

By: Representative Zuber

To: Judiciary B

HOUSE BILL NO. 1142

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE JUDICIAL DISCRETION FOR INCREASING FINES FOR THE
3 PROVISION OF LAW PROVIDING PENALTIES FOR DRIVING UNDER THE
4 INFLUENCE; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 63-11-30, Mississippi Code of 1972, is
7 amended as follows:

8 63-11-30. (1) It is unlawful for a person to drive or
9 otherwise operate a vehicle within this state if the person:

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

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

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

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



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

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

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

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

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

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



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

46 (iii) A qualifying first offense may be
47 nonadjudicated by the court under subsection (14) of this section.
48 The holder of a commercial driver's license or a commercial
49 learning permit at the time of the offense is ineligible for
50 nonadjudication.

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

54 (b) **Second offense DUI.** (i) Except as otherwise
55 provided in this section for the court's discretionary authority,
56 upon any second conviction of any person violating subsection (1)
57 of this section, the offenses being committed within a period of
58 five (5) years, the person shall be guilty of a misdemeanor, fined
59 not less than Six Hundred Dollars (\$600.00) nor more than One
60 Thousand Five Hundred Dollars (\$1,500.00), shall be imprisoned not
61 less than five (5) days nor more than six (6) months and sentenced
62 to community service work for not less than ten (10) days nor more
63 than six (6) months. The minimum penalties shall not be suspended
64 or reduced by the court and no prosecutor shall offer any
65 suspension or sentence reduction as part of a plea bargain.

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



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

71 (c) **Third offense DUI.** (i) Except as otherwise
72 provided in this section for the court's discretionary authority,
73 for a third conviction of a person for violating subsection (1) of
74 this section, the offenses being committed within a period of five
75 (5) years, the person shall be guilty of a felony and fined not
76 less than Two Thousand Dollars (\$2,000.00) nor more than Five
77 Thousand Dollars (\$5,000.00), and shall serve not less than one
78 (1) year nor more than five (5) years in the custody of the
79 Department of Corrections. For any offense that does not result
80 in serious injury or death to any person, the sentence of
81 incarceration may be served in the county jail rather than in the
82 State Penitentiary at the discretion of the circuit court judge.
83 The minimum penalties shall not be suspended or reduced by the
84 court and no prosecutor shall offer any suspension or sentence
85 reduction as part of a plea bargain.

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

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

90 (d) **Fourth and subsequent offense DUI.** (i) Except as
91 otherwise provided in this section for the court's discretionary
92 authority, for any fourth or subsequent conviction of a violation



93 of subsection (1) of this section, without regard to the time
94 period within which the violations occurred, the person shall be
95 guilty of a felony and fined not less than Three Thousand Dollars
96 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), and
97 shall serve not less than two (2) years nor more than ten (10)
98 years in the custody of the Department of Corrections.

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

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

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

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



117 (3) **Zero Tolerance for Minors.** (a) Except as otherwise
118 provided in this section for the court's discretionary authority,
119 this subsection shall be known and may be cited as Zero Tolerance
120 for Minors. The provisions of this subsection shall apply only
121 when a person under the age of twenty-one (21) years has a blood
122 alcohol concentration of two one-hundredths percent (.02%) or
123 more, but lower than eight one-hundredths percent (.08%). If the
124 person's blood alcohol concentration is eight one-hundredths
125 percent (.08%) or more, the provisions of subsection (2) shall
126 apply.

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

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

139 (c) A person under the age of twenty-one (21) years who
140 is convicted of a second violation of subsection (1) of this
141 section, the offenses being committed within a period of five (5)



142 years, shall be fined not more than Five Hundred Dollars
143 (\$500.00).

144 (d) A person under the age of twenty-one (21) years who
145 is convicted of a third or subsequent violation of subsection (1)
146 of this section, the offenses being committed within a period of
147 five (5) years, shall be fined not more than One Thousand Dollars
148 (\$1,000.00).

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

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

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

163 (5) **Aggravated DUI.** (a) Except as otherwise provided in
164 this section for the court's discretionary authority, every person
165 who operates any motor vehicle in violation of the provisions of
166 subsection (1) of this section and who in a negligent manner



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

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

188 (c) The court shall order an ignition-interlock
189 restriction on the offender's privilege to drive as a condition of
190 probation or post-release supervision not to exceed five (5) years
191 unless a longer restriction is required under other law. The



192 ignition-interlock restriction shall not be applied to commercial
193 license privileges until the driver serves the full
194 disqualification period required by Section 63-1-216.

