

By: Senator(s) White

To: Judiciary, Division A

SENATE BILL NO. 2083

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE FINES AND TERMS OF IMPRISONMENT FOR FIRST AND  
3 SECOND DUI OFFENDERS HAVING A BLOOD ALCOHOL CONCENTRATION IN  
4 EXCESS OF .15%; AND FOR RELATED PURPOSES.

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

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

8 63-11-30. (1) It is unlawful for any person to drive or  
9 otherwise operate a vehicle within this state who (a) is under the  
10 influence of intoxicating liquor; (b) is under the influence of  
11 any other substance which has impaired such person's ability to  
12 operate a motor vehicle; (c) has an alcohol concentration of eight  
13 one-hundredths percent (.08%) or more for persons who are above  
14 the legal age to purchase alcoholic beverages under state law, or  
15 two one-hundredths percent (.02%) or more for persons who are  
16 below the legal age to purchase alcoholic beverages under state  
17 law, in the person's blood based upon grams of alcohol per one  
18 hundred (100) milliliters of blood or grams of alcohol per two  
19 hundred ten (210) liters of breath as shown by a chemical analysis  
20 of such person's breath, blood or urine administered as authorized  
21 by this chapter; (d) is under the influence of any drug or  
22 controlled substance, the possession of which is unlawful under  
23 the Mississippi Controlled Substances Law; or (e) has an alcohol  
24 concentration of four one-hundredths percent (.04%) or more in the  
25 person's blood, based upon grams of alcohol per one hundred (100)  
26 milliliters of blood or grams of alcohol per two hundred ten (210)  
27 liters of breath as shown by a chemical analysis of such person's

28 blood, breath or urine, administered as authorized by this chapter  
29 for persons operating a commercial motor vehicle.

30 (2) (a) Except as otherwise provided in subsection (3),  
31 upon conviction of any person for the first offense of violating  
32 subsection (1) of this section where chemical tests provided for  
33 under Section 63-11-5 were given, or where chemical test results  
34 are not available, such person shall be fined not less than Two  
35 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
36 (\$1,000.00), or imprisoned for not more than forty-eight (48)  
37 hours in jail or both, provided that, upon conviction for a first  
38 offense where a person has an alcohol concentration of fifteen  
39 one-hundredths percent (.15%) or more, such person shall be fined  
40 not less than Five Hundred Dollars (\$500.00) nor more than Two  
41 Thousand Dollars (\$2,000.00); \* \* \* the court shall order a first  
42 offender to attend and complete an alcohol safety education  
43 program as provided in Section 63-11-32. The court may substitute  
44 attendance at a victim impact panel instead of forty-eight (48)  
45 hours in jail. In addition, the Department of Public Safety, the  
46 Commissioner of Public Safety or his duly authorized agent shall,  
47 after conviction and upon receipt of the court abstract, suspend  
48 the driver's license and driving privileges of such person for a  
49 period of not less than ninety (90) days and until such person  
50 attends and successfully completes an alcohol safety education  
51 program as herein provided; provided, however, in no event shall  
52 such period of suspension exceed one (1) year. Commercial driving  
53 privileges shall be suspended as provided in Section 63-1-83.

54 The circuit court having jurisdiction in the county in which  
55 the conviction was had or the circuit court of the person's county  
56 of residence may reduce the suspension of driving privileges under  
57 Section 63-11-30(2)(a) if the denial of which would constitute a  
58 hardship on the offender, except that no court may issue such an  
59 order reducing the suspension of driving privileges under this  
60 subsection until thirty (30) days have elapsed from the effective

61 date of the suspension. Hardships shall only apply to first  
62 offenses under Section 63-11-30(1), and shall not apply to second,  
63 third or subsequent convictions of any person violating subsection  
64 (1) of this section. A reduction of suspension on the basis of  
65 hardship shall not be available to any person who refused to  
66 submit to a chemical test upon the request of a law enforcement  
67 officer as provided in Section 63-11-5. When the petition is  
68 filed, such person shall pay to the circuit clerk of the court  
69 where the petition is filed a fee of Fifty Dollars (\$50.00), which  
70 shall be deposited into the State General Fund to the credit of a  
71 special fund hereby created in the State Treasury to be used for  
72 alcohol or drug abuse treatment and education, upon appropriation  
73 by the Legislature. This fee shall be in addition to any other  
74 court costs or fees required for the filing of petitions.

