

By: Senator(s) England

To: Judiciary, Division B

SENATE BILL NO. 2124

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE MAXIMUM TERM OF IMPRISONMENT FOR A FIRST OR SECOND  
3 DUI CONVICTION; AND FOR RELATED PURPOSES.

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

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

7 63-11-30. (1) It is unlawful for a person to drive or  
8 otherwise operate a vehicle within this state if the person:

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

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

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

14 Mississippi Controlled Substances Law; or

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



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

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

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

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

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

30 (a) **First offense DUI.** (i) Upon conviction of any  
31 person for the first offense of violating subsection (1) of this  
32 section where chemical tests under Section 63-11-5 were given, or  
33 where chemical test results are not available, the person shall be  
34 fined not less than Two Hundred Fifty Dollars (\$250.00) nor more  
35 than One Thousand Dollars (\$1,000.00), or imprisoned for not more  
36 than \* \* \* six (6) months in jail, or both; the court shall order  
37 the person to attend and complete an alcohol safety education  
38 program as provided in Section 63-11-32 within \* \* \* nine (9)  
39 months of sentencing. The court may substitute attendance at a  
40 victim impact panel instead of forty-eight (48) hours in jail.

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



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

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

51 (b) **Second offense DUI.** (i) Upon any second  
52 conviction of any person violating subsection (1) of this section,  
53 the offenses being committed within a period of five (5) years,  
54 the person shall be guilty of a misdemeanor, fined not less than  
55 Six Hundred Dollars (\$600.00) nor more than One Thousand Five  
56 Hundred Dollars (\$1,500.00), shall be imprisoned not less than  
57 five (5) days nor more than \* \* \* nine (9) months and sentenced to  
58 community service work for not less than ten (10) days nor more  
59 than six (6) months. The minimum penalties shall not be suspended  
60 or reduced by the court and no prosecutor shall offer any  
61 suspension or sentence reduction as part of a plea bargain.

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

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



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

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

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

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



91 less than two (2) years nor more than ten (10) years in the  
92 custody of the Department of Corrections.

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

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

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

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

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



116 one-hundredths percent (.08%). If the person's blood alcohol  
117 concentration is eight one-hundredths percent (.08%) or more, the  
118 provisions of subsection (2) shall apply.

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

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

131 (c) A person under the age of twenty-one (21) years who  
132 is convicted of a second violation of subsection (1) of this  
133 section, the offenses being committed within a period of five (5)  
134 years, shall be fined not more than Five Hundred Dollars  
135 (\$500.00).

136 (d) A person under the age of twenty-one (21) years who  
137 is convicted of a third or subsequent violation of subsection (1)  
138 of this section, the offenses being committed within a period of  
139 five (5) years, shall be fined not more than One Thousand Dollars  
140 (\$1,000.00).



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

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

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

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



166 imprisonment for the second or each subsequent conviction, in the  
167 discretion of the court, shall commence either at the termination  
168 of the imprisonment for the preceding conviction or run  
169 concurrently with the preceding conviction. Any person charged  
170 with causing the death of another as described in this subsection  
171 shall be required to post bail before being released after arrest.

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

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

185 (6) **DUI citations.** (a) Upon conviction of a violation of  
186 subsection (1) of this section, the trial judge shall sign in the  
187 place provided on the traffic ticket, citation or affidavit  
188 stating that the person arrested either employed an attorney or  
189 waived his right to an attorney after having been properly  
190 advised. If the person arrested employed an attorney, the name,





191 address and telephone number of the attorney shall be written on  
192 the ticket, citation or affidavit. The court clerk must  
193 immediately send a copy of the traffic ticket, citation or  
194 affidavit, and any other pertinent documents concerning the  
195 conviction or other order of the court, to the Department of  
196 Public Safety as provided in Section 63-11-37.

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

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



216           (8) **Charging of subsequent offenses.** (a) For the purposes  
217 of determining how to impose the sentence for a second, third,  
218 fourth or subsequent conviction under this section, the affidavit  
219 or indictment shall not be required to enumerate previous  
220 convictions. It shall only be necessary that the affidavit or  
221 indictment states the number of times that the defendant has been  
222 convicted and sentenced within the past five (5) years for a  
223 second or third offense, or without a time limitation for a fourth  
224 or subsequent offense, under this section to determine if an  
225 enhanced penalty shall be imposed. The amount of fine and  
226 imprisonment imposed in previous convictions shall not be  
227 considered in calculating offenses to determine a second, third,  
228 fourth or subsequent offense of this section.

