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To: Judiciary A

HOUSE BILL NO. 925

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE THE DEATH OF AN UNBORN FETUS IN DUI MANSLAUGHTER; AND
3 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 any person to drive or
8 otherwise operate a vehicle within this state who (a) is under the
9 influence of intoxicating liquor; (b) is under the influence of
10 any other substance which has impaired such person's ability to
11 operate a motor vehicle; (c) has an alcohol concentration of ten
12 one-hundredths percent (.10%) or more for persons who are above
13 the legal age to purchase alcoholic beverages under state law, or
14 two one-hundredths percent (.02%) or more for persons who are
15 below the legal age to purchase alcoholic beverages under state
16 law, in the person's blood based upon grams of alcohol per one
17 hundred (100) milliliters of blood or grams of alcohol per two
18 hundred ten (210) liters of breath as shown by a chemical analysis
19 of such person's breath, blood or urine administered as authorized
20 by this chapter; (d) is under the influence of any drug or
21 controlled substance, the possession of which is unlawful under

22 the Mississippi Controlled Substances Law; or (e) has an alcohol
23 concentration of four one-hundredths percent (.04%) or more in the
24 person's blood, based upon grams of alcohol per one hundred (100)
25 milliliters of blood or grams of alcohol per two hundred ten (210)
26 liters of breath as shown by a chemical analysis of such person's
27 blood, breath or urine, administered as authorized by this chapter
28 for persons operating a commercial motor vehicle.

29 (2) (a) Except as otherwise provided in subsection (3),
30 upon conviction of any person for the first offense of violating
31 subsection (1) of this section where chemical tests provided for
32 under Section 63-11-5 were given, or where chemical test results
33 are not available, such person shall be fined not less than Two
34 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
35 (\$1,000.00), or imprisoned for not more than forty-eight (48)
36 hours in jail or both; and the court shall order such person to
37 attend and complete an alcohol safety education program as
38 provided in Section 63-11-32. The court may substitute attendance
39 at a victim impact panel instead of forty-eight (48) hours in
40 jail. In addition, the Department of Public Safety, the
41 Commissioner of Public Safety or his duly authorized agent shall,
42 after conviction and upon receipt of the court abstract, suspend
43 the driver's license and driving privileges of such person for a
44 period of not less than ninety (90) days and until such person
45 attends and successfully completes an alcohol safety education
46 program as herein provided; provided, however, in no event shall
47 such period of suspension exceed one (1) year. Commercial driving
48 privileges shall be suspended as provided in Section 63-1-83.

49 The circuit court having jurisdiction in the county in which
50 the conviction was had or the circuit court of the person's county
51 of residence may reduce the suspension of driving privileges under
52 Section 63-11-30(2)(a) if the denial of which would constitute a

53 hardship on the offender, except that no court may issue such an
54 order reducing the suspension of driving privileges under this
55 subsection until thirty (30) days have elapsed from the effective
56 date of the suspension. Hardships shall only apply to first
57 offenses under Section 63-11-30(1), and shall not apply to second,
58 third or subsequent convictions of any person violating subsection
59 (1) of this section. A reduction of suspension on the basis of
60 hardship shall not be available to any person who refused to
61 submit to a chemical test upon the request of a law enforcement
62 officer as provided in Section 63-11-5. When the petition is
63 filed, such person shall pay to the circuit clerk of the court
64 where the petition is filed a fee of Fifty Dollars (\$50.00), which
65 shall be deposited into the State General Fund to the credit of a
66 special fund hereby created in the State Treasury to be used for
67 alcohol or drug abuse treatment and education, upon appropriation
68 by the Legislature. This fee shall be in addition to any other
69 court costs or fees required for the filing of petitions.

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

78 The order entered under the provisions of this subsection
79 shall contain the specific grounds upon which hardship was
80 determined, and shall order the petitioner to attend and complete

81 an alcohol safety education program as provided in Section
82 63-11-32. A certified copy of such order shall be delivered to
83 the Commissioner of Public Safety by the clerk of the court within
84 five (5) days of the entry of the order. The certified copy of
85 such order shall contain information which will identify the
86 petitioner, including, but not limited to, the name, mailing
87 address, street address, Social Security number and driver's
88 license number of the petitioner.

