

By: Senator(s) Hyde-Smith, White, Wilemon

To: Judiciary, Division A

SENATE BILL NO. 2720

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE AN ENHANCED PENALTY FOR DRIVING UNDER THE INFLUENCE  
3 WHILE A CHILD OF A CERTAIN AGE IS A PASSENGER; AND FOR RELATED  
4 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; and the court shall order such person to  
38 attend and complete an alcohol safety education program as  
39 provided in Section 63-11-32. The court may substitute attendance  
40 at a victim impact panel instead of forty-eight (48) hours in  
41 jail. Provided, however, any person convicted for a first offense  
42 when a child aged eight (8) years or younger was a passenger in  
43 the vehicle at the time of the violation shall be sentenced to not  
44 less than forty-eight (48) hours nor more than thirty (30) days in  
45 jail and a fine of not less than Five Hundred Dollars (\$500.00)  
46 nor more than One Thousand Five Hundred Dollars (\$1,500.00). In  
47 addition, the Department of Public Safety, the Commissioner of  
48 Public Safety or his duly authorized agent shall, after conviction  
49 and upon receipt of the court abstract, suspend the driver's  
50 license and driving privileges of such person for a period of not  
51 less than ninety (90) days and until such person attends and  
52 successfully completes an alcohol safety education program as  
53 herein provided; provided, however, in no event shall such period  
54 of suspension exceed one (1) year. Commercial driving privileges  
55 shall be suspended as provided in Section 63-1-83.

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

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

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

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

94 address, street address, social security number and driver's  
95 license number of the petitioner.

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

101 (i) Continue his employment;

102 (ii) Continue attending school or an educational  
103 institution; or

104 (iii) Obtain necessary medical care.

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

108 (b) Except as otherwise provided in subsection (3),  
109 upon any second conviction of any person violating subsection (1)  
110 of this section, the offenses being committed within a period of  
111 five (5) years, such person shall be fined not less than Six  
112 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred  
113 Dollars (\$1,500.00), shall be imprisoned not less than five (5)  
114 days nor more than one (1) year and sentenced to community service  
115 work for not less than ten (10) days nor more than one (1) year.  
116 Any person convicted of a second offense when a child aged eight  
117 (8) years or younger was a passenger in the vehicle at the time of  
118 the second violation, regardless of whether such a child was  
119 present for the first offense, shall be sentenced not less than  
120 fifteen (15) days nor more than one (1) year in jail, and shall be  
121 fined not less than One Thousand Dollars (\$1,000.00) nor more than  
122 Two Thousand Dollars (\$2,000.00). The minimum penalties shall not  
123 be suspended or reduced by the court and no prosecutor shall offer  
124 any suspension or sentence reduction as part of a plea bargain.  
125 Except as may otherwise be provided by paragraph (d) of this  
126 subsection, the Commissioner of Public Safety shall suspend the

127 driver's license of such person for two (2) years. Suspension of  
128 a commercial driver's license shall be governed by Section  
129 63-1-83. Upon any second conviction as described in this  
130 paragraph, the court shall ascertain whether the defendant is  
131 married, and if the defendant is married shall obtain the name and  
132 address of the defendant's spouse; the clerk of the court shall  
133 submit this information to the Department of Public Safety.  
134 Further, the commissioner shall notify in writing, by certified  
135 mail, return receipt requested, the owner of the vehicle and the  
136 spouse, if any, of the person convicted of the second violation of  
137 the possibility of forfeiture of the vehicle if such person is  
138 convicted of a third violation of subsection (1) of this section.  
139 The owner of the vehicle and the spouse shall be considered  
140 notified under this paragraph if the notice is deposited in the  
141 United States mail and any claim that the notice was not in fact  
142 received by the addressee shall not affect a subsequent forfeiture  
143 proceeding.

