

By: Martinson, Baker, Barbour, Chism, Denny, To: Judiciary A
Eads, Fleming, Fillingane, Lott, Mayo,
Masterson, Montgomery (15th), Montgomery
(74th), Moore (60th), Nicholson, Reeves

HOUSE BILL NO. 539

1 AN ACT TO AMEND SECTIONS 63-11-23 AND 63-11-30, MISSISSIPPI
2 CODE OF 1972, TO REVISE BLOOD ALCOHOL CONCENTRATION LEVELS UNDER
3 THE IMPLIED CONSENT LAW; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 63-11-23, Mississippi Code of 1972, is
6 amended as follows:

7 63-11-23. (1) The Commissioner of Public Safety, or his
8 authorized agent, shall review the sworn report by a law
9 enforcement officer as provided in Section 63-11-21. If upon such
10 review the Commissioner of Public Safety, or his authorized agent,
11 finds (a) that the law enforcement officer had reasonable grounds
12 and probable cause to believe the person had been driving a motor
13 vehicle upon the public highways, public roads and streets of this
14 state while under the influence of intoxicating liquor or any
15 other substance which may impair a person's mental or physical
16 ability; (b) that he refused to submit to the test upon request of
17 the officer; and (c) that the person was informed that his license
18 and/or driving privileges would be suspended or denied if he
19 refused to submit to the chemical test, then the Commissioner of
20 Public Safety, or his authorized agent, shall give notice to the
21 licensee that his license or permit to drive, or any nonresident
22 operating privilege, shall be suspended thirty (30) days after the
23 date of such notice for a period of ninety (90) days in the event
24 such person has not previously been convicted of a violation of
25 Section 63-11-30, or, for a period of one (1) year in the event of
26 any previous conviction of such person under Section 63-11-30. In

27 the event the commissioner or his authorized agent determines that
28 the license should not be suspended, he shall return the license
29 or permit to the licensee.

30 The notice of suspension shall be in writing and given in the
31 manner provided in Section 63-1-52(2)(a).

32 (2) If the chemical testing of a person's breath indicates
33 the blood alcohol concentration was eight one-hundredths percent
34 (.08%) or more for persons who are above the legal age to purchase
35 alcoholic beverages under state law, or two one-hundredths percent
36 (.02%) or more for persons who are below the legal age to purchase
37 alcoholic beverages under state law, based upon grams of alcohol
38 per one hundred (100) milliliters of blood or grams of alcohol per
39 two hundred ten (210) liters of breath as shown by a chemical
40 analysis of such person's blood, or breath, or urine, the
41 arresting officer shall seize the license and give the driver a
42 receipt for his license on forms prescribed by the Commissioner of
43 Public Safety and shall promptly forward the license together with
44 a sworn report to the Commissioner of Public Safety. The receipt
45 given a person as provided herein shall be valid as a permit to
46 operate a motor vehicle for a period of thirty (30) days in order
47 that the defendant be processed through the court having original
48 jurisdiction and a final disposition had; provided, however, that
49 if the defendant makes a written request directed to the trial
50 judge requesting that a trial be held on the matter within such
51 thirty-day period and such defendant is not afforded a trial
52 within such period, then the Commissioner of Public Safety shall
53 issue such defendant a permit to drive that shall be valid for an
54 additional thirty (30) days. If the defendant makes a written
55 request to the trial judge requesting that a trial be held on the
56 matter prior to the expiration of such permit to drive and such
57 defendant is not afforded a trial within such period, then the
58 Commissioner of Public Safety shall issue such defendant a permit
59 to drive for an additional thirty (30) days. In no event shall a
60 defendant be permitted to drive under the provisions of this
61 subsection for more than ninety (90) days after the initial
62 seizure of such defendant's license. The fact that the defendant
63 has the right to request a trial and the effect of a denial of

64 such request shall be plainly stated on the face of any receipt or
65 permit to drive issued such defendant. If a receipt or permit to
66 drive issued pursuant to the provisions of this subsection expires
67 without a trial having been requested as provided for in this
68 subsection, then the Commissioner of Public Safety or his
69 authorized agent shall suspend the license or permit to drive or
70 any nonresident operating privilege for the applicable period of
71 time as provided for in subsection (1) of this section.