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

- 94 (i) Continue his employment;
- 95 (ii) Continue attending school or an educational
96 institution; or
- 97 (iii) Obtain necessary medical care.

98 Proof of the hardship shall be established by clear and
99 convincing evidence which shall be supported by independent
100 documentation.

101 (b) Except as otherwise provided in subsection (3),
102 upon any second conviction of any person violating subsection (1)
103 of this section, the offenses being committed within a period of
104 five (5) years, such person shall be fined not less than Six
105 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
106 Dollars (\$1,500.00) and shall be imprisoned not less than ten (10)
107 days nor more than one (1) year and sentenced to community service
108 work for not less than ten (10) days nor more than one (1) year.

109 Except as may otherwise be provided by paragraph (e) of this
110 subsection, the Commissioner of Public Safety shall suspend the
111 driver's license of such person for two (2) years. Suspension of
112 a commercial driver's license shall be governed by Section
113 63-1-83. Upon any second conviction as described in this
114 paragraph, the court shall ascertain whether the defendant is
115 married, and if the defendant is married shall obtain the name and
116 address of the defendant's spouse; the clerk of the court shall
117 submit this information to the Department of Public Safety.

118 Further, the commissioner shall notify in writing, by certified
119 mail, return receipt requested, the owner of the vehicle and the
120 spouse, if any, of the person convicted of the second violation of
121 the possibility of forfeiture of the vehicle if such person is
122 convicted of a third violation of subsection (1) of this section.

123 The owner of the vehicle and the spouse shall be considered
124 notified under this paragraph if the notice is deposited in the
125 United States mail and any claim that the notice was not in fact
126 received by the addressee shall not affect a subsequent forfeiture
127 proceeding.

128 (c) Except as otherwise provided in subsection (3), for
129 any third or subsequent conviction of any person violating
130 subsection (1) of this section, the offenses being committed
131 within a period of five (5) years, such person shall be guilty of
132 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
133 nor more than Five Thousand Dollars (\$5,000.00) and shall be
134 imprisoned not less than one (1) year nor more than five (5) years
135 in the State Penitentiary. The law enforcement agency shall seize
136 the vehicle operated by any person charged with a third or

137 subsequent violation of subsection (1) of this section, if such
138 convicted person was driving the vehicle at the time the offense
139 was committed. Such vehicle may be forfeited in the manner
140 provided by Sections 63-11-49 through 63-11-53. Except as may
141 otherwise be provided by paragraph (e) of this subsection, the
142 Commissioner of Public Safety shall suspend the driver's license
143 of such person for five (5) years. The suspension of a commercial
144 driver's license shall be governed by Section 63-1-83.

145 (d) Except as otherwise provided in subsection (3), any
146 person convicted of a second violation of subsection (1) of this
147 section, may have the period that his driver's license is
148 suspended reduced if such person receives an in-depth diagnostic
149 assessment, and as a result of such assessment is determined to be
150 in need of treatment of his alcohol and/or drug abuse problem and
151 successfully completes treatment of his alcohol and/or drug abuse
152 problem at a program site certified by the Department of Mental
153 Health. Such person shall be eligible for reinstatement of his
154 driving privileges upon the successful completion of such
155 treatment after a period of one (1) year after such person's
156 driver's license is suspended. Each person who receives a
157 diagnostic assessment shall pay a fee representing the cost of
158 such assessment. Each person who participates in a treatment
159 program shall pay a fee representing the cost of such treatment.

160 (e) Except as otherwise provided in subsection (3), any
161 person convicted of a third or subsequent violation of subsection
162 (1) of this section may enter an alcohol and/or drug abuse program
163 approved by the Department of Mental Health for treatment of such
164 person's alcohol and/or drug abuse problem. If such person

165 successfully completes such treatment, such person shall be
166 eligible for reinstatement of his driving privileges after a
167 period of three (3) years after such person's driver's license is
168 suspended.

