

By: Representatives Mayo, Brown

To: Judiciary A

HOUSE BILL NO. 809

1 AN ACT TO AMEND SECTIONS 63-11-3, 63-11-5, 63-11-7, 63-11-9
2 AND 63-11-19, MISSISSIPPI CODE OF 1972, TO CLARIFY WHO IS
3 AUTHORIZED TO ADMINISTER A BLOOD TEST UNDER THE IMPLIED CONSENT
4 LAW; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 63-11-3, Mississippi Code of 1972, is
7 amended as follows:

8 63-11-3. The following words and phrases shall have the
9 meaning ascribed herein, unless the context clearly indicates
10 otherwise:

11 (a) "Driving privilege" or "privilege" means both the
12 driver's license of those licensed in Mississippi and the driving
13 privilege of unlicensed residents and the privilege of
14 nonresidents, licensed or not, the purpose of this section being
15 to make unlicensed and nonresident drivers subject to the same
16 penalties as licensed residents.

17 (b) "Community service" means work, projects or
18 services for the benefit of the community assigned, supervised and
19 recorded by appropriate public officials.

20 (c) "Chemical test" means an analysis of a person's
21 blood, breath, urine or other bodily substance for the
22 determination of the presence of alcohol or any other substance
23 which may impair a person's mental or physical ability.

24 (d) "Refusal to take breath, urine and/or blood test"
25 means an individual declining to take a chemical test, and/or the
26 failure to provide an adequate breath sample as required by the
27 Implied Consent Law when requested by a law enforcement officer.

28 (e) "Alcohol concentration" means either grams of
29 alcohol per one hundred (100) milliliters of blood or grams of
30 alcohol per two hundred ten (210) liters of breath.

31 (f) "Qualified person to withdraw blood" means any
32 person who has been trained to withdraw blood in the course of
33 their employment duties including, but not limited to, laboratory
34 personnel, phlebotomist, emergency medical personnel, emergency
35 medical technicians, nurses and doctors.

36 (g) "Victim impact panel" means a two-hour seminar in
37 which victims of DUI accidents relate their experiences following
38 the accident to persons convicted under the Implied Consent Law.
39 Paneling programs shall be based on a model developed by Mothers
40 Against Drunk Driving (MADD) victim panel or equivalent program
41 approved by the court.

42 (h) "Booked" means the administrative step taken after
43 the arrested person is brought to the police station, which
44 involves entry of the person's name, the crime for which the
45 arrest was made, and other relevant facts on the police docket,
46 and which may also include photographing, fingerprinting, and the
47 like.

48 **SECTION 2.** Section 63-11-5, Mississippi Code of 1972, is
49 amended as follows:

50 63-11-5. (1) Any person who operates a motor vehicle upon
51 the public highways, public roads and streets of this state shall
52 be deemed to have given his consent, subject to the provisions of
53 this chapter, to a chemical test or tests of his breath for the
54 purpose of determining alcohol concentration. A person shall give
55 his consent to a chemical test or tests of his breath, blood or
56 urine for the purpose of determining the presence in his body of
57 any other substance which would impair a person's ability to
58 operate a motor vehicle. The test or tests shall be administered
59 at the direction of any highway patrol officer, any sheriff or his
60 duly commissioned deputies, any police officer in any incorporated

61 municipality, any national park ranger, any officer of a
62 state-supported institution of higher learning campus police force
63 if such officer is exercising this authority in regard to a
64 violation that occurred on campus property, or any security
65 officer appointed and commissioned pursuant to the Pearl River
66 Valley Water Supply District Security Officer Law of 1978 if such
67 officer is exercising this authority in regard to a violation that
68 occurred within the limits of the Pearl River Valley Water Supply
69 District, when such officer has reasonable grounds and probable
70 cause to believe that the person was driving or had under his
71 actual physical control a motor vehicle upon the public streets or
72 highways of this state while under the influence of intoxicating
73 liquor or any other substance which had impaired such person's
74 ability to operate a motor vehicle. No such test shall be
75 administered by any person who has not met all the educational and
76 training requirements of the appropriate course of study
77 prescribed by the Board on Law Enforcement Officers Standards and
78 Training; provided, however, that sheriffs and elected chiefs of
79 police shall be exempt from such educational and training
80 requirement. No such tests shall be given by any officer or any
81 agency to any person within fifteen (15) minutes of consumption of
82 any substance by mouth.

83 (2) If the officer has reasonable grounds and probable cause
84 to believe such person to have been driving a motor vehicle upon
85 the public highways, public roads, and streets of this state while
86 under the influence of intoxicating liquor, such officer shall
87 inform such person that his failure to submit to such chemical
88 test or tests of his breath shall result in the suspension of his
89 privilege to operate a motor vehicle upon the public streets and
90 highways of this state for a period of ninety (90) days in the
91 event such person has not previously been convicted of a violation
92 of Section 63-11-30, or, for a period of one (1) year in the event
93 of any previous conviction of such person under Section 63-11-30.