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

239           (9) **License eligibility for underage offenders.** A person  
240 who is under the legal age to obtain a license to operate a motor



241 vehicle at the time of the offense and who is convicted under this  
242 section shall not be eligible to receive a driver's license until  
243 the person reaches the age of eighteen (18) years.

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

249       (11) **Ignition interlock.** If the court orders installation  
250 and use of an ignition-interlock device as provided in Section  
251 63-11-31 for every vehicle operated by a person convicted or  
252 nonadjudicated under this section, each device shall be installed,  
253 maintained and removed as provided in Section 63-11-31.

254       (12) **DUI child endangerment.** A person over the age of  
255 twenty-one (21) who violates subsection (1) of this section while  
256 transporting in a motor vehicle a child under the age of sixteen  
257 (16) years is guilty of the separate offense of endangering a  
258 child by driving under the influence of alcohol or any other  
259 substance which has impaired the person's ability to operate a  
260 motor vehicle. The offense of endangering a child by driving  
261 under the influence of alcohol or any other substance which has  
262 impaired the person's ability to operate a motor vehicle shall not  
263 be merged with an offense of violating subsection (1) of this  
264 section for the purposes of prosecution and sentencing. An



265 offender who is convicted of a violation of this subsection shall  
266 be punished as follows:

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

273 (b) A person who commits a violation of this subsection  
274 which does not result in the serious injury or death of a child  
275 and which is a second conviction shall be guilty of a misdemeanor  
276 and, upon conviction, shall be fined not less than One Thousand  
277 Dollars (\$1,000.00) nor more than Five Thousand Dollars  
278 (\$5,000.00) or shall be imprisoned for one (1) year, or both;

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

285 (d) A person who commits a violation of this subsection  
286 which results in the serious injury or death of a child, without  
287 regard to whether the offense was a first, second, third or  
288 subsequent offense, shall be guilty of a felony and, upon  
289 conviction, shall be punished by a fine of not less than Ten



290 Thousand Dollars (\$10,000.00) and shall be imprisoned for not less  
291 than five (5) years nor more than twenty-five (25) years.

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

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

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

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

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

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

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



315           (b) A person is eligible for only one (1) expunction  
316 under this subsection, and the Department of Public Safety shall  
317 maintain a permanent confidential registry of all cases of  
318 expunction under this subsection for the sole purpose of  
319 determining a person's eligibility for expunction, for  
320 nonadjudication, or as a first offender under this section.

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

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

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

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



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

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

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

347 (c) Nonadjudication may be initiated upon the filing of  
348 a petition for nonadjudication or at any stage of the proceedings  
349 in the discretion of the court; the court may withhold  
350 adjudication of guilt, defer sentencing, and upon the agreement of  
351 the offender to participate in a nonadjudication program, enter an  
352 order imposing requirements on the offender for a period of court  
353 supervision before the order of nonadjudication is entered.  
354 Failure to successfully complete a nonadjudication program  
355 subjects the person to adjudication of the charges against him and  
356 to imposition of all penalties previously withheld due to entrance  
357 into a nonadjudication program. The court shall immediately  
358 inform the commissioner of the conviction as required in Section  
359 63-11-37.

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

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



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

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

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

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





387 driver's license, during which time the person will not operate  
388 any vehicle.

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

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

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

407 (ii) Judges, clerks and prosecutors involved in  
408 the trial of implied consent violations and law enforcement  
409 officers involved in the issuance of citations for implied consent  
410 violations shall have secure online access to the confidential  
411 registry for the purpose of determining whether a person has



412 previously been the subject of a nonadjudicated case and 1. is  
413 therefore ineligible for another nonadjudication; 2. is ineligible  
414 as a first offender for a violation of this section; or 3. is  
415 ineligible for expunction of a conviction of a violation of this  
416 section.

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

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

425 (15) The provisions of this section are fully applicable to  
426 any person who is under the influence of medical cannabis that is  
427 lawful under the Mississippi Medical Cannabis Act and in  
428 compliance with rules and regulations adopted thereunder which has  
429 impaired the person's ability to operate a motor vehicle.

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