169 (3) (a) This subsection shall be known and may be cited as
170 Zero Tolerance for Minors. The provisions of this subsection
171 shall apply only when a person under the age of twenty-one (21)
172 years has a blood alcohol concentration two one-hundredths percent
173 (.02%) or more, but lower than eight one-hundredths percent
174 (.08%). If such person's blood alcohol concentration is eight
175 one-hundredths percent (.08%) or more, the provisions of
176 subsection (2) shall apply.

177 (b) Upon conviction of any person under the age of
178 twenty-one (21) years for the first offense of violating
179 subsection (1) of this section where chemical tests provided for
180 under Section 63-11-5 were given, or where chemical test results
181 are not available, such person shall have his driver's license
182 suspended for ninety (90) days and shall be fined Two Hundred
183 Fifty Dollars (\$250.00); and the court shall order such person to
184 attend and complete an alcohol safety education program as
185 provided in Section 63-11-32. The court may also require
186 attendance at a victim impact panel.

187 The circuit court having jurisdiction in the county in which
188 the conviction was had or the circuit court of the person's county
189 of residence may reduce the suspension of driving privileges under
190 Section 63-11-30(2)(a) if the denial of which would constitute a
191 hardship on the offender, except that no court may issue such an
192 order reducing the suspension of driving privileges under this

193 subsection until thirty (30) days have elapsed from the effective
194 date of the suspension. Hardships shall only apply to first
195 offenses under Section 63-11-30(1), and shall not apply to second,
196 third or subsequent convictions of any person violating subsection
197 (1) of this section. A reduction of suspension on the basis of
198 hardship shall not be available to any person who refused to
199 submit to a chemical test upon the request of a law enforcement
200 officer as provided in Section 63-11-5. When the petition is
201 filed, such person shall pay to the circuit clerk of the court
202 where the petition is filed a fee of Fifty Dollars (\$50.00), which
203 shall be deposited into the State General Fund to the credit of a
204 special fund hereby created in the State Treasury to be used for
205 alcohol or drug abuse treatment and education, upon appropriation
206 by the Legislature. This fee shall be in addition to any other
207 court costs or fees required for the filing of petitions.

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

216 The order entered under the provisions of this subsection
217 shall contain the specific grounds upon which hardship was
218 determined, and shall order the petitioner to attend and complete
219 an alcohol safety education program as provided in Section
220 63-11-32. A certified copy of such order shall be delivered to

221 the Commissioner of Public Safety by the clerk of the court within
222 five (5) days of the entry of the order. The certified copy of
223 such order shall contain information which will identify the
224 petitioner, including, but not limited to, the name, mailing
225 address, street address, Social Security number and driver's
226 license number of the petitioner.

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

232 (i) Continue his employment;

233 (ii) Continue attending school or an educational
234 institution; or

235 (iii) Obtain necessary medical care.

236 Proof of the hardship shall be established by clear and
237 convincing evidence which shall be supported by independent
238 documentation.

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

245 (d) For any third or subsequent conviction of any
246 person under the age of twenty-one (21) years violating subsection
247 (1) of this section, the offenses being committed within a period
248 of five (5) years, such person shall be fined not more than One

249 Thousand Dollars (\$1,000.00) and shall have his driver's license
250 suspended until he reaches the age of twenty-one (21) or for two
251 (2) years, whichever is longer.

252 (e) Any person under the age of twenty-one (21) years
253 convicted of a second violation of subsection (1) of this section,
254 may have the period that his driver's license is suspended reduced
255 if such person receives an in-depth diagnostic assessment, and as
256 a result of such assessment is determined to be in need of
257 treatment of his alcohol and/or drug abuse problem and
258 successfully completes treatment of his alcohol and/or drug abuse
259 problem at a program site certified by the Department of Mental
260 Health. Such person shall be eligible for reinstatement of his
261 driving privileges upon the successful completion of such
262 treatment after a period of six (6) months after such person's
263 driver's license is suspended. Each person who receives a
264 diagnostic assessment shall pay a fee representing the cost of
265 such assessment. Each person who participates in a treatment
266 program shall pay a fee representing the cost of such treatment.

