

By: Senator(s) Walls

To: Judiciary, Division B

SENATE BILL NO. 2404

1 AN ACT TO AMEND SECTION 63-9-11, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE ALTERNATIVE SENTENCING OF CERTAIN FIRST- OR SECOND-TIME
3 TRAFFIC VIOLATORS AND TO PROVIDE THAT SUCH TRAFFIC VIOLATIONS WILL
4 NOT BE ENTERED ON THE DRIVING RECORD OF ANY INDIVIDUAL; TO AMEND
5 SECTION 63-9-17, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 63-9-11, Mississippi Code of 1972, is
9 amended as follows:

10 63-9-11. (1) It is a misdemeanor for any person to violate
11 any of the provisions of Chapter 3, 5 or 7 of this title, unless
12 such violation is by such chapters or other law of this state
13 declared to be a felony.

14 (2) Every person convicted of a misdemeanor for a violation
15 of any of the provisions of such chapters for which another
16 penalty is not provided shall for first conviction thereof be
17 punished by a fine of not more than One Hundred Dollars (\$100.00)
18 or by imprisonment for not more than ten (10) days; for a second
19 such conviction within one (1) year thereafter such person shall
20 be punished by a fine of not more than Two Hundred Dollars
21 (\$200.00) or by imprisonment for not more than twenty (20) days or
22 by both such fine and imprisonment; upon a third or subsequent
23 conviction within one (1) year after the first conviction such
24 person shall be punished by a fine of not more than Five Hundred
25 Dollars (\$500.00) or by imprisonment for not more than six (6)
26 months or by both such fine and imprisonment.

27 (3) (a) Whenever a person not covered under Section 63-1-55
28 is charged with a misdemeanor violation of any of the provisions
29 of Chapter 3, 5 or 7 of this title, the person shall be eligible

30 to participate in not less than four (4) hours of a traffic safety
31 violator course and thereby have no record of the violation on the
32 person's driving record if the person meets all the following
33 conditions:

34 (i) The defendant has a valid Mississippi driver's
35 license or permit.

36 (ii) The defendant has not had a conviction of a
37 violation under Chapter 3, 5 or 7 of this title within three (3)
38 years before the current offense; any conviction entered before
39 October 1, 2002, does not constitute a prior offense for the
40 purposes of this subsection (3).

41 (iii) The defendant's public and nonpublic driving
42 record as maintained by the Department of Public Safety does not
43 indicate successful completion of a traffic safety violator course
44 under this section in the three-year period before the offense.

45 (iv) The defendant files an affidavit with the
46 court stating that this is the defendant's first conviction in
47 more than three (3) years or since October 1, 2002, whichever is
48 the lesser period of time; the defendant is not in the process of
49 taking a course under this section; and the defendant has not
50 completed a course under this section that is not yet reflected on
51 the defendant's public or nonpublic driving record.

52 (v) The offense charged is for a misdemeanor
53 offense under Chapter 3, 5 or 7 of this title.

54 (vi) The defendant pays the applicable fine, costs
55 and any assessments required by law to be paid upon conviction of
56 such an offense.

57 (vii) The defendant pays to the court an
58 additional fee of Ten Dollars (\$10.00) to elect to proceed under
59 the provisions of this subsection (3).

60 (b) (i) 1. An eligible defendant may enter a plea of
61 nolo contendere or guilty in person or in writing and present to
62 the court, in person or by mail postmarked on or before the

63 appearance date on the citation, an oral or written request to
64 participate in a course under this subsection (3).

65 2. The court shall withhold acceptance of the
66 plea and defer sentencing in order to allow the eligible defendant
67 ninety (90) days to successfully complete not less than four (4)
68 hours of a court-approved traffic safety violator course at the
69 cost of the defendant. Upon proof of successful completion
70 entered with the court, the court shall dismiss the prosecution
71 and direct that the case be closed. The only record maintained
72 thereafter shall be the nonpublic record required under Section
73 63-9-17 solely for use by the courts in determining eligibility
74 under this subsection (3).

75 (ii) If a person pleads not guilty to a
76 misdemeanor offense under any of the provisions of Chapter 3, 5 or
77 7 of this title but is convicted, and the person meets all the
78 requirements under paragraph (a) of this subsection, upon request
79 of the defendant the court shall suspend the sentence for such
80 offense to allow the defendant forty-five (45) days to
81 successfully complete not less than four (4) hours of a
82 court-approved traffic safety violator course at his own cost.
83 Upon successful completion by the defendant of the course, the
84 court shall set the conviction aside, dismiss the prosecution and
85 direct that the case be closed. The court on its own motion shall
86 expunge the record of the conviction, and the only record
87 maintained thereafter shall be the nonpublic record required under
88 Section 63-9-17 solely for use by the courts in determining an
89 offender's eligibility under this subsection (3).

