

By: Reeves, Snowden, Martinson, Barnett
(92nd)

To: Judiciary A

HOUSE BILL NO. 878
(As Sent to Governor)

1 AN ACT TO REQUIRE VEHICLE IMPOUNDMENT, IMMOBILIZATION OR USE
2 OF AN IGNITION INTERLOCK SYSTEM IN DUI CONVICTION; TO PROVIDE FOR
3 THE ADMINISTRATION OF THE USE OF SUCH DEVICES; TO PROVIDE
4 PENALTIES FOR VIOLATION; TO AMEND SECTIONS 63-11-23 AND 63-11-30,
5 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT
6 AND TO MAKE TECHNICAL CHANGES; TO PROHIBIT THE POSSESSION OF AN
7 OPEN ALCOHOLIC BEVERAGE, LIGHT WINE OR BEER CONTAINER OR THE
8 CONSUMPTION OF ALCOHOLIC BEVERAGES, LIGHT WINE OR BEER, WITHIN THE
9 PASSENGER COMPARTMENT OF A MOTOR VEHICLE; TO PRESCRIBE PENALTIES
10 FOR VIOLATIONS; AND FOR RELATED PURPOSES.

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

12 SECTION 1. (1) (a) In addition to the penalties authorized
13 for any second or subsequent convictions of Section 63-11-30, the
14 court shall order either the impoundment or immobilization of all
15 vehicles registered to the person convicted for the entire length
16 of license suspension to occur during the driver's license
17 suspension period; provided, however, that if other licensed
18 drivers living in the household are dependent upon the vehicle
19 subject to impoundment or immobilization for necessary
20 transportation, the court may order the installation of an
21 ignition interlock system on the vehicle in lieu of impoundment or
22 immobilization. Additionally, the court shall order the
23 installation of an ignition interlock system on all vehicles
24 registered to the person for a minimum period of six (6) months to
25 occur upon reinstatement of the person's driver's license if the
26 court determines it is a vehicle to which the person has access
27 and which should be subject to ignition interlock. The cost
28 associated with impoundment, immobilization or ignition interlock
29 shall be paid by the person convicted. For the purpose of this
30 section, "ignition interlock device" means a device which connects

31 a motor vehicle ignition system to a breath-alcohol analyzer and
32 prevents a motor vehicle ignition from starting if the driver's
33 blood alcohol level exceeds the calibrated setting on the device.

34 (b) A person may not tamper with, or in any way attempt
35 to circumvent the immobilization or impoundment of vehicles
36 ordered by the court. A violation of this paragraph (b) is a
37 misdemeanor and upon conviction the violator shall be fined an
38 amount not less than Two Hundred Fifty Dollars (\$250.00) nor more
39 than One Thousand Dollars (\$1,000.00) or imprisoned for not more
40 than one (1) year or both.

41 (c) When a court orders a person to operate only a
42 motor vehicle which is equipped with a functioning ignition
43 interlock device, the court shall establish a specific calibration
44 setting no lower than two one-hundredths percent (.02%) nor more
45 than four one-hundredths percent (.04%) blood alcohol
46 concentration at which the ignition interlock device will prevent
47 the motor vehicle from being started.

48 (d) Upon ordering use of an ignition interlock device,
49 the court shall:

50 (i) State on the record the requirement for and
51 the period of use of the device, and so notify the Department of
52 Public Safety;

53 (ii) Direct that the records of the department
54 reflect that the person may not operate a motor vehicle that is
55 not equipped with an ignition interlock device;

56 (iii) Direct the department to attach or imprint a
57 notation on the driver's license of any person restricted under
58 this section stating that the person may operate only a motor
59 vehicle equipped with an ignition interlock device;

60 (iv) Require proof of the installation of the
61 device and periodic reporting by the person for verification of
62 the proper operation of the device;

63 (v) Require the person to have the system
64 monitored for proper use and accuracy by an entity approved by the
65 department at least semiannually, or more frequently as the
66 circumstances may require;

67 (vi) Require the person to pay the reasonable cost

68 of leasing or buying, monitoring, and maintaining the device, and
69 may establish a payment schedule therefore.

