

By: Representative Robinson (84th)

To: Judiciary A

HOUSE BILL NO. 391

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 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 serve not
139 less than one (1) year nor more than five (5) years in the custody
140 of the Department of Corrections; provided, however, that for any
141 such offense which does not result in serious injury or death to
142 any person, any sentence of incarceration may be served in the
143 county jail rather than in the State Penitentiary at the
144 discretion of the circuit court judge. The minimum penalties
145 shall not be suspended or reduced by the court and no prosecutor
146 shall offer any suspension or sentence reduction as part of a plea
147 bargain. The law enforcement agency shall seize the vehicle
148 operated by any person charged with a third or subsequent
149 violation of subsection (1) of this section, if such convicted
150 person was driving the vehicle at the time the offense was
151 committed. Such vehicle may be forfeited in the manner provided
152 by Sections 63-11-49 through 63-11-53. Except as may otherwise be
153 provided by paragraph (e) of this subsection, the Commissioner of
154 Public Safety shall suspend the driver's license of such person
155 for five (5) years. The suspension of a commercial driver's
156 license shall be governed by Section 63-1-83.

157 (d) Except as otherwise provided in subsection (3), any
158 person convicted of a second violation of subsection (1) of this
159 section shall receive an in-depth diagnostic assessment, and if as
160 a result of such assessment is determined to be in need of
161 treatment of his alcohol and/or drug abuse problem, such person
162 shall successfully complete treatment of his alcohol and/or drug
163 abuse problem at a program site certified by the Department of
164 Mental Health. Such person shall be eligible for reinstatement of
165 his driving privileges upon the successful completion of such
166 treatment after a period of one (1) year after such person's
167 driver's license is suspended. Each person who receives a
168 diagnostic assessment shall pay a fee representing the cost of
169 such assessment. Each person who participates in a treatment
170 program shall pay a fee representing the cost of such treatment.

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

183 (f) The Department of Public Safety shall promulgate
184 rules and regulations for the use of interlock ignition devices as
185 provided in Section 63-11-31 and consistent with the provisions
186 therein. Such rules and regulations shall provide for the
187 calibration of such devices and shall provide that the cost of the
188 use of such systems shall be borne by the offender. The

189 Department of Public Safety shall approve which vendors of such
190 devices shall be used to furnish such systems.

191 (3) (a) This subsection shall be known and may be cited as
192 Zero Tolerance for Minors. The provisions of this subsection
193 shall apply only when a person under the age of twenty-one (21)
194 years has a blood alcohol concentration of two one-hundredths
195 percent (.02%) or more, but lower than eight one-hundredths
196 percent (.08%). If such person's blood alcohol concentration is
197 eight one-hundredths percent (.08%) or more, the provisions of
198 subsection (2) shall apply.

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

209 The court in the county in which the conviction was had or
210 the circuit court of the person's county of residence may reduce
211 the suspension of driving privileges under Section 63-11-30(2)(a)
212 if the denial of which would constitute a hardship on the
213 offender, except that no court may issue such an order reducing
214 the suspension of driving privileges under this subsection until
215 thirty (30) days have elapsed from the effective date of the
216 suspension. Hardships shall only apply to first offenses under
217 Section 63-11-30(1), and shall not apply to second, third or
218 subsequent convictions of any person violating subsection (1) of
219 this section. A reduction of suspension on the basis of hardship
220 shall not be available to any person who refused to submit to a
221 chemical test upon the request of a law enforcement officer as

222 provided in Section 63-11-5. When the petition is filed, such
223 person shall pay to the circuit clerk of the court where the
224 petition is filed a fee of Fifty Dollars (\$50.00), which shall be
225 deposited into the State General Fund to the credit of a special
226 fund hereby created in the State Treasury to be used for alcohol
227 or drug abuse treatment and education, upon appropriation by the
228 Legislature. This fee shall be in addition to any other court
229 costs or fees required for the filing of petitions.