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

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

215 (7) **Out-of-state prior convictions.** Convictions in another
216 state, territory or possession of the United States, or under the



217 law of a federally recognized Native American tribe, of violations
218 for driving or operating a vehicle while under the influence of an
219 intoxicating liquor or while under the influence of any other
220 substance that has impaired the person's ability to operate a
221 motor vehicle occurring within five (5) years before an offense
222 shall be counted for the purposes of determining if a violation of
223 subsection (1) of this section is a second, third, fourth or
224 subsequent offense and the penalty that shall be imposed upon
225 conviction for a violation of subsection (1) of this section.

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

239 (b) Before a defendant enters a plea of guilty to an
240 offense under this section, law enforcement must submit
241 certification to the prosecutor that the defendant's driving



242 record, the confidential registry and National Crime Information
243 Center record have been searched for all prior convictions,
244 nonadjudications, pretrial diversions and arrests for driving or
245 operating a vehicle while under the influence of an intoxicating
246 liquor or while under the influence of any other substance that
247 has impaired the person's ability to operate a motor vehicle. The
248 results of the search must be included in the certification.

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

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

259 (11) **Ignition interlock.** If the court orders installation
260 and use of an ignition-interlock device as provided in Section
261 63-11-31 for every vehicle operated by a person convicted or
262 nonadjudicated under this section, each device shall be installed,
263 maintained and removed as provided in Section 63-11-31.

264 (12) **DUI child endangerment.** A person over the age of
265 twenty-one (21) who violates subsection (1) of this section while
266 transporting in a motor vehicle a child under the age of sixteen



267 (16) years is guilty of the separate offense of endangering a
268 child by driving under the influence of alcohol or any other
269 substance which has impaired the person's ability to operate a
270 motor vehicle. The offense of endangering a child by driving
271 under the influence of alcohol or any other substance which has
272 impaired the person's ability to operate a motor vehicle shall not
273 be merged with an offense of violating subsection (1) of this
274 section for the purposes of prosecution and sentencing. An
275 offender who is convicted of a violation of this subsection shall
276 be punished as follows:

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

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

289 (c) A person who commits a violation of this subsection
290 which does not result in the serious injury or death of a child
291 and which is a third or subsequent conviction shall be guilty of a



292 felony and, upon conviction, shall be fined not less than Ten
293 Thousand Dollars (\$10,000.00) or shall be imprisoned for not less
294 than one (1) year nor more than five (5) years, or both; and

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

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

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

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



316 (iii) Whose blood alcohol concentration tested
317 below sixteen one-hundredths percent (.16%) if test results are
318 available;

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

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

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

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

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

335 (14) **Nonadjudication.** (a) For the purposes of this
336 chapter, "nonadjudication" means that the court withholds
337 adjudication of guilt and sentencing, either at the conclusion of
338 a trial on the merits or upon the entry of a plea of guilt by a
339 defendant, and places the defendant in a nonadjudication program



340 conditioned upon the successful completion of the requirements
341 imposed by the court under this subsection.

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

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

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

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

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

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



365 subjects the person to adjudication of the charges against him and
366 to imposition of all penalties previously withheld due to entrance
367 into a nonadjudication program. The court shall immediately
368 inform the commissioner of the conviction as required in Section
369 63-11-37.

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

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

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

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

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

386 b. If the court determines that the
387 person violated this section by operating a vehicle when under the
388 influence of a substance other than alcohol that has impaired the
389 person's ability to operate a motor vehicle, including any drug or



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

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

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

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



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

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

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

432 (iv) The Mississippi Alcohol Safety Education
433 Program shall have secure online access to the confidential
434 registry for research purposes only.

435 (15) The court in its discretion may increase any fines
436 listed in this section; however, the reasons for such increase
437 shall be included in the court's order which sets the fine.

438 (* * *16) The provisions of this section are fully
439 applicable to any person who is under the influence of medical



440 cannabis that is lawful under the Mississippi Medical Cannabis Act
441 and in compliance with rules and regulations adopted thereunder
442 which has impaired the person's ability to operate a motor
443 vehicle.

444 **SECTION 2.** This act shall take effect and be in force from
445 and after July 1, 2023.