70 (e) (i) 1. A person prohibited under this section
71 from operating a motor vehicle that is not equipped with an
72 ignition interlock device may not solicit or have another person
73 attempt to start or start a motor vehicle equipped with such a
74 device.

75 2. A person may not attempt to start or start
76 a motor vehicle equipped with an ignition interlock device for the
77 purpose of providing an operable motor vehicle to a person who is
78 prohibited under this section from operating a motor vehicle that
79 is not equipped with an ignition interlock device.

80 3. A person may not tamper with, or in any
81 way attempt to circumvent, the operation of an ignition interlock
82 device that has been installed in a motor vehicle.

83 4. A person may not knowingly provide a motor
84 vehicle not equipped with a functioning ignition interlock device
85 to another person who the provider of such vehicle knows or should
86 know is prohibited from operating a motor vehicle not equipped
87 with an ignition interlock device.

88 (ii) A violation of this paragraph (e) is a
89 misdemeanor and upon conviction the violator shall be fined an
90 amount not less than Two Hundred Fifty Dollars (\$250.00) nor more
91 than One Thousand Dollars (\$1,000.00) or imprisoned for not more
92 than one (1) year, or both.

93 (iii) A person shall not be in violation of this
94 paragraph (e) if:

95 1. The starting of a motor vehicle equipped
96 with an ignition interlock device is done for the purpose of
97 safety or mechanical repair of the device or the vehicle, and the
98 person subject to the court order does not operate the vehicle; or

99 2. The court finds that a person is required
100 to operate a motor vehicle in the course and scope of the person's

101 employment. If the vehicle is owned by the person's employer, the
102 person may operate that vehicle during regular working hours for
103 the purposes of employment without installation of an ignition
104 interlock device if the employer has been notified of such driving
105 privilege restriction and if proof of that notification is kept
106 with the vehicle at all times. This employment exemption does not
107 apply if the business entity that owns the vehicle is owned or
108 controlled by the person who is prohibited from operating the
109 motor vehicle not equipped with an ignition interlock device.

110 (f) (i) In addition to the circumstances under which a
111 judge may order the use of an ignition interlock device set out in
112 subsection (1)(a) of this section, a judge may order that the
113 vehicle owned or operated by a person or a family member of any
114 person who committed a violation of Section 63-11-30 be equipped
115 with an ignition interlock device for all or a portion of the time
116 the driver's license of the operator of such vehicle is suspended
117 or restricted pursuant to this section, if:

118 1. The operator of the vehicle used to
119 violate Section 63-11-30 has at least one (1) prior conviction for
120 driving a motor vehicle when such person's privilege to do so is
121 cancelled, suspended or revoked as provided by Section 63-11-30;
122 or

123 2. The driver's license of the operator of
124 such vehicle was cancelled, suspended or revoked at the time of
125 the violation of Section 63-11-30.

126 (ii) The provisions of this paragraph (f) shall
127 not apply if the vehicle used to commit the violation of Section
128 63-11-30, was, at the time of such violation, rented or stolen.

129 (2) The provisions of this section are supplemental to the
130 provisions of Section 63-11-30.

131 SECTION 2. Section 63-11-23, Mississippi Code of 1972, is
132 amended as follows:

133 63-11-23. (1) The Commissioner of Public Safety, or his

134 authorized agent, shall review the sworn report by a law
135 enforcement officer as provided in Section 63-11-21. If upon such
136 review the Commissioner of Public Safety, or his authorized agent,
137 finds (a) that the law enforcement officer had reasonable grounds
138 and probable cause to believe the person had been driving a motor
139 vehicle upon the public highways, public roads and streets of this
140 state while under the influence of intoxicating liquor or any
141 other substance which may impair a person's mental or physical
142 ability; (b) that he refused to submit to the test upon request of
143 the officer; and (c) that the person was informed that his license
144 and/or driving privileges would be suspended or denied if he
145 refused to submit to the chemical test, then the Commissioner of
146 Public Safety, or his authorized agent, shall give notice to the
147 licensee that his license or permit to drive, or any nonresident
148 operating privilege, shall be suspended thirty (30) days after the
149 date of such notice for a period of ninety (90) days in the event
150 such person has not previously been convicted of a violation of
151 Section 63-11-30, or, for a period of one (1) year in the event of
152 any previous conviction of such person under Section 63-11-30. In
153 the event the commissioner or his authorized agent determines that
154 the license should not be suspended, he shall return the license
155 or permit to the licensee.