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

147 (c) Except as otherwise provided in subsection (3), for  
148 any third or subsequent conviction of any person violating  
149 subsection (1) of this section, the offenses being committed  
150 within a period of five (5) years, such person shall be guilty of  
151 a felony and fined not less than Two Thousand Dollars (\$2,000.00)  
152 nor more than Five Thousand Dollars (\$5,000.00), shall serve not  
153 less than one (1) year nor more than five (5) years in the custody  
154 of the Department of Corrections; provided, however, that for any  
155 such offense which does not result in serious injury or death to  
156 any person, any sentence of incarceration may be served in the  
157 county jail rather than in the State Penitentiary at the  
158 discretion of the circuit court judge. Any person convicted of a  
159 third or subsequent offense when a child aged eight (8) years or

160 younger was a passenger in the vehicle at the time of the third or  
161 subsequent violation, regardless of whether such a child was  
162 present for any prior offense, shall be sentenced to not less than  
163 one (1) nor more than seven (7) years and shall be fined not less  
164 than Three Thousand Dollars (\$3,000.00) nor more than Seven  
165 Thousand Five Hundred Dollars (\$7,500.00). Any person convicted  
166 of a third or subsequent offense when a child aged eight (8) years  
167 or younger was a passenger in the vehicle at the time of the third  
168 or subsequent violation, regardless of whether such a child was  
169 present for any prior offense, shall be sentenced to not less than  
170 one (1) nor more than seven (7) years and shall be fined not less  
171 than Three Thousand Dollars (\$3,000.00) nor more than Seven  
172 Thousand Five Hundred Dollars (\$7,500.00). The minimum penalties  
173 shall not be suspended or reduced by the court and no prosecutor  
174 shall offer any suspension or sentence reduction as part of a plea  
175 bargain. The law enforcement agency shall seize the vehicle  
176 operated by any person charged with a third or subsequent  
177 violation of subsection (1) of this section, if such convicted  
178 person was driving the vehicle at the time the offense was  
179 committed. Such vehicle may be forfeited in the manner provided  
180 by Sections 63-11-49 through 63-11-53. Except as may otherwise be  
181 provided by paragraph (e) of this subsection, the Commissioner of  
182 Public Safety shall suspend the driver's license of such person  
183 for five (5) years. The suspension of a commercial driver's  
184 license shall be governed by Section 63-1-83.

185 (d) Except as otherwise provided in subsection (3), any  
186 person convicted of a second violation of subsection (1) of this  
187 section shall receive an in-depth diagnostic assessment, and if as  
188 a result of such assessment is determined to be in need of  
189 treatment of his alcohol and/or drug abuse problem, such person  
190 shall successfully complete treatment of his alcohol and/or drug  
191 abuse problem at a program site certified by the Department of  
192 Mental Health. Such person shall be eligible for reinstatement of

193 his driving privileges upon the successful completion of such  
194 treatment after a period of one (1) year after such person's  
195 driver's license is suspended. Each person who receives a  
196 diagnostic assessment shall pay a fee representing the cost of  
197 such assessment. Each person who participates in a treatment  
198 program shall pay a fee representing the cost of such treatment.

199 (e) Except as otherwise provided in subsection (3), any  
200 person convicted of a third or subsequent violation of subsection  
201 (1) of this section shall receive an in-depth diagnostic  
202 assessment, and if as a result of such assessment is determined to  
203 be in need of treatment of his alcohol and/or drug abuse problem,  
204 such person shall enter an alcohol and/or drug abuse program  
205 approved by the Department of Mental Health for treatment of such  
206 person's alcohol and/or drug abuse problem. If such person  
207 successfully completes such treatment, such person shall be  
208 eligible for reinstatement of his driving privileges after a  
209 period of three (3) years after such person's driver's license is  
210 suspended.

211 (f) The Department of Public Safety shall promulgate  
212 rules and regulations for the use of interlock ignition devices as  
213 provided in Section 63-11-31 and consistent with the provisions  
214 therein. Such rules and regulations shall provide for the  
215 calibration of such devices and shall provide that the cost of the  
216 use of such systems shall be borne by the offender. The  
217 Department of Public Safety shall approve which vendors of such  
218 devices shall be used to furnish such systems.