72 (3) If the person is a resident without a license or permit
73 to operate a motor vehicle in this state, the Commissioner of
74 Public Safety, or his authorized agent, shall deny to the person
75 the issuance of a license or permit for a period of one (1) year
76 beginning thirty (30) days after the date of notice of such
77 suspension.

78 (4) It shall be the duty of the county prosecuting attorney,
79 an attorney employed under the provisions of Section 19-3-49, or
80 in the event there is no such prosecuting attorney for the county,
81 the duty of the district attorney to represent the state in any
82 hearing held under the provisions of Section 63-11-25, under the
83 provisions of Section 63-11-37(2) or under the provisions of
84 Section 63-11-30(2)(a).

85 SECTION 2. Section 63-11-30, Mississippi Code of 1972, is
86 amended as follows:

87 63-11-30. (1) It is unlawful for any person to drive or
88 otherwise operate a vehicle within this state who (a) is under the
89 influence of intoxicating liquor; (b) is under the influence of
90 any other substance which has impaired such person's ability to
91 operate a motor vehicle; (c) has an alcohol concentration of eight
92 one-hundredths percent (.08%) or more for persons who are above
93 the legal age to purchase alcoholic beverages under state law, or
94 two one-hundredths percent (.02%) or more for persons who are
95 below the legal age to purchase alcoholic beverages under state
96 law, in the person's blood based upon grams of alcohol per one

97 hundred (100) milliliters of blood or grams of alcohol per two
98 hundred ten (210) liters of breath as shown by a chemical analysis
99 of such person's breath, blood or urine administered as authorized
100 by this chapter; (d) is under the influence of any drug or
101 controlled substance, the possession of which is unlawful under
102 the Mississippi Controlled Substances Law; or (e) has an alcohol
103 concentration of four one-hundredths percent (.04%) or more in the
104 person's blood, based upon grams of alcohol per one hundred (100)
105 milliliters of blood or grams of alcohol per two hundred ten (210)
106 liters of breath as shown by a chemical analysis of such person's
107 blood, breath or urine, administered as authorized by this chapter
108 for persons operating a commercial motor vehicle.

109 (2) (a) Except as otherwise provided in subsection (3),
110 upon conviction of any person for the first offense of violating
111 subsection (1) of this section where chemical tests provided for
112 under Section 63-11-5 were given, or where chemical test results
113 are not available, such person shall be fined not less than Two
114 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
115 (\$1,000.00), or imprisoned for not more than forty-eight (48)
116 hours in jail or both; and the court shall order such person to
117 attend and complete an alcohol safety education program as
118 provided in Section 63-11-32. The court may substitute attendance
119 at a victim impact panel instead of forty-eight (48) hours in
120 jail. In addition, the Department of Public Safety, the
121 Commissioner of Public Safety or his duly authorized agent shall,
122 after conviction and upon receipt of the court abstract, suspend
123 the driver's license and driving privileges of such person for a
124 period of not less than ninety (90) days and until such person
125 attends and successfully completes an alcohol safety education
126 program as herein provided; provided, however, in no event shall
127 such period of suspension exceed one (1) year. Commercial driving
128 privileges shall be suspended as provided in Section 63-1-83.

