

By: Representative Evans

To: Judiciary B

HOUSE BILL NO. 864

1 AN ACT TO AMEND SECTIONS 63-11-5 AND 63-11-23, MISSISSIPPI
2 CODE OF 1972, TO REVISE LICENSE SUSPENSION REQUIREMENTS FOR TEST
3 REFUSAL IF THE LICENSEE SUBSEQUENTLY PLEADS GUILTY; AND FOR
4 RELATED PURPOSES.

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

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

8 63-11-5. (1) (a) Any person who operates a motor vehicle
9 upon the public highways, public roads * * * or streets of this
10 state shall be deemed to have given his consent, subject to the
11 provisions of this chapter, to a chemical test or tests of his
12 breath, blood or urine for the purpose of determining alcohol
13 concentration. A person shall give his consent to a chemical test
14 or tests of his breath, blood or urine for the purpose of
15 determining the presence in his body of any other substance which
16 would impair a person's ability to operate a motor vehicle.

17 (b) The test or tests shall be administered at the
18 direction of any authorized officer, when such officer has
19 reasonable grounds and probable cause to believe that the person



20 was driving or had under his actual physical control a motor
21 vehicle upon the public streets or highways of this state while
22 under the influence of intoxicating liquor or any other substance
23 which had impaired such person's ability to operate a motor
24 vehicle.

25 (2) (a) A breath analysis test must be administered by a
26 person who has met all the educational and training requirements
27 of the appropriate course of study prescribed by the Board on Law
28 Enforcement * * * Officer Standards and Training; however,
29 sheriffs and elected chiefs of police are exempt from the
30 educational and training requirement. A breath analysis test must
31 not be given to any person within fifteen (15) minutes of
32 consumption of any substance by mouth.

33 (b) For purposes of this section, the term "authorized
34 officer" means any highway patrol officer, sheriff or his duly
35 commissioned deputies, police officer in any incorporated
36 municipality, national park ranger, officer of a state-supported
37 institution of higher learning campus police force if such officer
38 is exercising this authority in regard to a violation that
39 occurred on campus property, or security officer appointed and
40 commissioned pursuant to the Pearl River Valley Water Supply
41 District Security Officer Law of 1978 if such officer is
42 exercising this authority in regard to a violation that occurred
43 within the limits of the Pearl River Valley Water Supply District.



44 (3) If the officer has reasonable grounds and probable cause
45 to believe such person to have been driving a motor vehicle upon
46 the public highways, public roads * * * or streets of this state
47 while under the influence of intoxicating liquor or any other
48 substance that has impaired the person's ability to operate a
49 motor vehicle, the officer shall inform the person that his
50 failure to submit to such chemical test or tests of his breath,
51 blood or urine shall result in the suspension of his privilege to
52 operate a motor vehicle upon the public streets * * *, roads or
53 highways of this state for a period of ninety (90) days if the
54 person has not previously been convicted of a violation of Section
55 63-11-30, or * * * for a period of one (1) year if the person has
56 a prior conviction under Section 63-11-30. If the person who
57 failed to submit to such chemical test or tests of his breath
58 should, at the trial of his charge for driving under the
59 influence, subsequently enters a plea of guilty to the charge, the
60 suspension of the privilege to operate a motor vehicle upon the
61 public streets and highways of this state shall be set aside and
62 otherwise terminated.

63 (4) The traffic ticket, citation or affidavit issued to a
64 person arrested for a violation of this chapter shall conform to
65 the requirements of Section 63-9-21(3)(b) * * * and, if filed
66 electronically, shall conform to Section 63-9-21(8).

67 (5) Any person arrested under the provisions of this chapter
68 shall be informed that he has the right to telephone for the



69 purpose of requesting legal or medical assistance immediately
70 after being booked for a violation under this chapter.

71 (6) The Commissioner of Public Safety and the Mississippi
72 Forensics Laboratory created pursuant to Section 45-1-17 are
73 authorized to adopt procedures, rules and regulations applicable
74 to the Implied Consent Law.

75 **SECTION 2.** Section 63-11-23, Mississippi Code of 1972, is
76 amended as follows:

77 63-11-23. (1) **Administrative license suspension for test**
78 **refusal.** The Commissioner of Public Safety, or his authorized
79 agent, shall review the sworn report by a law enforcement officer
80 as provided in Section 63-11-21.

