

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2848

1 AN ACT TO AMEND SECTIONS 63-11-30 AND 63-11-23, MISSISSIPPI  
2 CODE OF 1972, TO REVISE THE BLOOD ALCOHOL LEVEL DETERMINATIVE OF  
3 DRIVING UNDER THE INFLUENCE; AND FOR RELATED PURPOSES.

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

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

7 63-11-30. (1) It is unlawful for 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 eight  
12 one-hundredths percent (.08%) 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), shall be imprisoned not less than five (5)  
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 The minimum penalties shall not be suspended or reduced by the  
110 court and no prosecutor shall offer any suspension or sentence  
111 reduction as part of a plea bargain. Except as may otherwise be  
112 provided by paragraph (d) of this subsection, the Commissioner of  
113 Public Safety shall suspend the driver's license of such person  
114 for two (2) years. Suspension of a commercial driver's license  
115 shall be governed by Section 63-1-83. Upon any second conviction  
116 as described in this paragraph, the court shall ascertain whether  
117 the defendant is married, and if the defendant is married shall  
118 obtain the name and address of the defendant's spouse; the clerk  
119 of the court shall submit this information to the Department of  
120 Public Safety. Further, the commissioner shall notify in writing,  
121 by certified mail, return receipt requested, the owner of the  
122 vehicle and the spouse, if any, of the person convicted of the  
123 second violation of the possibility of forfeiture of the vehicle  
124 if such person is convicted of a third violation of subsection (1)



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

130 For any second or subsequent conviction of any person under  
131 this section, the person shall also be subject to the penalties  
132 set forth in Section 63-11-31.

133 (c) Except as otherwise provided in subsection (3), for  
134 any third or subsequent conviction of any person violating  
135 subsection (1) of this section, the offenses being committed  
136 within a period of five (5) years, such person shall be guilty of  
137 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
138 nor more than Five Thousand Dollars (\$5,000.00), shall be  
139 imprisoned not less than one (1) year nor more than five (5) years  
140 in the State Penitentiary. The minimum penalties shall not be  
141 suspended or reduced by the court and no prosecutor shall offer  
142 any suspension or sentence reduction as part of a plea bargain.  
143 The law enforcement agency shall seize the vehicle operated by any  
144 person charged with a third or subsequent violation of subsection  
145 (1) of this section, if such convicted person was driving the  
146 vehicle at the time the offense was committed. Such vehicle may  
147 be forfeited in the manner provided by Sections 63-11-49 through  
148 63-11-53. Except as may otherwise be provided by paragraph (e) of  
149 this subsection, the Commissioner of Public Safety shall suspend  
150 the driver's license of such person for five (5) years. The  
151 suspension of a commercial driver's license shall be governed by  
152 Section 63-1-83.

153 (d) Except as otherwise provided in subsection (3), any  
154 person convicted of a second violation of subsection (1) of this  
155 section shall receive an in-depth diagnostic assessment, and if as  
156 a result of such assessment is determined to be in need of  
157 treatment of his alcohol and/or drug abuse problem, such person



158 shall successfully complete treatment of his alcohol and/or drug  
159 abuse problem at a program site certified by the Department of  
160 Mental Health. Such person shall be eligible for reinstatement of  
161 his driving privileges upon the successful completion of such  
162 treatment after a period of one (1) year after such person's  
163 driver's license is suspended. Each person who receives a  
164 diagnostic assessment shall pay a fee representing the cost of  
165 such assessment. Each person who participates in a treatment  
166 program shall pay a fee representing the cost of such treatment.

167 (e) Except as otherwise provided in subsection (3), any  
168 person convicted of a third or subsequent violation of subsection  
169 (1) of this section shall receive an in-depth diagnostic  
170 assessment, and if as a result of such assessment is determined to  
171 be in need of treatment of his alcohol and/or drug abuse problem,  
172 such person shall enter an alcohol and/or drug abuse program  
173 approved by the Department of Mental Health for treatment of such  
174 person's alcohol and/or drug abuse problem. If such person  
175 successfully completes such treatment, such person shall be  
176 eligible for reinstatement of his driving privileges after a  
177 period of three (3) years after such person's driver's license is  
178 suspended.