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

83 The order entered under the provisions of this subsection  
84 shall contain the specific grounds upon which hardship was  
85 determined, and shall order the petitioner to attend and complete  
86 an alcohol safety education program as provided in Section  
87 63-11-32. A certified copy of such order shall be delivered to  
88 the Commissioner of Public Safety by the clerk of the court within  
89 five (5) days of the entry of the order. The certified copy of  
90 such order shall contain information which will identify the  
91 petitioner, including, but not limited to, the name, mailing  
92 address, street address, social security number and driver's  
93 license number of the petitioner.

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

99 (i) Continue his employment;

100 (ii) Continue attending school or an educational  
101 institution; or

102 (iii) Obtain necessary medical care.

103 Proof of the hardship shall be established by clear and  
104 convincing evidence which shall be supported by independent  
105 documentation.

106 (b) Except as otherwise provided in subsection (3),  
107 upon any second conviction of any person violating subsection (1)  
108 of this section, the offenses being committed within a period of  
109 five (5) years, such person shall be fined not less than Six  
110 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
111 Dollars (\$1,500.00), shall be imprisoned not less than five (5)  
112 days nor more than one (1) year and sentenced to community service  
113 work for not less than ten (10) days nor more than one (1) year,  
114 provided that, upon any second conviction of any person violating  
115 subsection (1) of this section where the person has an alcohol  
116 concentration of fifteen one-hundredths percent (.15%) or more,  
117 such person shall be fined not less than One Thousand Two Hundred  
118 Dollars (\$1,200.00) nor more than Three Thousand Dollars  
119 (\$3,000.00), and shall be imprisoned not less than ten (10) days  
120 nor more than one (1) year. The minimum penalties shall not be  
121 suspended or reduced by the court and no prosecutor shall offer  
122 any suspension or sentence reduction as part of a plea bargain.  
123 Except as may otherwise be provided by paragraph (d) of this  
124 subsection, the Commissioner of Public Safety shall suspend the  
125 driver's license of such person for two (2) years. Suspension of  
126 a commercial driver's license shall be governed by Section

127 63-1-83. Upon any second conviction as described in this  
128 paragraph, the court shall ascertain whether the defendant is  
129 married, and if the defendant is married shall obtain the name and  
130 address of the defendant's spouse; the clerk of the court shall  
131 submit this information to the Department of Public Safety.  
132 Further, the commissioner shall notify in writing, by certified  
133 mail, return receipt requested, the owner of the vehicle and the  
134 spouse, if any, of the person convicted of the second violation of  
135 the possibility of forfeiture of the vehicle if such person is  
136 convicted of a third violation of subsection (1) of this section.  
137 The owner of the vehicle and the spouse shall be considered  
138 notified under this paragraph if the notice is deposited in the  
139 United States mail and any claim that the notice was not in fact  
140 received by the addressee shall not affect a subsequent forfeiture  
141 proceeding.

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

145 (c) Except as otherwise provided in subsection (3), for  
146 any third or subsequent conviction of any person violating  
147 subsection (1) of this section, the offenses being committed  
148 within a period of five (5) years, such person shall be guilty of  
149 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
150 nor more than Five Thousand Dollars (\$5,000.00), shall serve not  
151 less than one (1) year nor more than five (5) years in the custody  
152 of the Department of Corrections; provided, however, that for any  
153 such offense which does not result in serious injury or death to  
154 any person, any sentence of incarceration may be served in the  
155 county jail rather than in the State Penitentiary at the  
156 discretion of the circuit court judge. The minimum penalties  
157 shall not be suspended or reduced by the court and no prosecutor  
158 shall offer any suspension or sentence reduction as part of a plea  
159 bargain. The law enforcement agency shall seize the vehicle

160 operated by any person charged with a third or subsequent  
161 violation of subsection (1) of this section, if such convicted  
162 person was driving the vehicle at the time the offense was  
163 committed. Such vehicle may be forfeited in the manner provided  
164 by Sections 63-11-49 through 63-11-53. Except as may otherwise be  
165 provided by paragraph (e) of this subsection, the Commissioner of  
166 Public Safety shall suspend the driver's license of such person  
167 for five (5) years. The suspension of a commercial driver's  
168 license shall be governed by Section 63-1-83.

169 (d) Except as otherwise provided in subsection (3), any  
170 person convicted of a second violation of subsection (1) of this  
171 section shall receive an in-depth diagnostic assessment, and if as  
172 a result of such assessment is determined to be in need of  
173 treatment of his alcohol and/or drug abuse problem, such person  
174 shall successfully complete treatment of his alcohol and/or drug  
175 abuse problem at a program site certified by the Department of  
176 Mental Health. Such person shall be eligible for reinstatement of  
177 his driving privileges upon the successful completion of such  
178 treatment after a period of one (1) year after such person's  
179 driver's license is suspended. Each person who receives a  
180 diagnostic assessment shall pay a fee representing the cost of  
181 such assessment. Each person who participates in a treatment  
182 program shall pay a fee representing the cost of such treatment.