94 (3) The traffic ticket, citation or affidavit issued to a
95 person arrested for a violation of this chapter shall conform to
96 the requirements of Section 63-9-21(3)(b).

97 (4) Any person arrested under the provisions of this chapter
98 shall be informed that he has the right to telephone for the
99 purpose of requesting legal or medical assistance immediately
100 after being booked for a violation under this chapter.

101 (5) The Commissioner of Public Safety and the State Crime
102 Laboratory created pursuant to Section 45-1-17 are hereby
103 authorized from and after the passage of this section to adopt
104 procedures, rules and regulations, applicable to the Implied
105 Consent Law.

106 (6) Blood tests shall be administered only by a qualified
107 person to withdraw blood.

108 **SECTION 3.** Section 63-11-7, Mississippi Code of 1972, is
109 amended as follows:

110 63-11-7. If any person be unconscious or dead as a result of
111 an accident, or unconscious at the time of arrest or apprehension
112 or when the test is to be administered, or is otherwise in a
113 condition rendering him incapable of refusal, such person shall be
114 subjected to a blood test for the purpose of determining the
115 alcohol content of his blood as provided in this chapter, if the
116 arresting officer has reasonable grounds to believe the person to
117 have been driving a motor vehicle upon the public highways, public
118 roads and streets of this state while under the influence of
119 intoxicating liquor. The results of such test or tests, however,
120 shall not be used in evidence against such person in any court or
121 before any regulatory body without the consent of the person so
122 tested, or, if deceased, such person's legal representative.
123 However, refusal of release of evidence so obtained by such
124 officer or agency will in criminal actions against such person
125 result in the suspension of his or her driver's license for a
126 period of ninety (90) days as provided in this chapter for

127 conscious and capable persons who have refused to submit to such
128 test. Blood may only be withdrawn under the provisions of Section
129 63-11-9 by a qualified person to withdraw blood. It is the intent
130 of this chapter that blood samples taken under this section shall
131 be used exclusively for statistical evaluation of accident causes
132 with safeguards established to protect the identity of such
133 victims and to extend the rights of privileged communications to
134 those engaged in taking, handling and evaluating such statistical
135 evidence.

136 **SECTION 4.** Section 63-11-9, Mississippi Code of 1972, is
137 amended as follows:

138 63-11-9. Under Section 63-11-7, any qualified person to
139 withdraw blood acting at the request of a law enforcement officer
140 may withdraw blood for the purpose of determining the alcoholic
141 content therein. This limitation shall not apply to the taking of
142 breath or urine specimens.

143 **SECTION 5.** Section 63-11-19, Mississippi Code of 1972, is
144 amended as follows:

145 63-11-19. A chemical analysis of the person's breath, blood
146 or urine, to be considered valid under the provisions of this
147 section, shall have been performed according to methods approved
148 by the State Crime Laboratory created pursuant to Section 45-1-17
149 and the Commissioner of Public Safety and performed by an
150 individual possessing a valid permit issued by the State Crime
151 Laboratory for making such analysis. Blood tests shall only be
152 administered by a qualified person to withdraw blood. The State
153 Crime Laboratory and the Commissioner of Public Safety are
154 authorized to approve satisfactory techniques or methods, to
155 ascertain the qualifications and competence of individuals to
156 conduct such analyses, and to issue permits which shall be subject
157 to termination or revocation at the discretion of the State Crime
158 Laboratory. The State Crime Laboratory shall not approve the
159 permit required herein for any law enforcement officer other than

160 a member of the State Highway Patrol, a sheriff or his deputies, a
161 city policeman, an officer of a state-supported institution of
162 higher learning campus police force, a security officer appointed
163 and commissioned pursuant to the Pearl River Valley Water Supply
164 District Security Officer Law of 1978, a national park ranger, a
165 national park ranger technician, a military policeman stationed at
166 a United States military base located within this state other than
167 a military policeman of the Army or Air National Guard or of
168 Reserve Units of the Army, Air Force, Navy or Marine Corps, a
169 marine law enforcement officer employed by the Department of
170 Marine Resources, or a conservation officer employed by the
171 Mississippi Department of Wildlife, Fisheries and Parks. The
172 permit given a marine law enforcement officer shall authorize such
173 officer to administer tests only for violations of Sections
174 59-23-1 through 59-23-7. The permit given a conservation officer
175 shall authorize such officer to administer tests only for
176 violations of Sections 59-23-1 through 59-23-7 and for hunting
177 related incidents resulting in injury or death to any person by
178 discharge of a weapon as provided under Section 49-4-31.

179 The State Crime Laboratory shall make periodic, but not less
180 frequently than quarterly, tests of the methods, machines or
181 devices used in making chemical analysis of a person's breath as
182 shall be necessary to ensure the accuracy thereof, and shall issue
183 its certificate to verify the accuracy of the same.

184 **SECTION 6.** This act shall take effect and be in force from
185 and after July 1, 2007.