

By: Representative Roberson

To: Judiciary B

HOUSE BILL NO. 604

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

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

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

10 63-11-23. (1) **Administrative license suspension for test**
11 **refusal.** The Commissioner of Public Safety, or his authorized
12 agent, shall review the sworn report by a law enforcement officer
13 as provided in Section 63-11-21.

14 (a) If upon review the Commissioner of Public Safety,
15 or his authorized agent, finds (i) that the law enforcement
16 officer had reasonable grounds and probable cause to believe the
17 person had been operating a motor vehicle upon the public
18 highways, public roads * * * or streets of this state while under
19 the influence of intoxicating liquor or any other substance that
20 may impair a person's mental or physical ability; (ii) that the



21 person refused to submit to the chemical test of the person's
22 breath, blood or urine upon request of the officer; and (iii) that
23 the person was informed that his license and driving privileges
24 would be suspended or denied if he refused to submit to the
25 chemical test of his breath, blood or urine, then the Commissioner
26 of Public Safety, or his authorized agent, shall give notice to
27 the licensee that his license or permit to drive, or any
28 nonresident operating privilege, shall be suspended thirty (30)
29 days after the date of the notice for a period of ninety (90) days
30 if the person has not previously been convicted of or
31 nonadjudicated for a violation of Section 63-11-30, or, for a
32 period of one (1) year if the person was previously convicted or
33 nonadjudicated under Section 63-11-30. If the commissioner or his
34 authorized agent determines that the license or permit should not
35 be suspended, he shall return the license or permit to the
36 licensee.

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

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

43 (2) **Extension or suspension of privilege to drive; request**
44 **for trial.** (a) If the chemical testing of a person's breath
45 indicates the blood alcohol concentration was eight one-hundredths



46 percent (.08%) or more for persons who are above the legal age to
47 purchase alcoholic beverages under state law, or two
48 one-hundredths percent (.02%) or more for persons who are below
49 the legal age to purchase alcoholic beverages under state law,
50 based upon grams of alcohol per one hundred (100) milliliters of
51 blood or grams of alcohol per two hundred ten (210) liters of
52 breath as shown by a chemical analysis of the person's blood,
53 breath, or urine, the arresting officer shall seize the license
54 and give the driver a receipt for his license on forms prescribed
55 by the Commissioner of Public Safety and shall promptly forward
56 the license together with a sworn report to the Commissioner of
57 Public Safety. The receipt given a person shall be valid as a
58 permit to operate a motor vehicle for thirty (30) days in order
59 that the defendant may be processed through the court having
60 original jurisdiction and a final disposition had.

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

69 (c) If a receipt or permit to drive issued under this
70 subsection expires without a trial having been requested as



71 provided in this subsection, then the Commissioner of Public
72 Safety, or his authorized agent, shall suspend the license or
73 permit to drive or any nonresident operating privilege for the
74 applicable period of time as provided in subsection (1) of this
75 section.

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

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

89 (5) **Suspension subsequent to conviction.** Unless the person
90 obtains an interlock-restricted license or the court orders the
91 person to exercise the privilege to operate a motor vehicle only
92 under an interlock-restricted license or while participating in a
93 court-ordered drug-testing program, thirty (30) days after receipt
94 of the court abstract documenting a person's conviction under
95 Section 63-11-30, the Department of Public Safety shall suspend



96 the driver's license and privileges of the person to operate a
97 motor vehicle as follows:

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

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

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

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

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

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

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

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

118 (iii) For a third offense occurring within five
119 (5) years, suspend or deny the driving privilege for two (2) years



120 or until the person reaches the age of twenty-one (21), whichever
121 is longer.