129 The circuit court having jurisdiction in the county in which

130 the conviction was had or the circuit court of the person's county
131 of residence may reduce the suspension of driving privileges under
132 Section 63-11-30(2)(a) if the denial of which would constitute a
133 hardship on the offender, except that no court may issue such an
134 order reducing the suspension of driving privileges under this
135 subsection until thirty (30) days have elapsed from the effective
136 date of the suspension. Hardships shall only apply to first
137 offenses under Section 63-11-30(1), and shall not apply to second,
138 third or subsequent convictions of any person violating subsection
139 (1) of this section. A reduction of suspension on the basis of
140 hardship shall not be available to any person who refused to
141 submit to a chemical test upon the request of a law enforcement
142 officer as provided in Section 63-11-5. When the petition is
143 filed, such person shall pay to the circuit clerk of the court
144 where the petition is filed a fee of Fifty Dollars (\$50.00), which
145 shall be deposited into the State General Fund to the credit of a
146 special fund hereby created in the State Treasury to be used for
147 alcohol or drug abuse treatment and education, upon appropriation
148 by the Legislature. This fee shall be in addition to any other
149 court costs or fees required for the filing of petitions.

150 The petition filed under the provisions of this subsection
151 shall contain the specific facts which the petitioner alleges to
152 constitute a hardship and the driver's license number of the
153 petitioner. A hearing may be held on any petition filed under
154 this subsection only after ten (10) days' prior written notice to
155 the Commissioner of Public Safety, or his designated agent, or the
156 attorney designated to represent the state. At such hearing, the
157 court may enter an order reducing the period of suspension.

158 The order entered under the provisions of this subsection
159 shall contain the specific grounds upon which hardship was
160 determined, and shall order the petitioner to attend and complete
161 an alcohol safety education program as provided in Section
162 63-11-32. A certified copy of such order shall be delivered to

163 the Commissioner of Public Safety by the clerk of the court within
164 five (5) days of the entry of the order. The certified copy of
165 such order shall contain information which will identify the
166 petitioner, including, but not limited to, the name, mailing
167 address, street address, Social Security number and driver's
168 license number of the petitioner.

169 At any time following at least thirty (30) days of suspension
170 for a first offense violation of this section, the court may grant
171 the person hardship driving privileges upon written petition of
172 the defendant, if it finds reasonable cause to believe that
173 revocation would hinder the person's ability to:

- 174 (i) Continue his employment;
- 175 (ii) Continue attending school or an educational
176 institution; or
- 177 (iii) Obtain necessary medical care.

178 Proof of the hardship shall be established by clear and
179 convincing evidence which shall be supported by independent
180 documentation.

181 (b) Except as otherwise provided in subsection (3),
182 upon any second conviction of any person violating subsection (1)
183 of this section, the offenses being committed within a period of
184 five (5) years, such person shall be fined not less than Six
185 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
186 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)
187 days nor more than one (1) year and sentenced to community service
188 work for not less than ten (10) days nor more than one (1) year.
189 Except as may otherwise be provided by paragraph (d) of this
190 subsection, the Commissioner of Public Safety shall suspend the
191 driver's license of such person for two (2) years. Suspension of
192 a commercial driver's license shall be governed by Section
193 63-1-83. Upon any second conviction as described in this
194 paragraph, the court shall ascertain whether the defendant is
195 married, and if the defendant is married shall obtain the name and

196 address of the defendant's spouse; the clerk of the court shall
197 submit this information to the Department of Public Safety.
198 Further, the commissioner shall notify in writing, by certified
199 mail, return receipt requested, the owner of the vehicle and the
200 spouse, if any, of the person convicted of the second violation of
201 the possibility of forfeiture of the vehicle if such person is
202 convicted of a third violation of subsection (1) of this section.

203 The owner of the vehicle and the spouse shall be considered
204 notified under this paragraph if the notice is deposited in the
205 United States mail and any claim that the notice was not in fact
206 received by the addressee shall not affect a subsequent forfeiture
207 proceeding.