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

158 (2) If the chemical testing of a person's breath indicates
159 the blood alcohol concentration was ten one-hundredths percent
160 (.10%) or more for persons who are above the legal age to purchase
161 alcoholic beverages under state law, or two one-hundredths percent
162 (.02%) or more for persons who are below the legal age to purchase
163 alcoholic beverages under state law, based upon grams of alcohol
164 per one hundred (100) milliliters of blood or grams of alcohol per
165 two hundred ten (210) liters of breath as shown by a chemical
166 analysis of such person's blood, or breath, or urine, the

167 arresting officer shall seize the license and give the driver a
168 receipt for his license on forms prescribed by the Commissioner of
169 Public Safety and shall promptly forward the license together with
170 a sworn report to the Commissioner of Public Safety. The receipt
171 given a person as provided herein shall be valid as a permit to
172 operate a motor vehicle for a period of thirty (30) days in order
173 that the defendant be processed through the court having original
174 jurisdiction and a final disposition had. If the defendant
175 requests a trial within thirty (30) days and such trial is not
176 commenced within thirty (30) days, then the court shall determine
177 if the delay in the trial is the fault of the defendant or his
178 counsel. If the court finds that such is not the fault of the
179 defendant or his counsel, then the court shall order the
180 defendant's driving privileges to be extended until such time as
181 the defendant is convicted. If a receipt or permit to drive
182 issued pursuant to the provisions of this subsection expires
183 without a trial having been requested as provided for in this
184 subsection, then the Commissioner of Public Safety or his
185 authorized agent shall suspend the license or permit to drive or
186 any nonresident operating privilege for the applicable period of
187 time as provided for in subsection (1) of this section.

188 (3) If the person is a resident without a license or permit
189 to operate a motor vehicle in this state, the Commissioner of
190 Public Safety, or his authorized agent, shall deny to the person
191 the issuance of a license or permit for a period of one (1) year
192 beginning thirty (30) days after the date of notice of such
193 suspension.

194 (4) It shall be the duty of the county prosecuting attorney,
195 an attorney employed under the provisions of Section 19-3-49, or
196 in the event there is no such prosecuting attorney for the county,
197 the duty of the district attorney to represent the state in any
198 hearing held under the provisions of Section 63-11-25, under the
199 provisions of Section 63-11-37(2) or under the provisions of

200 Section 63-11-30(2)(a).

201 SECTION 3. Section 63-11-30, Mississippi Code of 1972, is
202 amended as follows:

203 63-11-30. (1) It is unlawful for any person to drive or
204 otherwise operate a vehicle within this state who (a) is under the
205 influence of intoxicating liquor; (b) is under the influence of
206 any other substance which has impaired such person's ability to
207 operate a motor vehicle; (c) has an alcohol concentration of ten
208 one-hundredths percent (.10%) or more for persons who are above
209 the legal age to purchase alcoholic beverages under state law, or
210 two one-hundredths percent (.02%) or more for persons who are
211 below the legal age to purchase alcoholic beverages under state
212 law, in the person's blood based upon grams of alcohol per one
213 hundred (100) milliliters of blood or grams of alcohol per two
214 hundred ten (210) liters of breath as shown by a chemical analysis
215 of such person's breath, blood or urine administered as authorized
216 by this chapter; (d) is under the influence of any drug or
217 controlled substance, the possession of which is unlawful under
218 the Mississippi Controlled Substances Law; or (e) has an alcohol
219 concentration of four one-hundredths percent (.04%) or more in the
220 person's blood, based upon grams of alcohol per one hundred (100)
221 milliliters of blood or grams of alcohol per two hundred ten (210)
222 liters of breath as shown by a chemical analysis of such person's
223 blood, breath or urine, administered as authorized by this chapter
224 for persons operating a commercial motor vehicle.