179 (f) The Department of Public Safety shall promulgate  
180 rules and regulations for the use of interlock ignition devices as  
181 provided in Section 63-11-31 and consistent with the provisions  
182 therein. Such rules and regulations shall provide for the  
183 calibration of such devices and shall provide that the cost of the  
184 use of such systems shall be borne by the offender. The  
185 Department of Public Safety shall approve which vendors of such  
186 devices shall be used to furnish such systems.

187 (3) (a) This subsection shall be known and may be cited as  
188 Zero Tolerance for Minors. The provisions of this subsection  
189 shall apply only when a person under the age of twenty-one (21)  
190 years has a blood alcohol concentration two one-hundredths percent



191 (.02%) or more, but lower than eight one-hundredths percent  
192 (.08%). If such person's blood alcohol concentration is eight  
193 one-hundredths percent (.08%) or more, the provisions of  
194 subsection (2) shall apply.

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

205 The circuit court having jurisdiction in the county in which  
206 the conviction was had or the circuit court of the person's county  
207 of residence may reduce the suspension of driving privileges under  
208 Section 63-11-30(2)(a) if the denial of which would constitute a  
209 hardship on the offender, except that no court may issue such an  
210 order reducing the suspension of driving privileges under this  
211 subsection until thirty (30) days have elapsed from the effective  
212 date of the suspension. Hardships shall only apply to first  
213 offenses under Section 63-11-30(1), and shall not apply to second,  
214 third or subsequent convictions of any person violating subsection  
215 (1) of this section. A reduction of suspension on the basis of  
216 hardship shall not be available to any person who refused to  
217 submit to a chemical test upon the request of a law enforcement  
218 officer as provided in Section 63-11-5. When the petition is  
219 filed, such person shall pay to the circuit clerk of the court  
220 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
221 shall be deposited into the State General Fund to the credit of a  
222 special fund hereby created in the State Treasury to be used for  
223 alcohol or drug abuse treatment and education, upon appropriation



224 by the Legislature. This fee shall be in addition to any other  
225 court costs or fees required for the filing of petitions.

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

234 The order entered under the provisions of this subsection  
235 shall contain the specific grounds upon which hardship was  
236 determined, and shall order the petitioner to attend and complete  
237 an alcohol safety education program as provided in Section  
238 63-11-32. A certified copy of such order shall be delivered to  
239 the Commissioner of Public Safety by the clerk of the court within  
240 five (5) days of the entry of the order. The certified copy of  
241 such order shall contain information which will identify the  
242 petitioner, including, but not limited to, the name, mailing  
243 address, street address, social security number and driver's  
244 license number of the petitioner.

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

- 250 (i) Continue his employment;
- 251 (ii) Continue attending school or an educational  
252 institution; or
- 253 (iii) Obtain necessary medical care.

254 Proof of the hardship shall be established by clear and  
255 convincing evidence which shall be supported by independent  
256 documentation.





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

263 (d) For any third or subsequent conviction of any  
264 person under the age of twenty-one (21) years violating subsection  
265 (1) of this section, the offenses being committed within a period  
266 of five (5) years, such person shall be fined not more than One  
267 Thousand Dollars (\$1,000.00) and shall have his driver's license  
268 suspended until he reaches the age of twenty-one (21) or for two  
269 (2) years, whichever is longer.

270 (e) Any person under the age of twenty-one (21) years  
271 convicted of a second violation of subsection (1) of this section,  
272 may have the period that his driver's license is suspended reduced  
273 if such person receives an in-depth diagnostic assessment, and as  
274 a result of such assessment is determined to be in need of  
275 treatment of his alcohol and/or drug abuse problem and  
276 successfully completes treatment of his alcohol and/or drug abuse  
277 problem at a program site certified by the Department of Mental  
278 Health. Such person shall be eligible for reinstatement of his  
279 driving privileges upon the successful completion of such  
280 treatment after a period of six (6) months after such person's  
281 driver's license is suspended. Each person who receives a  
282 diagnostic assessment shall pay a fee representing the cost of  
283 such assessment. Each person who participates in a treatment  
284 program shall pay a fee representing the cost of such treatment.