81 (a) If upon review the Commissioner of Public Safety,
82 or his authorized agent, finds (i) that the law enforcement
83 officer had reasonable grounds and probable cause to believe the
84 person had been operating a motor vehicle upon the public
85 highways, public roads * * * or streets of this state while under
86 the influence of intoxicating liquor or any other substance that
87 may impair a person's mental or physical ability; (ii) that the
88 person refused to submit to the chemical test of the person's
89 breath, blood or urine upon request of the officer; and (iii) that
90 the person was informed that his license and driving privileges
91 would be suspended or denied if he refused to submit to the
92 chemical test of his breath, blood or urine, then the Commissioner
93 of Public Safety, or his authorized agent, shall give notice to



94 the licensee that his license or permit to drive, or any
95 nonresident operating privilege, shall be suspended thirty (30)
96 days after the date of the notice for a period of ninety (90) days
97 if the person has not previously been convicted of or
98 nonadjudicated for a violation of Section 63-11-30, or, for a
99 period of one (1) year if the person was previously convicted or
100 nonadjudicated under Section 63-11-30. If the commissioner or his
101 authorized agent determines that the license or permit should not
102 be suspended, he shall return the license or permit to the
103 licensee.

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

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

110 (2) **Extension or suspension of privilege to drive; request**
111 **for trial.** (a) If the chemical testing of a person's breath
112 indicates the blood alcohol concentration was eight one-hundredths
113 percent (.08%) or more for persons who are above the legal age to
114 purchase alcoholic beverages under state law, or two
115 one-hundredths percent (.02%) or more for persons who are below
116 the legal age to purchase alcoholic beverages under state law,
117 based upon grams of alcohol per one hundred (100) milliliters of
118 blood or grams of alcohol per two hundred ten (210) liters of



119 breath as shown by a chemical analysis of the person's blood,
120 breath, or urine, the arresting officer shall seize the license
121 and give the driver a receipt for his license on forms prescribed
122 by the Commissioner of Public Safety and shall promptly forward
123 the license together with a sworn report to the Commissioner of
124 Public Safety. The receipt given a person shall be valid as a
125 permit to operate a motor vehicle for thirty (30) days in order
126 that the defendant may be processed through the court having
127 original jurisdiction and a final disposition had.

128 (b) If the defendant requests a trial within thirty
129 (30) days and trial is not commenced within thirty (30) days, then
130 the court shall determine if the delay in the trial is the fault
131 of the defendant or his counsel. If the court finds that it is
132 not the fault of the defendant or his counsel, then the court
133 shall order the defendant's privileges to operate a motor vehicle
134 to be extended until the defendant is convicted upon final order
135 of the court.

136 (c) If a receipt or permit to drive issued under this
137 subsection expires without a trial having been requested as
138 provided in this subsection, then the Commissioner of Public
139 Safety, or his authorized agent, shall suspend the license or
140 permit to drive or any nonresident operating privilege for the
141 applicable period of time as provided in subsection (1) of this
142 section.



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

149 (4) **Appeal.** It shall be the duty of the municipal
150 prosecuting attorney, county prosecuting attorney, an attorney
151 employed under the provisions of Section 19-3-49, or if there is
152 not a prosecuting attorney for the municipality or county, the
153 duty of the district attorney to represent the state in any
154 hearing on a de novo appeal held under the provisions of Section
155 63-11-25, Section 63-11-37 or Section 63-11-30.

156 (5) **Suspension subsequent to conviction.** Unless the person
157 obtains an interlock-restricted license or the court orders the
158 person to exercise the privilege to operate a motor vehicle only
159 under an interlock-restricted license or while participating in a
160 court-ordered drug-testing program, thirty (30) days after receipt
161 of the court abstract documenting a person's conviction under
162 Section 63-11-30, the Department of Public Safety shall suspend
163 the driver's license and privileges of the person to operate a
164 motor vehicle as follows:

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

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



168 (ii) For a second offense: one (1) year;
169 (iii) For a third offense: for the full period of
170 the person's sentence; upon release from incarceration, the person
171 will be eligible for only an interlock-restricted license for
172 three (3) years;

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

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

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

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

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

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

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



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

199 **SECTION 3.** This act shall take effect and be in force from
200 and after July 1, 2024.

