

By: Representative Baker (74th)

To: Judiciary A

HOUSE BILL NO. 849

1 AN ACT TO AMEND SECTIONS 63-11-21 AND 63-11-23, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT REFUSAL TO TAKE THE TEST PROVIDED IN  
3 THE IMPLIED CONSENT LAW SHALL BE A CRIME; AND FOR RELATED  
4 PURPOSES.

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

6 **SECTION 1.** Section 63-11-21, Mississippi Code of 1972, is  
7 amended as follows:

8 63-11-21. If a person refuses upon the request of a law  
9 enforcement officer to submit to a chemical test of his breath  
10 designated by the law enforcement agency as provided in Section  
11 63-11-5, none shall be given, but the officer shall at that point  
12 demand the driver's license of the person, who shall deliver his  
13 driver's license into the hands of the officer and such person  
14 shall, upon conviction, be guilty of a misdemeanor punishable by a  
15 fine of not more than One Thousand Dollars (\$1,000.00). If a  
16 person refuses to submit to a chemical test under the provisions  
17 of this chapter, the person shall be informed by the law  
18 enforcement officer that the refusal to submit to the test shall  
19 subject him to arrest and punishment consistent with the penalties  
20 prescribed in this section and Section 63-11-30 for persons  
21 submitting to the test. The officer shall give the driver a  
22 receipt for his license on forms prescribed and furnished by the  
23 Commissioner of Public Safety. The officer shall forward the  
24 driver's license together with a sworn report to the Commissioner  
25 of Public Safety stating that he had reasonable grounds and  
26 probable cause to believe the person had been driving a motor  
27 vehicle upon the public highways, public roads and streets of this  
28 state while under the influence of intoxicating liquor, or any

29 other substance which may impair a person's mental or physical  
30 ability, stating such grounds, and that the person had refused to  
31 submit to the chemical test of his breath upon request of the law  
32 enforcement officer.

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

35 63-11-23. (1) The Commissioner of Public Safety, or his  
36 authorized agent, shall review the sworn report by a law  
37 enforcement officer as provided in Section 63-11-21. If upon such  
38 review the Commissioner of Public Safety, or his authorized agent,  
39 finds (a) that the law enforcement officer had reasonable grounds  
40 and probable cause to believe the person had been driving a motor  
41 vehicle upon the public highways, public roads and streets of this  
42 state while under the influence of intoxicating liquor or any  
43 other substance which may impair a person's mental or physical  
44 ability; (b) that he refused to submit to the test upon request of  
45 the officer; and (c) that the person was informed that his license  
46 and/or driving privileges would be suspended or denied if he  
47 refused to submit to the chemical test, then the Commissioner of  
48 Public Safety, or his authorized agent, shall give notice to the  
49 licensee that in addition to the fine provided in Section  
50 63-11-23, his license or permit to drive, or any nonresident  
51 operating privilege, shall be suspended thirty (30) days after the  
52 date of such notice for a period of ninety (90) days in the event  
53 such person has not previously been convicted of a violation of  
54 Section 63-11-30, or, for a period of one (1) year in the event of  
55 any previous conviction of such person under Section 63-11-30. In  
56 the event the commissioner or his authorized agent determines that  
57 the license should not be suspended, he shall return the license  
58 or permit to the licensee.

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

61           (2) If the chemical testing of a person's breath indicates  
62 the blood alcohol concentration was eight one-hundredths percent  
63 (.08%) or more for persons who are above the legal age to purchase  
64 alcoholic beverages under state law, or two one-hundredths percent  
65 (.02%) or more for persons who are below the legal age to purchase  
66 alcoholic beverages under state law, based upon grams of alcohol  
67 per one hundred (100) milliliters of blood or grams of alcohol per  
68 two hundred ten (210) liters of breath as shown by a chemical  
69 analysis of such person's blood, or breath, or urine, the  
70 arresting officer shall seize the license and give the driver a  
71 receipt for his license on forms prescribed by the Commissioner of  
72 Public Safety and shall promptly forward the license together with  
73 a sworn report to the Commissioner of Public Safety. The receipt  
74 given a person as provided herein shall be valid as a permit to  
75 operate a motor vehicle for a period of thirty (30) days in order  
76 that the defendant be processed through the court having original  
77 jurisdiction and a final disposition had. If the defendant  
78 requests a trial within thirty (30) days and such trial is not  
79 commenced within thirty (30) days, then the court shall determine  
80 if the delay in the trial is the fault of the defendant or his  
81 counsel. If the court finds that such is not the fault of the  
82 defendant or his counsel, then the court shall order the  
83 defendant's driving privileges to be extended until such time as  
84 the defendant is convicted. If a receipt or permit to drive  
85 issued pursuant to the provisions of this subsection expires  
86 without a trial having been requested as provided for in this  
87 subsection, then the Commissioner of Public Safety or his  
88 authorized agent shall suspend the license or permit to drive or  
89 any nonresident operating privilege for the applicable period of  
90 time as provided for in subsection (1) of this section.

91           (3) If the person is a resident without a license or permit  
92 to operate a motor vehicle in this state, the Commissioner of  
93 Public Safety, or his authorized agent, shall deny to the person

94 the issuance of a license or permit for a period of one (1) year  
95 beginning thirty (30) days after the date of notice of such  
96 suspension.

97 (4) It shall be the duty of the county prosecuting attorney,  
98 an attorney employed under the provisions of Section 19-3-49, or  
99 in the event there is no such prosecuting attorney for the county,  
100 the duty of the district attorney to represent the state in any  
101 hearing held under the provisions of Section 63-11-25, under the  
102 provisions of Section 63-11-37(2) or under the provisions of  
103 Section 63-11-30(2)(a).

104 **SECTION 3.** This act shall take effect and be in force from  
105 and after July 1, 2005.