219 (3) (a) This subsection shall be known and may be cited as  
220 Zero Tolerance for Minors. The provisions of this subsection  
221 shall apply only when a person under the age of twenty-one (21)  
222 years has a blood alcohol concentration of two one-hundredths  
223 percent (.02%) or more, but lower than eight one-hundredths  
224 percent (.08%). If such person's blood alcohol concentration is

225 eight one-hundredths percent (.08%) or more, the provisions of  
226 subsection (2) shall apply.

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

237           The court in the county in which the conviction was had or  
238 the circuit court of the person's county of residence may reduce  
239 the suspension of driving privileges under Section 63-11-30(2)(a)  
240 if the denial of which would constitute a hardship on the  
241 offender, except that no court may issue such an order reducing  
242 the suspension of driving privileges under this subsection until  
243 thirty (30) days have elapsed from the effective date of the  
244 suspension. Hardships shall only apply to first offenses under  
245 Section 63-11-30(1), and shall not apply to second, third or  
246 subsequent convictions of any person violating subsection (1) of  
247 this section. A reduction of suspension on the basis of hardship  
248 shall not be available to any person who refused to submit to a  
249 chemical test upon the request of a law enforcement officer as  
250 provided in Section 63-11-5. When the petition is filed, such  
251 person shall pay to the circuit clerk of the court where the  
252 petition is filed a fee of Fifty Dollars (\$50.00), which shall be  
253 deposited into the State General Fund to the credit of a special  
254 fund hereby created in the State Treasury to be used for alcohol  
255 or drug abuse treatment and education, upon appropriation by the  
256 Legislature. This fee shall be in addition to any other court  
257 costs or fees required for the filing of petitions.

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

266           The order entered under the provisions of this subsection  
267 shall contain the specific grounds upon which hardship was  
268 determined, and shall order the petitioner to attend and complete  
269 an alcohol safety education program as provided in Section  
270 63-11-32. A certified copy of such order shall be delivered to  
271 the Commissioner of Public Safety by the clerk of the court within  
272 five (5) days of the entry of the order. The certified copy of  
273 such order shall contain information which will identify the  
274 petitioner, including, but not limited to, the name, mailing  
275 address, street address, social security number and driver's  
276 license number of the petitioner.

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

- 282                   (i) Continue his employment;
- 283                   (ii) Continue attending school or an educational  
284 institution; or
- 285                   (iii) Obtain necessary medical care.

286           Proof of the hardship shall be established by clear and  
287 convincing evidence which shall be supported by independent  
288 documentation.

289           (c) Upon any second conviction of any person under the  
290 age of twenty-one (21) years violating subsection (1) of this

291 section, the offenses being committed within a period of five (5)  
292 years, such person shall be fined not more than Five Hundred  
293 Dollars (\$500.00) and shall have his driver's license suspended  
294 for one (1) year.

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

302 (e) Any person under the age of twenty-one (21) years  
303 convicted of a second violation of subsection (1) of this section,  
304 may have the period that his driver's license is suspended reduced  
305 if such person receives an in-depth diagnostic assessment, and as  
306 a result of such assessment is determined to be in need of  
307 treatment of his alcohol and/or drug abuse problem and  
308 successfully completes treatment of his alcohol and/or drug abuse  
309 problem at a program site certified by the Department of Mental  
310 Health. Such person shall be eligible for reinstatement of his  
311 driving privileges upon the successful completion of such  
312 treatment after a period of six (6) months after such person's  
313 driver's license is suspended. Each person who receives a  
314 diagnostic assessment shall pay a fee representing the cost of  
315 such assessment. Each person who participates in a treatment  
316 program shall pay a fee representing the cost of such treatment.

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

322 (g) The court shall have the discretion to rule that a  
323 first offense of this subsection by a person under the age of

324 twenty-one (21) years shall be nonadjudicated. Such person shall  
325 be eligible for nonadjudication only once. The Department of  
326 Public Safety shall maintain a confidential registry of all cases  
327 which are nonadjudicated as provided in this paragraph. A judge  
328 who rules that a case is nonadjudicated shall forward such ruling  
329 to the Department of Public Safety. Judges and prosecutors  
330 involved in implied consent violations shall have access to the  
331 confidential registry for the purpose of determining  
332 nonadjudication eligibility. A record of a person who has been  
333 nonadjudicated shall be maintained for five (5) years or until  
334 such person reaches the age of twenty-one (21) years. Any person  
335 whose confidential record has been disclosed in violation of this  
336 paragraph shall have a civil cause of action against the person  
337 and/or agency responsible for such disclosure.