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



290           (g) The court shall have the discretion to rule that a  
291 first offense of this subsection by a person under the age of  
292 twenty-one (21) years shall be nonadjudicated. Such person shall  
293 be eligible for nonadjudication only once. The Department of  
294 Public Safety shall maintain a confidential registry of all cases  
295 which are nonadjudicated as provided in this paragraph. A judge  
296 who rules that a case is nonadjudicated shall forward such ruling  
297 to the Department of Public Safety. Judges and prosecutors  
298 involved in implied consent violations shall have access to the  
299 confidential registry for the purpose of determining  
300 nonadjudication eligibility. A record of a person who has been  
301 nonadjudicated shall be maintained for five (5) years or until  
302 such person reaches the age of twenty-one (21) years. Any person  
303 whose confidential record has been disclosed in violation of this  
304 paragraph shall have a civil cause of action against the person  
305 and/or agency responsible for such disclosure.

306           (4) In addition to the other penalties provided in this  
307 section, every person refusing a law enforcement officer's request  
308 to submit to a chemical test of his breath as provided in this  
309 chapter, or who was unconscious at the time of a chemical test and  
310 refused to consent to the introduction of the results of such test  
311 in any prosecution, shall suffer an additional suspension of  
312 driving privileges as follows:

313           The Commissioner of Public Safety or his authorized agent  
314 shall suspend the driver's license or permit to drive or deny the  
315 issuance of a license or permit to such person as provided for  
316 first, second and third or subsequent offenders in subsection (2)  
317 of this section. Such suspension shall be in addition to any  
318 suspension imposed pursuant to subsection (1) of Section 63-11-23.  
319 The minimum suspension imposed under this subsection shall not be  
320 reduced and no prosecutor is authorized to offer a reduction of  
321 such suspension as part of a plea bargain.



322 (5) Every person who operates any motor vehicle in violation  
323 of the provisions of subsection (1) of this section and who in a  
324 negligent manner causes the death of another or mutilates,  
325 disfigures, permanently disables or destroys the tongue, eye, lip,  
326 nose or any other limb, organ or member of another shall, upon  
327 conviction, be guilty of a felony and shall be committed to the  
328 custody of the State Department of Corrections for a period of  
329 time of not less than five (5) years and not to exceed twenty-five  
330 (25) years.

331 (6) Upon conviction of any violation of subsection (1) of  
332 this section, the trial judge shall sign in the place provided on  
333 the traffic ticket, citation or affidavit stating that the person  
334 arrested either employed an attorney or waived his right to an  
335 attorney after having been properly advised. If the person  
336 arrested employed an attorney, the name, address and telephone  
337 number of the attorney shall be written on the ticket, citation or  
338 affidavit. The judge shall cause a copy of the traffic ticket,  
339 citation or affidavit, and any other pertinent documents  
340 concerning the conviction, to be sent to the Commissioner of  
341 Public Safety. A copy of the traffic ticket, citation or  
342 affidavit and any other pertinent documents, having been attested  
343 as true and correct by the Commissioner of Public Safety, or his  
344 designee, shall be sufficient proof of the conviction for purposes  
345 of determining the enhanced penalty for any subsequent convictions  
346 of violations of subsection (1) of this section.

347 (7) Convictions in other states of violations for driving or  
348 operating a vehicle while under the influence of an intoxicating  
349 liquor or while under the influence of any other substance that  
350 has impaired the person's ability to operate a motor vehicle  
351 occurring after July 1, 1992, shall be counted for the purposes of  
352 determining if a violation of subsection (1) of this section is a  
353 first, second, third or subsequent offense and the penalty that



354 shall be imposed upon conviction for a violation of subsection (1)  
355 of this section.

356 (8) For the purposes of determining how to impose the  
357 sentence for a second, third or subsequent conviction under this  
358 section, the indictment shall not be required to enumerate  
359 previous convictions. It shall only be necessary that the  
360 indictment state the number of times that the defendant has been  
361 convicted and sentenced within the past five (5) years under this  
362 section to determine if an enhanced penalty shall be imposed. The  
363 amount of fine and imprisonment imposed in previous convictions  
364 shall not be considered in calculating offenses to determine a  
365 second, third or subsequent offense of this section.