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

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

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

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

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

137 63-11-30. (1) It is unlawful for a person to drive or
138 otherwise operate a vehicle within this state if the person:

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

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

142 (c) Is under the influence of any drug or controlled
143 substance, the possession of which is unlawful under the

144 Mississippi Controlled Substances Law; or



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

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

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

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

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

160 (a) **First offense DUI.** (i) Upon conviction of any
161 person for the first offense of violating subsection (1) of this
162 section where chemical tests under Section 63-11-5 were given, or
163 where chemical test results are not available, the person shall be
164 fined not less than Two Hundred Fifty Dollars (\$250.00) nor more
165 than One Thousand Dollars (\$1,000.00), or imprisoned for not more
166 than forty-eight (48) hours in jail, or both; the court shall
167 order the person to attend and complete an alcohol safety
168 education program as provided in Section 63-11-32 within six (6)



169 months of sentencing. The court may substitute attendance at a
170 victim impact panel instead of forty-eight (48) hours in jail.

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

173 (iii) A qualifying first offense may be
174 nonadjudicated by the court under subsection (14) of this section.
175 The holder of a commercial driver's license or a commercial
176 learning permit at the time of the offense is ineligible for
177 nonadjudication.

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

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

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



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

197 (c) **Third offense DUI.** (i) For a third conviction of
198 a person for violating subsection (1) of this section, the
199 offenses being committed within a period of five (5) years, the
200 person shall be guilty of a felony and fined not less than Two
201 Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars
202 (\$5,000.00), and shall serve not less than one (1) year nor more
203 than five (5) years in the custody of the Department of
204 Corrections. For any offense that does not result in serious
205 injury or death to any person, the sentence of incarceration may
206 be served in the county jail rather than in the State Penitentiary
207 at the discretion of the circuit court judge. The minimum
208 penalties shall not be suspended or reduced by the court and no
209 prosecutor shall offer any suspension or sentence reduction as
210 part of a plea bargain.

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

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

215 (d) **Fourth and subsequent offense DUI.** (i) For any
216 fourth or subsequent conviction of a violation of subsection (1)
217 of this section, without regard to the time period within which
218 the violations occurred, the person shall be guilty of a felony



219 and fined not less than Three Thousand Dollars (\$3,000.00) nor
220 more than Ten Thousand Dollars (\$10,000.00), and shall serve not
221 less than two (2) years nor more than ten (10) years in the
222 custody of the Department of Corrections.

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

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

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

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

241 (3) **Zero Tolerance for Minors.** (a) This subsection shall
242 be known and may be cited as Zero Tolerance for Minors. The
243 provisions of this subsection shall apply only when a person under



244 the age of twenty-one (21) years has a blood alcohol concentration
245 of two one-hundredths percent (.02%) or more, but lower than eight
246 one-hundredths percent (.08%). If the person's blood alcohol
247 concentration is eight one-hundredths percent (.08%) or more, the
248 provisions of subsection (2) shall apply.

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

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

261 (c) A person under the age of twenty-one (21) years who
262 is convicted of a second violation of subsection (1) of this
263 section, the offenses being committed within a period of five (5)
264 years, shall be fined not more than Five Hundred Dollars
265 (\$500.00).

266 (d) A person under the age of twenty-one (21) years who
267 is convicted of a third or subsequent violation of subsection (1)
268 of this section, the offenses being committed within a period of



269 five (5) years, shall be fined not more than One Thousand Dollars
270 (\$1,000.00).

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

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

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

285 (5) **Aggravated DUI.** (a) Every person who operates any
286 motor vehicle in violation of the provisions of subsection (1) of
287 this section and who in a negligent manner causes the death of
288 another or mutilates, disfigures, permanently disables or destroys
289 the tongue, eye, lip, nose or any other limb, organ or member of
290 another shall, upon conviction, be guilty of a separate felony for
291 each victim who suffers death, mutilation, disfigurement or other
292 injury and shall be committed to the custody of the State
293 Department of Corrections for a period of time of not less than



294 five (5) years and not to exceed twenty-five (25) years for each
295 death, mutilation, disfigurement or other injury, and the
296 imprisonment for the second or each subsequent conviction, in the
297 discretion of the court, shall commence either at the termination
298 of the imprisonment for the preceding conviction or run
299 concurrently with the preceding conviction. Any person charged
300 with causing the death of another as described in this subsection
301 shall be required to post bail before being released after arrest.