183 (e) Except as otherwise provided in subsection (3), any  
184 person convicted of a third or subsequent violation of subsection  
185 (1) of this section shall receive an in-depth diagnostic  
186 assessment, and if as a result of such assessment is determined to  
187 be in need of treatment of his alcohol and/or drug abuse problem,  
188 such person shall enter an alcohol and/or drug abuse program  
189 approved by the Department of Mental Health for treatment of such  
190 person's alcohol and/or drug abuse problem. If such person  
191 successfully completes such treatment, such person shall be  
192 eligible for reinstatement of his driving privileges after a

193 period of three (3) years after such person's driver's license is  
194 suspended.

195 (f) The Department of Public Safety shall promulgate  
196 rules and regulations for the use of interlock ignition devices as  
197 provided in Section 63-11-31 and consistent with the provisions  
198 therein. Such rules and regulations shall provide for the  
199 calibration of such devices and shall provide that the cost of the  
200 use of such systems shall be borne by the offender. The  
201 Department of Public Safety shall approve which vendors of such  
202 devices shall be used to furnish such systems.

203 (3) (a) This subsection shall be known and may be cited as  
204 Zero Tolerance for Minors. The provisions of this subsection  
205 shall apply only when a person under the age of twenty-one (21)  
206 years has a blood alcohol concentration of two one-hundredths  
207 percent (.02%) or more, but lower than eight one-hundredths  
208 percent (.08%). If such person's blood alcohol concentration is  
209 eight one-hundredths percent (.08%) or more, the provisions of  
210 subsection (2) shall apply.

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

221 The court in the county in which the conviction was had or  
222 the circuit court of the person's county of residence may reduce  
223 the suspension of driving privileges under Section 63-11-30(2)(a)  
224 if the denial of which would constitute a hardship on the  
225 offender, except that no court may issue such an order reducing

226 the suspension of driving privileges under this subsection until  
227 thirty (30) days have elapsed from the effective date of the  
228 suspension. Hardships shall only apply to first offenses under  
229 Section 63-11-30(1), and shall not apply to second, third or  
230 subsequent convictions of any person violating subsection (1) of  
231 this section. A reduction of suspension on the basis of hardship  
232 shall not be available to any person who refused to submit to a  
233 chemical test upon the request of a law enforcement officer as  
234 provided in Section 63-11-5. When the petition is filed, such  
235 person shall pay to the circuit clerk of the court where the  
236 petition is filed a fee of Fifty Dollars (\$50.00), which shall be  
237 deposited into the State General Fund to the credit of a special  
238 fund hereby created in the State Treasury to be used for alcohol  
239 or drug abuse treatment and education, upon appropriation by the  
240 Legislature. This fee shall be in addition to any other court  
241 costs or fees required for the filing of petitions.

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

250 The order entered under the provisions of this subsection  
251 shall contain the specific grounds upon which hardship was  
252 determined, and shall order the petitioner to attend and complete  
253 an alcohol safety education program as provided in Section  
254 63-11-32. A certified copy of such order shall be delivered to  
255 the Commissioner of Public Safety by the clerk of the court within  
256 five (5) days of the entry of the order. The certified copy of  
257 such order shall contain information which will identify the  
258 petitioner, including, but not limited to, the name, mailing



259 address, street address, social security number and driver's  
260 license number of the petitioner.

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

266 (i) Continue his employment;

267 (ii) Continue attending school or an educational  
268 institution; or

269 (iii) Obtain necessary medical care.

270 Proof of the hardship shall be established by clear and  
271 convincing evidence which shall be supported by independent  
272 documentation.

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

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

286 (e) Any person under the age of twenty-one (21) years  
287 convicted of a second violation of subsection (1) of this section,  
288 may have the period that his driver's license is suspended reduced  
289 if such person receives an in-depth diagnostic assessment, and as  
290 a result of such assessment is determined to be in need of  
291 treatment of his alcohol and/or drug abuse problem and

292 successfully completes treatment of his alcohol and/or drug abuse  
293 problem at a program site certified by the Department of Mental  
294 Health. Such person shall be eligible for reinstatement of his  
295 driving privileges upon the successful completion of such  
296 treatment after a period of six (6) months after such person's  
297 driver's license is suspended. Each person who receives a  
298 diagnostic assessment shall pay a fee representing the cost of  
299 such assessment. Each person who participates in a treatment  
300 program shall pay a fee representing the cost of such treatment.