208 (c) Except as otherwise provided in subsection (3), for
209 any third or subsequent conviction of any person violating
210 subsection (1) of this section, the offenses being committed
211 within a period of five (5) years, such person shall be guilty of
212 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
213 nor more than Five Thousand Dollars (\$5,000.00) and shall be
214 imprisoned not less than one (1) year nor more than five (5) years
215 in the State Penitentiary. The law enforcement agency shall seize
216 the vehicle operated by any person charged with a third or
217 subsequent violation of subsection (1) of this section, if such
218 convicted person was driving the vehicle at the time the offense
219 was committed. Such vehicle may be forfeited in the manner
220 provided by Sections 63-11-49 through 63-11-53. Except as may
221 otherwise be provided by paragraph (e) of this subsection, the
222 Commissioner of Public Safety shall suspend the driver's license
223 of such person for five (5) years. The suspension of a commercial
224 driver's license shall be governed by Section 63-1-83.

225 (d) Except as otherwise provided in subsection (3), any
226 person convicted of a second violation of subsection (1) of this
227 section, may have the period that his driver's license is
228 suspended reduced if such person receives an in-depth diagnostic

229 assessment, and as a result of such assessment is determined to be
230 in need of treatment of his alcohol and/or drug abuse problem and
231 successfully completes treatment of his alcohol and/or drug abuse
232 problem at a program site certified by the Department of Mental
233 Health. Such person shall be eligible for reinstatement of his
234 driving privileges upon the successful completion of such
235 treatment after a period of one (1) year after such person's
236 driver's license is suspended. Each person who receives a
237 diagnostic assessment shall pay a fee representing the cost of
238 such assessment. Each person who participates in a treatment
239 program shall pay a fee representing the cost of such treatment.

240 (e) Except as otherwise provided in subsection (3), any
241 person convicted of a third or subsequent violation of subsection
242 (1) of this section may enter an alcohol and/or drug abuse program
243 approved by the Department of Mental Health for treatment of such
244 person's alcohol and/or drug abuse problem. If such person
245 successfully completes such treatment, such person shall be
246 eligible for reinstatement of his driving privileges after a
247 period of three (3) years after such person's driver's license is
248 suspended.

249 (3) (a) This subsection shall be known and may be cited as
250 Zero Tolerance for Minors. The provisions of this subsection
251 shall apply only when a person under the age of twenty-one (21)
252 years has a blood alcohol concentration two one-hundredths percent
253 (.02%) or more, but lower than eight one-hundredths percent
254 (.08%). If such person's blood alcohol concentration is eight
255 one-hundredths percent (.08%) or more, the provisions of
256 subsection (2) shall apply.

257 (b) Upon conviction of any person under the age of
258 twenty-one (21) years for the first offense of violating
259 subsection (1) of this section where chemical tests provided for
260 under Section 63-11-5 were given, or where chemical test results
261 are not available, such person shall have his driver's license

262 suspended for ninety (90) days and shall be fined Two Hundred
263 Fifty Dollars (\$250.00); and the court shall order such person to
264 attend and complete an alcohol safety education program as
265 provided in Section 63-11-32. The court may also require
266 attendance at a victim impact panel.

267 The circuit court having jurisdiction in the county in which
268 the conviction was had or the circuit court of the person's county
269 of residence may reduce the suspension of driving privileges under
270 Section 63-11-30(2)(a) if the denial of which would constitute a
271 hardship on the offender, except that no court may issue such an
272 order reducing the suspension of driving privileges under this
273 subsection until thirty (30) days have elapsed from the effective
274 date of the suspension. Hardships shall only apply to first
275 offenses under Section 63-11-30(1), and shall not apply to second,
276 third or subsequent convictions of any person violating subsection
277 (1) of this section. A reduction of suspension on the basis of
278 hardship shall not be available to any person who refused to
279 submit to a chemical test upon the request of a law enforcement
280 officer as provided in Section 63-11-5. When the petition is
281 filed, such person shall pay to the circuit clerk of the court
282 where the petition is filed a fee of Fifty Dollars (\$50.00), which
283 shall be deposited into the State General Fund to the credit of a
284 special fund hereby created in the State Treasury to be used for
285 alcohol or drug abuse treatment and education, upon appropriation
286 by the Legislature. This fee shall be in addition to any other
287 court costs or fees required for the filing of petitions.

