI CODE OF 1972, WHICH PROVIDES PENALTIES FOR
5 DUI OFFENSES, TO MAKE SOME MINOR NONSUBSTANTIVE CHANGES; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 9-23-23, Mississippi Code of 1972, is
9 amended as follows:

10 9-23-23. If the participant completes all requirements
11 imposed upon him by the intervention court, including the payment
12 of fines and fees assessed and not waived by the court, the charge
13 and prosecution shall be dismissed. If the defendant or
14 participant was sentenced at the time of entry of plea of guilty,
15 the successful completion of the intervention court order and
16 other requirements of probation or suspension of sentence will
17 result in the record of the criminal conviction or adjudication
18 being expunged. * * *

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



21 63-11-30. (1) It is unlawful for a person to drive or
22 otherwise operate a vehicle within this state if the person:
23 (a) Is under the influence of intoxicating liquor;
24 (b) Is under the influence of any other substance that
25 has impaired the person's ability to operate a motor vehicle;
26 (c) Is under the influence of any drug or controlled
27 substance, the possession of which is unlawful under the
28 Mississippi Controlled Substances Law; or
29 (d) Has an alcohol concentration in the person's blood,
30 based upon grams of alcohol per one hundred (100) milliliters of
31 blood, or grams of alcohol per two hundred ten (210) liters of
32 breath, as shown by a chemical analysis of the person's breath,
33 blood or urine administered as authorized by this chapter, of:
34 (i) Eight one-hundredths percent (.08%) or more
35 for a person who is above the legal age to purchase alcoholic
36 beverages under state law;
37 (ii) Two one-hundredths percent (.02%) or more for
38 a person who is below the legal age to purchase alcoholic
39 beverages under state law; or
40 (iii) Four one-hundredths percent (.04%) or more
41 for a person operating a commercial motor vehicle.
42 (2) Except as otherwise provided in subsection (3) of this
43 section (Zero Tolerance for Minors):
44 (a) **First offense DUI.** (i) Upon conviction of any
45 person for the first offense of violating subsection (1) of this



46 section where chemical tests under Section 63-11-5 were given, or
47 where chemical test results are not available, the person shall be
48 fined not less than Two Hundred Fifty Dollars (\$250.00) nor more
49 than One Thousand Dollars (\$1,000.00), or imprisoned for not more
50 than forty-eight (48) hours in jail, or both; the court shall
51 order the person to attend and complete an alcohol safety
52 education program as provided in Section 63-11-32 within six (6)
53 months of sentencing. The court may substitute attendance at a
54 victim impact panel instead of forty-eight (48) hours in jail.

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

57 (iii) A qualifying first offense may be
58 nonadjudicated by the court under subsection (14) of this section.
59 The holder of a commercial driver's license or a commercial
60 learning permit at the time of the offense is ineligible for
61 nonadjudication.

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

65 (b) **Second offense DUI.** (i) Upon any second
66 conviction of any person violating subsection (1) of this section,
67 the offenses being committed within a period of five (5) years,
68 the person shall be guilty of a misdemeanor, fined not less than
69 Six Hundred Dollars (\$600.00) nor more than One Thousand Five
70 Hundred Dollars (\$1,500.00), shall be imprisoned not less than



71 five (5) days nor more than six (6) months and sentenced to
72 community service work for not less than ten (10) days nor more
73 than six (6) months. The minimum penalties shall not be suspended
74 or reduced by the court and no prosecutor shall offer any
75 suspension or sentence reduction as part of a plea bargain.

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

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

81 (c) **Third offense DUI.** (i) For a third conviction of
82 a person for violating subsection (1) of this section, the
83 offenses being committed within a period of five (5) years, the
84 person shall be guilty of a felony and fined not less than Two
85 Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars
86 (\$5,000.00), and shall serve not less than one (1) year nor more
87 than five (5) years in the custody of the Department of
88 Corrections. For any offense that does not result in serious
89 injury or death to any person, the sentence of incarceration may
90 be served in the county jail rather than in the State Penitentiary
91 at the discretion of the circuit court judge. The minimum
92 penalties shall not be suspended or reduced by the court and no
93 prosecutor shall offer any suspension or sentence reduction as
94 part of a plea bargain.



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

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

99 (d) **Fourth and subsequent offense DUI.** (i) For any
100 fourth or subsequent conviction of a violation of subsection (1)
101 of this section, without regard to the time period within which
102 the violations occurred, the person shall be guilty of a felony
103 and fined not less than Three Thousand Dollars (\$3,000.00) nor
104 more than Ten Thousand Dollars (\$10,000.00), and shall serve not
105 less than two (2) years nor more than ten (10) years in the
106 custody of the Department of Corrections.