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

370 (10) Suspension of driving privileges for any person  
371 convicted of violations of Section 63-11-30(1) shall run  
372 consecutively.

373 (11) The court may order the use of any ignition interlock  
374 device as provided in Section 63-11-31.

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

377 63-11-23. (1) The Commissioner of Public Safety, or his  
378 authorized agent, shall review the sworn report by a law  
379 enforcement officer as provided in Section 63-11-21. If upon such  
380 review the Commissioner of Public Safety, or his authorized agent,  
381 finds (a) that the law enforcement officer had reasonable grounds  
382 and probable cause to believe the person had been driving a motor  
383 vehicle upon the public highways, public roads and streets of this  
384 state while under the influence of intoxicating liquor or any  
385 other substance which may impair a person's mental or physical  
386 ability; (b) that he refused to submit to the test upon request of



387 the officer; and (c) that the person was informed that his license  
388 and/or driving privileges would be suspended or denied if he  
389 refused to submit to the chemical test, then the Commissioner of  
390 Public Safety, or his authorized agent, shall give notice to the  
391 licensee that his license or permit to drive, or any nonresident  
392 operating privilege, shall be suspended thirty (30) days after the  
393 date of such notice for a period of ninety (90) days in the event  
394 such person has not previously been convicted of a violation of  
395 Section 63-11-30, or, for a period of one (1) year in the event of  
396 any previous conviction of such person under Section 63-11-30. In  
397 the event the commissioner or his authorized agent determines that  
398 the license should not be suspended, he shall return the license  
399 or permit to the licensee.

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

402 (2) If the chemical testing of a person's breath indicates  
403 the blood alcohol concentration was eight one-hundredths percent  
404 (.08%) or more for persons who are above the legal age to purchase  
405 alcoholic beverages under state law, or two one-hundredths percent  
406 (.02%) or more for persons who are below the legal age to purchase  
407 alcoholic beverages under state law, based upon grams of alcohol  
408 per one hundred (100) milliliters of blood or grams of alcohol per  
409 two hundred ten (210) liters of breath as shown by a chemical  
410 analysis of such person's blood, or breath, or urine, the  
411 arresting officer shall seize the license and give the driver a  
412 receipt for his license on forms prescribed by the Commissioner of  
413 Public Safety and shall promptly forward the license together with  
414 a sworn report to the Commissioner of Public Safety. The receipt  
415 given a person as provided herein shall be valid as a permit to  
416 operate a motor vehicle for a period of thirty (30) days in order  
417 that the defendant be processed through the court having original  
418 jurisdiction and a final disposition had. If the defendant  
419 requests a trial within thirty (30) days and such trial is not



420 commenced within thirty (30) days, then the court shall determine  
421 if the delay in the trial is the fault of the defendant or his  
422 counsel. If the court finds that such is not the fault of the  
423 defendant or his counsel, then the court shall order the  
424 defendant's driving privileges to be extended until such time as  
425 the defendant is convicted. If a receipt or permit to drive  
426 issued pursuant to the provisions of this subsection expires  
427 without a trial having been requested as provided for in this  
428 subsection, then the Commissioner of Public Safety or his  
429 authorized agent shall suspend the license or permit to drive or  
430 any nonresident operating privilege for the applicable period of  
431 time as provided for in subsection (1) of this section.

432 (3) If the person is a resident without a license or permit  
433 to operate a motor vehicle in this state, the Commissioner of  
434 Public Safety, or his authorized agent, shall deny to the person  
435 the issuance of a license or permit for a period of one (1) year  
436 beginning thirty (30) days after the date of notice of such  
437 suspension.

438 (4) It shall be the duty of the county prosecuting attorney,  
439 an attorney employed under the provisions of Section 19-3-49, or  
440 in the event there is no such prosecuting attorney for the county,  
441 the duty of the district attorney to represent the state in any  
442 hearing held under the provisions of Section 63-11-25, under the  
443 provisions of Section 63-11-37(2) or under the provisions of  
444 Section 63-11-30(2)(a).

445 **SECTION 3.** This act shall take effect and be in force from  
446 and after July 1, 2002.