288 The petition filed under the provisions of this subsection
289 shall contain the specific facts which the petitioner alleges to
290 constitute a hardship and the driver's license number of the
291 petitioner. A hearing may be held on any petition filed under
292 this subsection only after ten (10) days' prior written notice to
293 the Commissioner of Public Safety, or his designated agent, or the
294 attorney designated to represent the state. At such hearing, the

295 court may enter an order reducing the period of suspension.

296 The order entered under the provisions of this subsection
297 shall contain the specific grounds upon which hardship was
298 determined, and shall order the petitioner to attend and complete
299 an alcohol safety education program as provided in Section
300 63-11-32. A certified copy of such order shall be delivered to
301 the Commissioner of Public Safety by the clerk of the court within
302 five (5) days of the entry of the order. The certified copy of
303 such order shall contain information which will identify the
304 petitioner, including, but not limited to, the name, mailing
305 address, street address, Social Security number and driver's
306 license number of the petitioner.

307 At any time following at least thirty (30) days of suspension
308 for a first offense violation of this section, the court may grant
309 the person hardship driving privileges upon written petition of
310 the defendant, if it finds reasonable cause to believe that
311 revocation would hinder the person's ability to:

- 312 (i) Continue his employment;
- 313 (ii) Continue attending school or an educational
314 institution; or
- 315 (iii) Obtain necessary medical care.

316 Proof of the hardship shall be established by clear and
317 convincing evidence which shall be supported by independent
318 documentation.

319 (c) Upon any second conviction of any person under the
320 age of twenty-one (21) years violating subsection (1) of this
321 section, the offenses being committed within a period of five (5)
322 years, such person shall be fined not more than Five Hundred
323 Dollars (\$500.00) and shall have his driver's license suspended
324 for one (1) year.

325 (d) For any third or subsequent conviction of any
326 person under the age of twenty-one (21) years violating subsection
327 (1) of this section, the offenses being committed within a period

328 of five (5) years, such person shall be fined not more than One
329 Thousand Dollars (\$1,000.00) and shall have his driver's license
330 suspended until he reaches the age of twenty-one (21) or for two
331 (2) years, whichever is longer.

332 (e) Any person under the age of twenty-one (21) years
333 convicted of a second violation of subsection (1) of this section,
334 may have the period that his driver's license is suspended reduced
335 if such person receives an in-depth diagnostic assessment, and as
336 a result of such assessment is determined to be in need of
337 treatment of his alcohol and/or drug abuse problem and
338 successfully completes treatment of his alcohol and/or drug abuse
339 problem at a program site certified by the Department of Mental
340 Health. Such person shall be eligible for reinstatement of his
341 driving privileges upon the successful completion of such
342 treatment after a period of six (6) months after such person's
343 driver's license is suspended. Each person who receives a
344 diagnostic assessment shall pay a fee representing the cost of
345 such assessment. Each person who participates in a treatment
346 program shall pay a fee representing the cost of such treatment.

347 (f) Any person under the age of twenty-one (21) years
348 convicted of a third or subsequent violation of subsection (1) of
349 this section shall complete treatment of an alcohol and/or drug
350 abuse program at a site certified by the Department of Mental
351 Health.

352 (g) The court shall have the discretion to rule that a
353 first offense of this subsection by a person under the age of
354 twenty-one (21) years shall be nonadjudicated. Such person shall
355 be eligible for nonadjudication only once. The Department of
356 Public Safety shall maintain a confidential registry of all cases
357 which are nonadjudicated as provided in this paragraph. A judge
358 who rules that a case is nonadjudicated shall forward such ruling
359 to the Department of Public Safety. Judges and prosecutors
360 involved in implied consent violations shall have access to the

361 confidential registry for the purpose of determining
362 nonadjudication eligibility. A record of a person who has been
363 nonadjudicated shall be maintained for five (5) years or until
364 such person reaches the age of twenty-one (21) years. Any person
365 whose confidential record has been disclosed in violation of this
366 paragraph shall have a civil cause of action against the person
367 and/or agency responsible for such disclosure.