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

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

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



120 representing the cost of the assessment. Each person who
121 participates in a treatment program shall pay a fee representing
122 the cost of treatment.

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

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

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

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



145 (c) A person under the age of twenty-one (21) years who
146 is convicted of a second violation of subsection (1) of this
147 section, the offenses being committed within a period of five (5)
148 years, shall be fined not more than Five Hundred Dollars
149 (\$500.00).

150 (d) A person under the age of twenty-one (21) years who
151 is convicted of a third or subsequent violation of subsection (1)
152 of this section, the offenses being committed within a period of
153 five (5) years, shall be fined not more than One Thousand Dollars
154 (\$1,000.00).

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

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

161 (4) **DUI test refusal.** In addition to the other penalties
162 provided in this section, every person refusing a law enforcement
163 officer's request to submit to a chemical test of the person's
164 breath as provided in this chapter, or who was unconscious at the
165 time of a chemical test and refused to consent to the introduction
166 of the results of the test in any prosecution, shall suffer an
167 additional administrative suspension of driving privileges as set
168 forth in Section 63-11-23.



169 (5) **Aggravated DUI.** (a) Every person who operates any
170 motor vehicle in violation of the provisions of subsection (1) of
171 this section and who in a negligent manner causes the death of
172 another or mutilates, disfigures, permanently disables or destroys
173 the tongue, eye, lip, nose or any other limb, organ or member of
174 another shall, upon conviction, be guilty of a separate felony for
175 each victim who suffers death, mutilation, disfigurement or other
176 injury and shall be committed to the custody of the State
177 Department of Corrections for a period of time of not less than
178 five (5) years and not to exceed twenty-five (25) years for each
179 death, mutilation, disfigurement or other injury, and the
180 imprisonment for the second or each subsequent conviction, in the
181 discretion of the court, shall commence either at the termination
182 of the imprisonment for the preceding conviction or run
183 concurrently with the preceding conviction. Any person charged
184 with causing the death of another as described in this subsection
185 shall be required to post bail before being released after arrest.

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

192 (c) The court shall order an ignition-interlock
193 restriction on the offender's privilege to drive as a condition of



194 probation or post-release supervision not to exceed five (5) years
195 unless a longer restriction is required under other law. The
196 ignition-interlock restriction shall not be applied to commercial
197 license privileges until the driver serves the full
198 disqualification period required by Section 63-1-216.

199 (6) **DUI citations.** (a) Upon conviction of a violation of
200 subsection (1) of this section, the trial judge shall sign in the
201 place provided on the traffic ticket, citation or affidavit
202 stating that the person arrested either employed an attorney or
203 waived his right to an attorney after having been properly
204 advised. If the person arrested employed an attorney, the name,
205 address and telephone number of the attorney shall be written on
206 the ticket, citation or affidavit. The court clerk must
207 immediately send a copy of the traffic ticket, citation or
208 affidavit, and any other pertinent documents concerning the
209 conviction or other order of the court, to the Department of
210 Public Safety as provided in Section 63-11-37.

211 (b) A copy of the traffic ticket, citation or affidavit
212 and any other pertinent documents, having been attested as true
213 and correct by the Commissioner of Public Safety, or his designee,
214 shall be sufficient proof of the conviction for purposes of
215 determining the enhanced penalty for any subsequent convictions of
216 violations of subsection (1) of this section. The Department of
217 Public Safety shall maintain a central database for verification
218 of prior offenses and convictions.



219 (7) **Out-of-state prior convictions.** Convictions in another
220 state, territory or possession of the United States, or under the
221 law of a federally recognized Native American tribe, of violations
222 for driving or operating a vehicle while under the influence of an
223 intoxicating liquor or while under the influence of any other
224 substance that has impaired the person's ability to operate a
225 motor vehicle occurring within five (5) years before an offense
226 shall be counted for the purposes of determining if a violation of
227 subsection (1) of this section is a second, third, fourth or
228 subsequent offense and the penalty that shall be imposed upon
229 conviction for a violation of subsection (1) of this section.

230 (8) **Charging of subsequent offenses.** (a) For the purposes
231 of determining how to impose the sentence for a second, third,
232 fourth or subsequent conviction under this section, the affidavit
233 or indictment shall not be required to enumerate previous
234 convictions. It shall only be necessary that the affidavit or
235 indictment states the number of times that the defendant has been
236 convicted and sentenced within the past five (5) years for a
237 second or third offense, or without a time limitation for a fourth
238 or subsequent offense, under this section to determine if an
239 enhanced penalty shall be imposed. The amount of fine and
240 imprisonment imposed in previous convictions shall not be
241 considered in calculating offenses to determine a second, third,
242 fourth or subsequent offense of this section.