225 (2) (a) Except as otherwise provided in subsection (3),
226 upon conviction of any person for the first offense of violating
227 subsection (1) of this section where chemical tests provided for
228 under Section 63-11-5 were given, or where chemical test results
229 are not available, such person shall be fined not less than Two
230 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
231 (\$1,000.00), or imprisoned for not more than forty-eight (48)
232 hours in jail or both; and the court shall order such person to

233 attend and complete an alcohol safety education program as
234 provided in Section 63-11-32. The court may substitute attendance
235 at a victim impact panel instead of forty-eight (48) hours in
236 jail. In addition, the Department of Public Safety, the
237 Commissioner of Public Safety or his duly authorized agent shall,
238 after conviction and upon receipt of the court abstract, suspend
239 the driver's license and driving privileges of such person for a
240 period of not less than ninety (90) days and until such person
241 attends and successfully completes an alcohol safety education
242 program as herein provided; provided, however, in no event shall
243 such period of suspension exceed one (1) year. Commercial driving
244 privileges shall be suspended as provided in Section 63-1-83.

245 The circuit court having jurisdiction in the county in which
246 the conviction was had or the circuit court of the person's county
247 of residence may reduce the suspension of driving privileges under
248 Section 63-11-30(2)(a) if the denial of which would constitute a
249 hardship on the offender, except that no court may issue such an
250 order reducing the suspension of driving privileges under this
251 subsection until thirty (30) days have elapsed from the effective
252 date of the suspension. Hardships shall only apply to first
253 offenses under Section 63-11-30(1), and shall not apply to second,
254 third or subsequent convictions of any person violating subsection
255 (1) of this section. A reduction of suspension on the basis of
256 hardship shall not be available to any person who refused to
257 submit to a chemical test upon the request of a law enforcement
258 officer as provided in Section 63-11-5. When the petition is
259 filed, such person shall pay to the circuit clerk of the court
260 where the petition is filed a fee of Fifty Dollars (\$50.00), which
261 shall be deposited into the State General Fund to the credit of a
262 special fund hereby created in the State Treasury to be used for
263 alcohol or drug abuse treatment and education, upon appropriation
264 by the Legislature. This fee shall be in addition to any other
265 court costs or fees required for the filing of petitions.

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

274 The order entered under the provisions of this subsection
275 shall contain the specific grounds upon which hardship was
276 determined, and shall order the petitioner to attend and complete
277 an alcohol safety education program as provided in Section
278 63-11-32. A certified copy of such order shall be delivered to
279 the Commissioner of Public Safety by the clerk of the court within
280 five (5) days of the entry of the order. The certified copy of
281 such order shall contain information which will identify the
282 petitioner, including, but not limited to, the name, mailing
283 address, street address, social security number and driver's
284 license number of the petitioner.

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

- 290 (i) Continue his employment;
- 291 (ii) Continue attending school or an educational
292 institution; or
- 293 (iii) Obtain necessary medical care.

294 Proof of the hardship shall be established by clear and
295 convincing evidence which shall be supported by independent
296 documentation.

297 (b) Except as otherwise provided in subsection (3),
298 upon any second conviction of any person violating subsection (1)