90 (c) An out-of-state resident shall be allowed to
91 complete a substantially similar program in his home state,
92 province or country provided the requirements of this subsection
93 (3) are met, except that the necessary valid driver's license or
94 permit shall be one issued by the home jurisdiction.

95 (d) A court shall not approve a traffic safety violator
96 course under this subsection (3) that does not supply at least
97 four (4) hours of instruction, an instructor's manual setting
98 forth an appropriate curriculum, student workbooks, some
99 scientifically verifiable analysis of the effectiveness of the
100 curriculum and provide minimum qualifications for instructors.

101 (e) A court shall inform a defendant making inquiry or
102 entering a personal appearance of the provisions of this
103 subsection (3).

104 (f) The Department of Public Safety shall cause notice
105 of the provisions of this subsection (3) to be available on its
106 official website.

107 (g) Failure of a defendant to elect to come under the
108 provisions of this subsection (3) for whatever reason, in and of
109 itself, shall not invalidate a conviction.

110 (h) No employee of the sentencing court shall
111 personally benefit from a defendant's attendance of a traffic
112 safety violator course. Violation of this prohibition shall
113 result in termination of employment.

114 (i) The additional fee of Ten Dollars (\$10.00) imposed
115 under this subsection (3) shall be forwarded by the court clerk to
116 the State Treasurer for deposit into a special fund created in the
117 State Treasury. Monies in the special fund may be expended by the
118 Department of Public Safety, upon legislative appropriation, to
119 defray the costs incurred by the department in maintaining the
120 nonpublic record of persons who are eligible for participation
121 under the provisions of this subsection (3).

122 (4) Whenever, in a misdemeanor case, a person is convicted
123 of violating any of the provisions of Chapter 3, 5 or 7 of this
124 title, has not had more than one (1) such violation within the
125 past three (3) years, and pleads guilty to the violation, the
126 court imposing sentence is authorized to impose a double fine and

127 withhold reporting of the conviction to the Mississippi Department
128 of Public Safety for inclusion in the person's driving record.

129 **SECTION 2.** Section 63-9-17, Mississippi Code of 1972, is
130 amended as follows:

131 63-9-17. (1) Every court shall keep a full record of the
132 proceedings of every case in which a person is charged with any
133 violation of law regulating the operation of vehicles on the
134 highways, streets or roads of this state.

135 (2) Unless otherwise sooner required by law, within
136 forty-five (45) days after the conviction of a person upon a
137 charge of violating any law regulating the operation of vehicles
138 on the highways, streets or roads of this state, every court in
139 which such conviction was had shall prepare and immediately
140 forward to the Department of Public Safety an abstract of the
141 record of said court covering the case in which said person was so
142 convicted, which abstract must be certified by the person so
143 authorized to prepare the same to be true and correct.

144 (3) Said abstract must be made upon a form approved by the
145 Department of Public Safety, and shall include the name and
146 address of the party charged, the registration number of the
147 vehicle involved, the nature of the offense, the date of hearing,
148 the plea, the judgment, and if the fine was satisfied by
149 prepayment or appearance bond forfeiture, and the amount of the
150 fine or forfeiture, as the case may be.

151 (4) Every court shall also forward a like report to the
152 Department of Public Safety upon the conviction of any person of
153 manslaughter or other felony in the commission of which a vehicle
154 was used.

155 (5) Every court shall also forward a like report to the
156 Department of Public Safety after the satisfactory completion by a
157 defendant of an approved traffic safety violator course under
158 Section 63-9-11(3), and the department shall make and maintain a
159 private, nonpublic record to be kept for a period of three (3)

160 years. The record shall be solely for the use of the courts in
161 determining eligibility under Section 63-9-11(3), as a first-time
162 offender, and shall not constitute a criminal record for the
163 purpose of private or administrative inquiry. Reports forwarded
164 to the Department of Public Safety under this subsection shall be
165 exempt from the provisions of the Mississippi Public Records Act
166 of 1983.

167 (6) Every court shall also forward a like report to the
168 Department of Public Safety upon the entry of a plea of guilty
169 under Section 63-9-11(4), and the department shall make and
170 maintain a private, nonpublic record solely for the use of the
171 courts in determining eligibility under Section 63-9-11(4) as a
172 first- or second-time offender, which shall not constitute a
173 criminal record for the purpose of private or administrative
174 inquiry. Reports forwarded to the Department of Public Safety
175 under this subsection shall be exempt from the provisions of the
176 Mississippi Public Records Act of 1983.

177 (7) The failure by refusal or neglect of any such judicial
178 officer to comply with any of the requirements of this section
179 shall constitute misconduct in office and shall be grounds for
180 removal therefrom.

181 (8) The Department of Public Safety shall keep copies of all
182 abstracts received hereunder for a period of three (3) years at
183 its main office and the same shall be open to public inspection
184 during reasonable business hours. This subsection shall not apply
185 to nonpublic records maintained solely for the use of the courts
186 in determining offender eligibility.

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