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

306 (g) The court shall have the discretion to rule that a  
307 first offense of this subsection by a person under the age of  
308 twenty-one (21) years shall be nonadjudicated. Such person shall  
309 be eligible for nonadjudication only once. The Department of  
310 Public Safety shall maintain a confidential registry of all cases  
311 which are nonadjudicated as provided in this paragraph. A judge  
312 who rules that a case is nonadjudicated shall forward such ruling  
313 to the Department of Public Safety. Judges and prosecutors  
314 involved in implied consent violations shall have access to the  
315 confidential registry for the purpose of determining  
316 nonadjudication eligibility. A record of a person who has been  
317 nonadjudicated shall be maintained for five (5) years or until  
318 such person reaches the age of twenty-one (21) years. Any person  
319 whose confidential record has been disclosed in violation of this  
320 paragraph shall have a civil cause of action against the person  
321 and/or agency responsible for such disclosure.

322 (4) In addition to the other penalties provided in this  
323 section, every person refusing a law enforcement officer's request  
324 to submit to a chemical test of his breath as provided in this

325 chapter, or who was unconscious at the time of a chemical test and  
326 refused to consent to the introduction of the results of such test  
327 in any prosecution, shall suffer an additional suspension of  
328 driving privileges as follows:

329         The Commissioner of Public Safety or his authorized agent  
330 shall suspend the driver's license or permit to drive or deny the  
331 issuance of a license or permit to such person as provided for  
332 first, second and third or subsequent offenders in subsection (2)  
333 of this section. Such suspension shall be in addition to any  
334 suspension imposed pursuant to subsection (1) of Section 63-11-23.  
335 The minimum suspension imposed under this subsection shall not be  
336 reduced and no prosecutor is authorized to offer a reduction of  
337 such suspension as part of a plea bargain.

338         (5) Every person who operates any motor vehicle in violation  
339 of the provisions of subsection (1) of this section and who in a  
340 negligent manner causes the death of another or mutilates,  
341 disfigures, permanently disables or destroys the tongue, eye, lip,  
342 nose or any other limb, organ or member of another shall, upon  
343 conviction, be guilty of a separate felony for each such death,  
344 mutilation, disfigurement or other injury and shall be committed  
345 to the custody of the State Department of Corrections for a period  
346 of time of not less than five (5) years and not to exceed  
347 twenty-five (25) years for each such death, mutilation,  
348 disfigurement or other injury, and the imprisonment for the second  
349 or each subsequent conviction, in the discretion of the court,  
350 shall commence either at the termination of the imprisonment for  
351 the preceding conviction or run concurrently with the preceding  
352 conviction. Any person charged with causing the death of another  
353 as described in this subsection shall be required to post bail  
354 before being released after arrest.

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

358 arrested either employed an attorney or waived his right to an  
359 attorney after having been properly advised. If the person  
360 arrested employed an attorney, the name, address and telephone  
361 number of the attorney shall be written on the ticket, citation or  
362 affidavit. The judge shall cause a copy of the traffic ticket,  
363 citation or affidavit, and any other pertinent documents  
364 concerning the conviction, to be sent to the Commissioner of  
365 Public Safety. A copy of the traffic ticket, citation or  
366 affidavit and any other pertinent documents, having been attested  
367 as true and correct by the Commissioner of Public Safety, or his  
368 designee, shall be sufficient proof of the conviction for purposes  
369 of determining the enhanced penalty for any subsequent convictions  
370 of violations of subsection (1) of this section.

371 (7) Convictions in other states of violations for driving or  
372 operating a vehicle while under the influence of an intoxicating  
373 liquor or while under the influence of any other substance that  
374 has impaired the person's ability to operate a motor vehicle  
375 occurring after July 1, 1992, shall be counted for the purposes of  
376 determining if a violation of subsection (1) of this section is a  
377 first, second, third or subsequent offense and the penalty that  
378 shall be imposed upon conviction for a violation of subsection (1)  
379 of this section.

380 (8) For the purposes of determining how to impose the  
381 sentence for a second, third or subsequent conviction under this  
382 section, the indictment shall not be required to enumerate  
383 previous convictions. It shall only be necessary that the  
384 indictment state the number of times that the defendant has been  
385 convicted and sentenced within the past five (5) years under this  
386 section to determine if an enhanced penalty shall be imposed. The  
387 amount of fine and imprisonment imposed in previous convictions  
388 shall not be considered in calculating offenses to determine a  
389 second, third or subsequent offense of this section.

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

394           (10) Suspension of driving privileges for any person  
395 convicted of violations of Section 63-11-30(1) shall run  
396 consecutively.

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

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