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

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

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

263 (11) **Ignition interlock.** If the court orders installation
264 and use of an ignition-interlock device as provided in Section
265 63-11-31 for every vehicle operated by a person convicted or
266 nonadjudicated under this section, each device shall be installed,
267 maintained and removed as provided in Section 63-11-31.



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

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

287 (b) A person who commits a violation of this subsection
288 which does not result in the serious injury or death of a child
289 and which is a second conviction shall be guilty of a misdemeanor
290 and, upon conviction, shall be fined not less than One Thousand
291 Dollars (\$1,000.00) nor more than Five Thousand Dollars
292 (\$5,000.00) or shall be imprisoned for one (1) year, or both;



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

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

306 (13) **Expunction.** (a) Any person convicted under subsection
307 (2) or (3) of this section of a first offense of driving under the
308 influence and who was not the holder of a commercial driver's
309 license or a commercial learning permit at the time of the offense
310 may petition the circuit court of the county in which the
311 conviction was had for an order to expunge the record of the
312 conviction at least five (5) years after successful completion of
313 all terms and conditions of the sentence imposed for the
314 conviction. Expunction under this subsection will only be
315 available to a person:

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



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

320 (iii) Whose blood alcohol concentration tested
321 below sixteen one-hundredths percent (.16%) if test results are
322 available;

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

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

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

329 (b) A person is eligible for only one (1) expunction
330 under this subsection, and the Department of Public Safety shall
331 maintain a permanent confidential registry of all cases of
332 expunction under this subsection for the sole purpose of
333 determining a person's eligibility for expunction, for
334 nonadjudication, or as a first offender under this section.

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

339 (14) **Nonadjudication.** (a) For the purposes of this
340 chapter, "nonadjudication" means that the court withholds
341 adjudication of guilt and sentencing, either at the conclusion of
342 a trial on the merits or upon the entry of a plea of guilt by a



343 defendant, and places the defendant in a nonadjudication program
344 conditioned upon the successful completion of the requirements
345 imposed by the court under this subsection.

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

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

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

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

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

361 (c) Nonadjudication may be initiated upon the filing of
362 a petition for nonadjudication or at any stage of the proceedings
363 in the discretion of the court; the court may withhold
364 adjudication of guilt, defer sentencing, and upon the agreement of
365 the offender to participate in a nonadjudication program, enter an
366 order imposing requirements on the offender for a period of court
367 supervision before the order of nonadjudication is entered.



368 Failure to successfully complete a nonadjudication program
369 subjects the person to adjudication of the charges against him and
370 to imposition of all penalties previously withheld due to entrance
371 into a nonadjudication program. The court shall immediately
372 inform the commissioner of the conviction as required in Section
373 63-11-37.

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

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

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

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

382 4. a. If the court determines that the
383 person violated this section with respect to alcohol or
384 intoxicating liquor, the person must install an ignition-interlock
385 device on every motor vehicle operated by the person, obtain an
386 interlock-restricted license, and maintain that license for one
387 hundred twenty (120) days or suffer a one-hundred-twenty-day
388 suspension of the person's regular driver's license, during which
389 time the person must not operate any vehicle.

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



393 person's ability to operate a motor vehicle, including any drug or
394 controlled substance which is unlawful to possess under the
395 Mississippi Controlled Substances Law, the person must submit to a
396 one-hundred-twenty-day period of a nonadjudication program that
397 includes court-ordered drug testing at the person's own expense
398 not less often than every thirty (30) days, during which time the
399 person may drive if compliant with the terms of the program, or
400 suffer a one-hundred-twenty-day suspension of the person's regular
401 driver's license, during which time the person will not operate
402 any vehicle.

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

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

416 (e) (i) The clerk shall immediately forward a record
417 of every person placed in a nonadjudication program and of every



418 nonadjudication order to the Department of Public Safety for
419 inclusion in the permanent confidential registry of all cases that
420 are nonadjudicated under this subsection (14).

421 (ii) Judges, clerks and prosecutors involved in
422 the trial of implied consent violations and law enforcement
423 officers involved in the issuance of citations for implied consent
424 violations shall have secure online access to the confidential
425 registry for the purpose of determining whether a person has
426 previously been the subject of a nonadjudicated case and 1. is
427 therefore ineligible for another nonadjudication; 2. is ineligible
428 as a first offender for a violation of this section; or 3. is
429 ineligible for expunction of a conviction of a violation of this
430 section.

431 (iii) The Driver Services Bureau of the department
432 shall have access to the confidential registry for the purpose of
433 determining whether a person is eligible for a form of license not
434 restricted to operating a vehicle equipped with an
435 ignition-interlock device.

436 (iv) The Mississippi Alcohol Safety Education
437 Program shall have secure online access to the confidential
438 registry for research purposes only.

439 **SECTION 3.** This act shall take effect and be in force from
440 and after July 1, 2022.