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

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

315 (6) **DUI citations.** (a) Upon conviction of a violation of
316 subsection (1) of this section, the trial judge shall sign in the
317 place provided on the traffic ticket, citation or affidavit
318 stating that the person arrested either employed an attorney or



319 waived his right to an attorney after having been properly
320 advised. If the person arrested employed an attorney, the name,
321 address and telephone number of the attorney shall be written on
322 the ticket, citation or affidavit. The court clerk must
323 immediately send a copy of the traffic ticket, citation or
324 affidavit, and any other pertinent documents concerning the
325 conviction or other order of the court, to the Department of
326 Public Safety as provided in Section 63-11-37.

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

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



344 subsequent offense and the penalty that shall be imposed upon
345 conviction for a violation of subsection (1) of this section.

346 (8) **Charging of subsequent offenses.** (a) For the purposes
347 of determining how to impose the sentence for a second, third,
348 fourth or subsequent conviction under this section, the affidavit
349 or indictment shall not be required to enumerate previous
350 convictions. It shall only be necessary that the affidavit or
351 indictment states the number of times that the defendant has been
352 convicted and sentenced within the past five (5) years for a
353 second or third offense, or without a time limitation for a fourth
354 or subsequent offense, under this section to determine if an
355 enhanced penalty shall be imposed. The amount of fine and
356 imprisonment imposed in previous convictions shall not be
357 considered in calculating offenses to determine a second, third,
358 fourth or subsequent offense of this section.

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



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

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

379 (11) **Ignition interlock.** If the court orders installation
380 and use of an ignition-interlock device as provided in Section
381 63-11-31 for every vehicle operated by a person convicted or
382 nonadjudicated under this section, each device shall be installed,
383 maintained and removed as provided in Section 63-11-31.

384 (12) **DUI child endangerment.** A person over the age of
385 twenty-one (21) who violates subsection (1) of this section while
386 transporting in a motor vehicle a child under the age of sixteen
387 (16) years is guilty of the separate offense of endangering a
388 child by driving under the influence of alcohol or any other
389 substance which has impaired the person's ability to operate a
390 motor vehicle. The offense of endangering a child by driving
391 under the influence of alcohol or any other substance which has
392 impaired the person's ability to operate a motor vehicle shall not
393 be merged with an offense of violating subsection (1) of this



394 section for the purposes of prosecution and sentencing. An
395 offender who is convicted of a violation of this subsection shall
396 be punished as follows:

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

403 (b) A person who commits a violation of this subsection
404 which does not result in the serious injury or death of a child
405 and which is a second conviction shall be guilty of a misdemeanor
406 and, upon conviction, shall be fined not less than One Thousand
407 Dollars (\$1,000.00) nor more than Five Thousand Dollars
408 (\$5,000.00) or shall be imprisoned for one (1) year, or both;

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

415 (d) A person who commits a violation of this subsection
416 which results in the serious injury or death of a child, without
417 regard to whether the offense was a first, second, third or
418 subsequent offense, shall be guilty of a felony and, upon



419 conviction, shall be punished by a fine of not less than Ten
420 Thousand Dollars (\$10,000.00) and shall be imprisoned for not less
421 than five (5) years nor more than twenty-five (25) years.