299 of this section, the offenses being committed within a period of
300 five (5) years, such person shall be fined not less than Six
301 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
302 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
303 days nor more than one (1) year and sentenced to community service
304 work for not less than ten (10) days nor more than one (1) year.
305 The minimum penalties shall not be suspended or reduced by the
306 court and no prosecutor shall offer any suspension or sentence
307 reduction as part of a plea bargain. Except as may otherwise be
308 provided by paragraph (d) of this subsection, the Commissioner of
309 Public Safety shall suspend the driver's license of such person
310 for two (2) years. Suspension of a commercial driver's license
311 shall be governed by Section 63-1-83. Upon any second conviction
312 as described in this paragraph, the court shall ascertain whether
313 the defendant is married, and if the defendant is married shall
314 obtain the name and address of the defendant's spouse; the clerk
315 of the court shall submit this information to the Department of
316 Public Safety. Further, the commissioner shall notify in writing,
317 by certified mail, return receipt requested, the owner of the
318 vehicle and the spouse, if any, of the person convicted of the
319 second violation of the possibility of forfeiture of the vehicle
320 if such person is convicted of a third violation of subsection (1)
321 of this section. The owner of the vehicle and the spouse shall be
322 considered notified under this paragraph if the notice is
323 deposited in the United States mail and any claim that the notice
324 was not in fact received by the addressee shall not affect a
325 subsequent forfeiture proceeding.

326 For any second or subsequent conviction of any person under
327 this section, the person shall also be subject to the penalties
328 set forth in Section 1 of this act.

329 (c) Except as otherwise provided in subsection (3), for
330 any third or subsequent conviction of any person violating
331 subsection (1) of this section, the offenses being committed

332 within a period of five (5) years, such person shall be guilty of
333 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
334 nor more than Five Thousand Dollars (\$5,000.00), shall be
335 imprisoned not less than one (1) year nor more than five (5) years
336 in the State Penitentiary. The minimum penalties shall not be
337 suspended or reduced by the court and no prosecutor shall offer
338 any suspension or sentence reduction as part of a plea bargain.
339 The law enforcement agency shall seize the vehicle operated by any
340 person charged with a third or subsequent violation of subsection
341 (1) of this section, if such convicted person was driving the
342 vehicle at the time the offense was committed. Such vehicle may
343 be forfeited in the manner provided by Sections 63-11-49 through
344 63-11-53. Except as may otherwise be provided by paragraph (e) of
345 this subsection, the Commissioner of Public Safety shall suspend
346 the driver's license of such person for five (5) years. The
347 suspension of a commercial driver's license shall be governed by
348 Section 63-1-83.

349 (d) Except as otherwise provided in subsection (3), any
350 person convicted of a second violation of subsection (1) of this
351 section shall receive an in-depth diagnostic assessment, and if as
352 a result of such assessment is determined to be in need of
353 treatment of his alcohol and/or drug abuse problem, such person
354 shall successfully complete treatment of his alcohol and/or drug
355 abuse problem at a program site certified by the Department of
356 Mental Health. Such person shall be eligible for reinstatement of
357 his driving privileges upon the successful completion of such
358 treatment after a period of one (1) year after such person's
359 driver's license is suspended. Each person who receives a
360 diagnostic assessment shall pay a fee representing the cost of
361 such assessment. Each person who participates in a treatment
362 program shall pay a fee representing the cost of such treatment.

363 (e) Except as otherwise provided in subsection (3), any
364 person convicted of a third or subsequent violation of subsection

365 (1) of this section shall receive an in-depth diagnostic
366 assessment, and if as a result of such assessment is determined to
367 be in need of treatment of his alcohol and/or drug abuse problem,
368 such person shall enter an alcohol and/or drug abuse program
369 approved by the Department of Mental Health for treatment of such
370 person's alcohol and/or drug abuse problem. If such person
371 successfully completes such treatment, such person shall be
372 eligible for reinstatement of his driving privileges after a
373 period of three (3) years after such person's driver's license is
374 suspended.

375 (f) The Department of Public Safety shall promulgate
376 rules and regulations for the use of interlock ignition devices as
377 provided in Section 1 of this act and consistent with the
378 provisions therein. Such rules and regulations shall provide for
379 the calibration of such devices and shall provide that the cost of
380 the use of such systems shall be borne by the offender. The
381 Department of Public Safety shall approve which vendors of such
382 devices shall be used to furnish such systems.

383 (3) (a) This subsection shall be known and may be cited as
384 Zero Tolerance for Minors. The provisions of this subsection
385 shall apply only when a person under the age of twenty-one (21)
386 years has a blood alcohol concentration two one-hundredths percent
387 (.02%) or more, but lower than eight one-hundredths percent
388 (.08%). If such person's blood alcohol concentration is eight
389 one-hundredths percent (.08%) or more, the provisions of
390 subsection (2) shall apply.