338 (4) In addition to the other penalties provided in this  
339 section, every person refusing a law enforcement officer's request  
340 to submit to a chemical test of his breath as provided in this  
341 chapter, or who was unconscious at the time of a chemical test and  
342 refused to consent to the introduction of the results of such test  
343 in any prosecution, shall suffer an additional suspension of  
344 driving privileges as follows:

345 The Commissioner of Public Safety or his authorized agent  
346 shall suspend the driver's license or permit to drive or deny the  
347 issuance of a license or permit to such person as provided for  
348 first, second and third or subsequent offenders in subsection (2)  
349 of this section. Such suspension shall be in addition to any  
350 suspension imposed pursuant to subsection (1) of Section 63-11-23.  
351 The minimum suspension imposed under this subsection shall not be  
352 reduced and no prosecutor is authorized to offer a reduction of  
353 such suspension as part of a plea bargain.

354 (5) Every person who operates any motor vehicle in violation  
355 of the provisions of subsection (1) of this section and who in a  
356 negligent manner causes the death of another or mutilates,

357 disfigures, permanently disables or destroys the tongue, eye, lip,  
358 nose or any other limb, organ or member of another shall, upon  
359 conviction, be guilty of a separate felony for each such death,  
360 mutilation, disfigurement or other injury and shall be committed  
361 to the custody of the State Department of Corrections for a period  
362 of time of not less than five (5) years and not to exceed  
363 twenty-five (25) years for each such death, mutilation,  
364 disfigurement or other injury, and the imprisonment for the second  
365 or each subsequent conviction, in the discretion of the court,  
366 shall commence either at the termination of the imprisonment for  
367 the preceding conviction or run concurrently with the preceding  
368 conviction. Any person charged with causing the death of another  
369 as described in this subsection shall be required to post bail  
370 before being released after arrest.

371 (6) Upon conviction of any violation of subsection (1) of  
372 this section, the trial judge shall sign in the place provided on  
373 the traffic ticket, citation or affidavit stating that the person  
374 arrested either employed an attorney or waived his right to an  
375 attorney after having been properly advised. If the person  
376 arrested employed an attorney, the name, address and telephone  
377 number of the attorney shall be written on the ticket, citation or  
378 affidavit. The judge shall cause a copy of the traffic ticket,  
379 citation or affidavit, and any other pertinent documents  
380 concerning the conviction, to be sent to the Commissioner of  
381 Public Safety. A copy of the traffic ticket, citation or  
382 affidavit and any other pertinent documents, having been attested  
383 as true and correct by the Commissioner of Public Safety, or his  
384 designee, shall be sufficient proof of the conviction for purposes  
385 of determining the enhanced penalty for any subsequent convictions  
386 of violations of subsection (1) of this section.

387 (7) Convictions in other states of violations for driving or  
388 operating a vehicle while under the influence of an intoxicating  
389 liquor or while under the influence of any other substance that

390 has impaired the person's ability to operate a motor vehicle  
391 occurring after July 1, 1992, shall be counted for the purposes of  
392 determining if a violation of subsection (1) of this section is a  
393 first, second, third or subsequent offense and the penalty that  
394 shall be imposed upon conviction for a violation of subsection (1)  
395 of this section.

396 (8) For the purposes of determining how to impose the  
397 sentence for a second, third or subsequent conviction under this  
398 section, the indictment shall not be required to enumerate  
399 previous convictions. It shall only be necessary that the  
400 indictment state the number of times that the defendant has been  
401 convicted and sentenced within the past five (5) years under this  
402 section to determine if an enhanced penalty shall be imposed. The  
403 amount of fine and imprisonment imposed in previous convictions  
404 shall not be considered in calculating offenses to determine a  
405 second, third or subsequent offense of this section.

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

410 (10) Suspension of driving privileges for any person  
411 convicted of violations of Section 63-11-30(1) shall run  
412 consecutively.

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

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