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

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

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

254 (i) Continue his employment;

255 (ii) Continue attending school or an educational
256 institution; or

257 (iii) Obtain necessary medical care.

258 Proof of the hardship shall be established by clear and
259 convincing evidence which shall be supported by independent
260 documentation.

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

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

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

287 such assessment. Each person who participates in a treatment
288 program shall pay a fee representing the cost of such treatment.

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

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

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

317 The Commissioner of Public Safety or his authorized agent
318 shall suspend the driver's license or permit to drive or deny the
319 issuance of a license or permit to such person as provided for

320 first, second and third or subsequent offenders in subsection (2)
321 of this section. Such suspension shall be in addition to any
322 suspension imposed pursuant to subsection (1) of Section 63-11-23.
323 The minimum suspension imposed under this subsection shall not be
324 reduced and no prosecutor is authorized to offer a reduction of
325 such suspension as part of a plea bargain.

326 (5) Every person who operates any motor vehicle in violation
327 of the provisions of subsection (1) of this section and who in a
328 negligent manner causes the death of another, the death of an
329 unborn fetus or mutilates, disfigures, permanently disables or
330 destroys the tongue, eye, lip, nose or any other limb, organ or
331 member of another shall, upon conviction, be guilty of a separate
332 felony for each such death, mutilation, disfigurement or other
333 injury and shall be committed to the custody of the State
334 Department of Corrections for a period of time of not less than
335 five (5) years and not to exceed twenty-five (25) years for each
336 such death, mutilation, disfigurement or other injury, and the
337 imprisonment for the second or each subsequent conviction, in the
338 discretion of the court, shall commence either at the termination
339 of the imprisonment for the preceding conviction or run
340 concurrently with the preceding conviction. Any person charged
341 with causing the death of another as described in this subsection
342 shall be required to post bail before being released after arrest.

343 (6) Upon conviction of any violation of subsection (1) of
344 this section, the trial judge shall sign in the place provided on
345 the traffic ticket, citation or affidavit stating that the person
346 arrested either employed an attorney or waived his right to an
347 attorney after having been properly advised. If the person
348 arrested employed an attorney, the name, address and telephone
349 number of the attorney shall be written on the ticket, citation or
350 affidavit. The judge shall cause a copy of the traffic ticket,
351 citation or affidavit, and any other pertinent documents
352 concerning the conviction, to be sent to the Commissioner of

353 Public Safety. A copy of the traffic ticket, citation or
354 affidavit and any other pertinent documents, having been attested
355 as true and correct by the Commissioner of Public Safety, or his
356 designee, shall be sufficient proof of the conviction for purposes
357 of determining the enhanced penalty for any subsequent convictions
358 of violations of subsection (1) of this section.

359 (7) Convictions in other states of violations for driving or
360 operating a vehicle while under the influence of an intoxicating
361 liquor or while under the influence of any other substance that
362 has impaired the person's ability to operate a motor vehicle
363 occurring after July 1, 1992, shall be counted for the purposes of
364 determining if a violation of subsection (1) of this section is a
365 first, second, third or subsequent offense and the penalty that
366 shall be imposed upon conviction for a violation of subsection (1)
367 of this section.

368 (8) For the purposes of determining how to impose the
369 sentence for a second, third or subsequent conviction under this
370 section, the indictment shall not be required to enumerate
371 previous convictions. It shall only be necessary that the
372 indictment state the number of times that the defendant has been
373 convicted and sentenced within the past five (5) years under this
374 section to determine if an enhanced penalty shall be imposed. The
375 amount of fine and imprisonment imposed in previous convictions
376 shall not be considered in calculating offenses to determine a
377 second, third or subsequent offense of this section.

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

382 (10) Suspension of driving privileges for any person
383 convicted of violations of Section 63-11-30(1) shall run
384 consecutively.

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

387 **SECTION 2.** This act shall take effect and be in force from
388 and after July 1, 2005.