391 (b) Upon conviction of any person under the age of
392 twenty-one (21) years for the first offense of violating
393 subsection (1) of this section where chemical tests provided for
394 under Section 63-11-5 were given, or where chemical test results
395 are not available, such person shall have his driver's license
396 suspended for ninety (90) days and shall be fined Two Hundred
397 Fifty Dollars (\$250.00); and the court shall order such person to

398 attend and complete an alcohol safety education program as
399 provided in Section 63-11-32. The court may also require
400 attendance at a victim impact panel.

401 The circuit court having jurisdiction in the county in which
402 the conviction was had or the circuit court of the person's county
403 of residence may reduce the suspension of driving privileges under
404 Section 63-11-30(2)(a) if the denial of which would constitute a
405 hardship on the offender, except that no court may issue such an
406 order reducing the suspension of driving privileges under this
407 subsection until thirty (30) days have elapsed from the effective
408 date of the suspension. Hardships shall only apply to first
409 offenses under Section 63-11-30(1), and shall not apply to second,
410 third or subsequent convictions of any person violating subsection
411 (1) of this section. A reduction of suspension on the basis of
412 hardship shall not be available to any person who refused to
413 submit to a chemical test upon the request of a law enforcement
414 officer as provided in Section 63-11-5. When the petition is
415 filed, such person shall pay to the circuit clerk of the court
416 where the petition is filed a fee of Fifty Dollars (\$50.00), which
417 shall be deposited into the State General Fund to the credit of a
418 special fund hereby created in the State Treasury to be used for
419 alcohol or drug abuse treatment and education, upon appropriation
420 by the Legislature. This fee shall be in addition to any other
421 court costs or fees required for the filing of petitions.

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

430 The order entered under the provisions of this subsection

431 shall contain the specific grounds upon which hardship was
432 determined, and shall order the petitioner to attend and complete
433 an alcohol safety education program as provided in Section
434 63-11-32. A certified copy of such order shall be delivered to
435 the Commissioner of Public Safety by the clerk of the court within
436 five (5) days of the entry of the order. The certified copy of
437 such order shall contain information which will identify the
438 petitioner, including, but not limited to, the name, mailing
439 address, street address, social security number and driver's
440 license number of the petitioner.

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

- 446 (i) Continue his employment;
- 447 (ii) Continue attending school or an educational
448 institution; or
- 449 (iii) Obtain necessary medical care.

450 Proof of the hardship shall be established by clear and
451 convincing evidence which shall be supported by independent
452 documentation.

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

459 (d) For any third or subsequent conviction of any
460 person under the age of twenty-one (21) years violating subsection
461 (1) of this section, the offenses being committed within a period
462 of five (5) years, such person shall be fined not more than One
463 Thousand Dollars (\$1,000.00) and shall have his driver's license

464 suspended until he reaches the age of twenty-one (21) or for two
465 (2) years, whichever is longer.

466 (e) Any person under the age of twenty-one (21) years
467 convicted of a second violation of subsection (1) of this section,
468 may have the period that his driver's license is suspended reduced
469 if such person receives an in-depth diagnostic assessment, and as
470 a result of such assessment is determined to be in need of
471 treatment of his alcohol and/or drug abuse problem and
472 successfully completes treatment of his alcohol and/or drug abuse
473 problem at a program site certified by the Department of Mental
474 Health. Such person shall be eligible for reinstatement of his
475 driving privileges upon the successful completion of such
476 treatment after a period of six (6) months after such person's
477 driver's license is suspended. Each person who receives a
478 diagnostic assessment shall pay a fee representing the cost of
479 such assessment. Each person who participates in a treatment
480 program shall pay a fee representing the cost of such treatment.