368 (4) Every person convicted of operating a vehicle while
369 under the influence of intoxicating liquor or any other substance
370 which has impaired such person's ability to operate a motor
371 vehicle where the person (a) refused a law enforcement officer's
372 request to submit to a chemical test of his breath as provided in
373 this chapter, or (b) was unconscious at the time of a chemical
374 test and refused to consent to the introduction of the results of
375 such test in any prosecution, shall be punished consistent with
376 the penalties prescribed herein for persons submitting to the
377 test, except that there shall be an additional suspension of
378 driving privileges as follows:

379 The Commissioner of Public Safety or his authorized agent
380 shall suspend the driver's license or permit to drive or deny the
381 issuance of a license or permit to such person as provided for
382 first, second and third or subsequent offenders in subsection (2)
383 of this section. Such suspension shall be in addition to any
384 suspension imposed pursuant to subsection (1) of Section 63-11-23.

385 (5) Every person who operates any motor vehicle in violation
386 of the provisions of subsection (1) of this section and who in a
387 negligent manner causes the death of another or mutilates,
388 disfigures, permanently disables or destroys the tongue, eye, lip,
389 nose or any other limb, organ or member of another shall, upon
390 conviction, be guilty of a felony and shall be committed to the
391 custody of the State Department of Corrections for a period of
392 time not to exceed twenty-five (25) years.

393 (6) Upon conviction of any violation of subsection (1) of

394 this section, the trial judge shall sign in the place provided on
395 the traffic ticket, citation or affidavit stating that the person
396 arrested either employed an attorney or waived his right to an
397 attorney after having been properly advised. If the person
398 arrested employed an attorney, the name, address and telephone
399 number of the attorney shall be written on the ticket, citation or
400 affidavit. The judge shall cause a copy of the traffic ticket,
401 citation or affidavit, and any other pertinent documents
402 concerning the conviction, to be sent to the Commissioner of
403 Public Safety. A copy of the traffic ticket, citation or
404 affidavit and any other pertinent documents, having been attested
405 as true and correct by the Commissioner of Public Safety, or his
406 designee, shall be sufficient proof of the conviction for purposes
407 of determining the enhanced penalty for any subsequent convictions
408 of violations of subsection (1) of this section.

409 (7) Convictions in other states of violations for driving or
410 operating a vehicle while under the influence of an intoxicating
411 liquor or while under the influence of any other substance that
412 has impaired the person's ability to operate a motor vehicle
413 occurring after July 1, 1992, shall be counted for the purposes of
414 determining if a violation of subsection (1) of this section is a
415 first, second, third or subsequent offense and the penalty that
416 shall be imposed upon conviction for a violation of subsection (1)
417 of this section.

418 (8) For the purposes of determining how to impose the
419 sentence for a second, third or subsequent conviction under this
420 section, the indictment shall not be required to enumerate
421 previous convictions. It shall only be necessary that the
422 indictment state the number of times that the defendant has been
423 convicted and sentenced within the past five (5) years under this
424 section to determine if an enhanced penalty shall be imposed. The
425 amount of fine and imprisonment imposed in previous convictions
426 shall not be considered in calculating offenses to determine a

427 second, third or subsequent offense of this section.

428 (9) Any person under the legal age to obtain a license to
429 operate a motor vehicle convicted under this section shall not be
430 eligible to receive such license until the person reaches the age
431 of eighteen (18) years.

432 (10) Suspension of driving privileges for any person
433 convicted of violations of Section 63-11-30(1) shall run
434 consecutively.

435 SECTION 3. This act shall take effect and be in force from
436 and after its passage.