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

272 (g) The court shall have the discretion to rule that a
273 first offense of this subsection by a person under the age of
274 twenty-one (21) years shall be nonadjudicated. Such person shall
275 be eligible for nonadjudication only once. The Department of
276 Public Safety shall maintain a confidential registry of all cases

277 which are nonadjudicated as provided in this paragraph. A judge
278 who rules that a case is nonadjudicated shall forward such ruling
279 to the Department of Public Safety. Judges and prosecutors
280 involved in implied consent violations shall have access to the
281 confidential registry for the purpose of determining
282 nonadjudication eligibility. A record of a person who has been
283 nonadjudicated shall be maintained for five (5) years or until
284 such person reaches the age of twenty-one (21) years. Any person
285 whose confidential record has been disclosed in violation of this
286 paragraph shall have a civil cause of action against the person
287 and/or agency responsible for such disclosure.

288 (4) Every person convicted of operating a vehicle while
289 under the influence of intoxicating liquor or any other substance
290 which has impaired such person's ability to operate a motor
291 vehicle where the person (a) refused a law enforcement officer's
292 request to submit to a chemical test of his breath as provided in
293 this chapter, or (b) was unconscious at the time of a chemical
294 test and refused to consent to the introduction of the results of
295 such test in any prosecution, shall be punished consistent with
296 the penalties prescribed herein for persons submitting to the
297 test, except that there shall be an additional suspension of
298 driving privileges as follows:

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

305 (5) Every person who operates any motor vehicle in violation
306 of the provisions of subsection (1) of this section and who in a
307 negligent manner causes the death of another, the death of an
308 unborn fetus or mutilates, disfigures, permanently disables or
309 destroys the tongue, eye, lip, nose or any other limb, organ or
310 member of another shall, upon conviction, be guilty of a felony
311 and shall be committed to the custody of the State Department of
312 Corrections for a period of time not to exceed twenty-five (25)
313 years.

314 (6) Upon conviction of any violation of subsection (1) of
315 this section, the trial judge shall sign in the place provided on
316 the traffic ticket, citation or affidavit stating that the person
317 arrested either employed an attorney or waived his right to an
318 attorney after having been properly advised. If the person
319 arrested employed an attorney, the name, address and telephone
320 number of the attorney shall be written on the ticket, citation or
321 affidavit. The judge shall cause a copy of the traffic ticket,
322 citation or affidavit, and any other pertinent documents
323 concerning the conviction, to be sent to the Commissioner of
324 Public Safety. A copy of the traffic ticket, citation or
325 affidavit and any other pertinent documents, having been attested
326 as true and correct by the Commissioner of Public Safety, or his
327 designee, shall be sufficient proof of the conviction for purposes
328 of determining the enhanced penalty for any subsequent convictions
329 of violations of subsection (1) of this section.

330 (7) Convictions in other states of violations for driving or
331 operating a vehicle while under the influence of an intoxicating
332 liquor or while under the influence of any other substance that

333 has impaired the person's ability to operate a motor vehicle
334 occurring after July 1, 1992, shall be counted for the purposes of
335 determining if a violation of subsection (1) of this section is a
336 first, second, third or subsequent offense and the penalty that
337 shall be imposed upon conviction for a violation of subsection (1)
338 of this section.

339 (8) For the purposes of determining how to impose the
340 sentence for a second, third or subsequent conviction under this
341 section, the indictment shall not be required to enumerate
342 previous convictions. It shall only be necessary that the
343 indictment state the number of times that the defendant has been
344 convicted and sentenced within the past five (5) years under this
345 section to determine if an enhanced penalty shall be imposed. The
346 amount of fine and imprisonment imposed in previous convictions
347 shall not be considered in calculating offenses to determine a
348 second, third or subsequent offense of this section.

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

353 (10) Suspension of driving privileges for any person
354 convicted of violations of Section 63-11-30(1) shall run
355 consecutively.

356 SECTION 2. This act shall take effect and be in force from
357 and after July 1, 2000.