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

486 (g) The court shall have the discretion to rule that a
487 first offense of this subsection by a person under the age of
488 twenty-one (21) years shall be nonadjudicated. Such person shall
489 be eligible for nonadjudication only once. The Department of
490 Public Safety shall maintain a confidential registry of all cases
491 which are nonadjudicated as provided in this paragraph. A judge
492 who rules that a case is nonadjudicated shall forward such ruling
493 to the Department of Public Safety. Judges and prosecutors
494 involved in implied consent violations shall have access to the
495 confidential registry for the purpose of determining
496 nonadjudication eligibility. A record of a person who has been

497 nonadjudicated shall be maintained for five (5) years or until
498 such person reaches the age of twenty-one (21) years. Any person
499 whose confidential record has been disclosed in violation of this
500 paragraph shall have a civil cause of action against the person
501 and/or agency responsible for such disclosure.

502 (4) In addition to the other penalties provided in this
503 section, every person refusing a law enforcement officer's request
504 to submit to a chemical test of his breath as provided in this
505 chapter, or who was unconscious at the time of a chemical test and
506 refused to consent to the introduction of the results of such test
507 in any prosecution, shall suffer an additional suspension of
508 driving privileges as follows:

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

515 The minimum suspension imposed under this subsection shall not be
516 reduced and no prosecutor is authorized to offer a reduction of
517 such suspension as part of a plea bargain.

518 (5) Every person who operates any motor vehicle in violation
519 of the provisions of subsection (1) of this section and who in a
520 negligent manner causes the death of another or mutilates,
521 disfigures, permanently disables or destroys the tongue, eye, lip,
522 nose or any other limb, organ or member of another shall, upon
523 conviction, be guilty of a felony and shall be committed to the
524 custody of the State Department of Corrections for a period of
525 time of not less than five (5) years and not to exceed twenty-five
526 (25) years.

527 (6) Upon conviction of any violation of subsection (1) of
528 this section, the trial judge shall sign in the place provided on
529 the traffic ticket, citation or affidavit stating that the person

530 arrested either employed an attorney or waived his right to an
531 attorney after having been properly advised. If the person
532 arrested employed an attorney, the name, address and telephone
533 number of the attorney shall be written on the ticket, citation or
534 affidavit. The judge shall cause a copy of the traffic ticket,
535 citation or affidavit, and any other pertinent documents
536 concerning the conviction, to be sent to the Commissioner of
537 Public Safety. A copy of the traffic ticket, citation or
538 affidavit and any other pertinent documents, having been attested
539 as true and correct by the Commissioner of Public Safety, or his
540 designee, shall be sufficient proof of the conviction for purposes
541 of determining the enhanced penalty for any subsequent convictions
542 of violations of subsection (1) of this section.

543 (7) Convictions in other states of violations for driving or
544 operating a vehicle while under the influence of an intoxicating
545 liquor or while under the influence of any other substance that
546 has impaired the person's ability to operate a motor vehicle
547 occurring after July 1, 1992, shall be counted for the purposes of
548 determining if a violation of subsection (1) of this section is a
549 first, second, third or subsequent offense and the penalty that
550 shall be imposed upon conviction for a violation of subsection (1)
551 of this section.

552 (8) For the purposes of determining how to impose the
553 sentence for a second, third or subsequent conviction under this
554 section, the indictment shall not be required to enumerate
555 previous convictions. It shall only be necessary that the
556 indictment state the number of times that the defendant has been
557 convicted and sentenced within the past five (5) years under this
558 section to determine if an enhanced penalty shall be imposed. The
559 amount of fine and imprisonment imposed in previous convictions
560 shall not be considered in calculating offenses to determine a
561 second, third or subsequent offense of this section.

562 (9) Any person under the legal age to obtain a license to

563 operate a motor vehicle convicted under this section shall not be
564 eligible to receive such license until the person reaches the age
565 of eighteen (18) years.

566 (10) Suspension of driving privileges for any person
567 convicted of violations of Section 63-11-30(1) shall run
568 consecutively.

569 (11) The court may order the use of any ignition interlock
570 device as provided in Section 1 of this act.

571 SECTION 4. This act shall take effect and be in force from
572 and after September 1, 2000.