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

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

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

436 (iii) Whose blood alcohol concentration tested
437 below sixteen one-hundredths percent (.16%) if test results are
438 available;

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

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



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

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

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

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

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



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

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

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

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

477 (c) Nonadjudication may be initiated upon the filing of
478 a petition for nonadjudication or at any stage of the proceedings
479 in the discretion of the court; the court may withhold
480 adjudication of guilt, defer sentencing, and upon the agreement of
481 the offender to participate in a nonadjudication program, enter an
482 order imposing requirements on the offender for a period of court
483 supervision before the order of nonadjudication is entered.
484 Failure to successfully complete a nonadjudication program
485 subjects the person to adjudication of the charges against him and
486 to imposition of all penalties previously withheld due to entrance
487 into a nonadjudication program. The court shall immediately
488 inform the commissioner of the conviction as required in Section
489 63-11-37.

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



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

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

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

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

509 b. If the court determines that the
510 person violated this section by operating a vehicle when under the
511 influence of a substance other than alcohol that has impaired the
512 person's ability to operate a motor vehicle, including any drug or
513 controlled substance which is unlawful to possess under the
514 Mississippi Controlled Substances Law, the person must submit to a
515 one-hundred-twenty-day period of a nonadjudication program that



516 includes court-ordered drug testing at the person's own expense
517 not less often than every thirty (30) days, during which time the
518 person may drive if compliant with the terms of the program, or
519 suffer a one-hundred-twenty-day suspension of the person's regular
520 driver's license, during which time the person will not operate
521 any vehicle.

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

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

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



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

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

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

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

560 63-11-31. (1) (a) The provisions of this section are
561 supplemental to the provisions of Section 63-11-30.

562 (b) (i) "Ignition-interlock device" means a device
563 approved by the Department of Public Safety that connects a motor
564 vehicle ignition system to a breath-alcohol analyzer and prevents



565 a motor vehicle ignition from starting if the driver's blood
566 alcohol level exceeds the calibrated setting on the device.

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

684 (b) The court shall determine a defendant's indigence
685 based upon whether the defendant has access to adequate resources
686 to pay the ignition-interlock fee and the costs of installation
687 and maintenance of an ignition-interlock device, or the costs of
688 court-ordered drug testing or both, and may further base the



689 determination of indigence on proof of enrollment in one or more
690 of the following types of public assistance:

691 (i) Temporary Assistance for Needy Families
692 (TANF);

693 (ii) Medicaid assistance;

694 (iii) The Supplemental Nutritional Assistance
695 Program (SNAP), also known as "food stamps";

696 (iv) Supplemental security income (SSI);

697 (v) Participation in a federal food distribution
698 program;

699 (vi) Federal housing assistance;

700 (vii) Unemployment compensation; or

701 (viii) Other criteria determined appropriate by
702 the court.

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

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

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

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



714 (e) (i) Money in the Interlock Device Fund will be
715 appropriated to the department to cover part of the costs of
716 court-ordered drug testing and installing, removing and leasing
717 ignition-interlock devices for indigent people who are required,
718 because of a conviction or nonadjudication under Section 63-11-30,
719 to install an ignition-interlock device in all vehicles operated
720 by the person.

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

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

736 (8) In order to reinstate a form of driver's license that is
737 not restricted to operation of an ignition-interlock equipped
738 vehicle, the person must submit proof to the Department of Public



739 Safety to substantiate the person's eligibility for an
740 unrestricted license, which may be a court order indicating
741 completion of sentence or final order of nonadjudication; in the
742 absence of a court order, the proof may consist of the following
743 or such other proof as the commissioner may set forth by
744 regulation duly adopted under the Administrative Procedures Act:

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

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

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

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

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

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

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



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

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

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

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

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

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

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



788 (b) The Department of Public Safety shall require all
789 vendors of drug testing programs approved under Section 63-11-31.1
790 to report test results in a consistent and uniform format as
791 prescribed by the Forensics Laboratory. Vendors must report test
792 results to the court on a monthly basis, except that a positive
793 test or failure of the testing participant to submit to
794 verification must be reported to the court within five (5) days of
795 verification of the positive test or the failure to submit.

796 **SECTION 4.** This act shall take effect and be in force from
797 and after July 1, 2022.

