

By: Representative Evans

To: Judiciary B

HOUSE BILL NO. 862

1 AN ACT TO AMEND SECTIONS 63-11-21, 63-11-23 AND 63-11-25,  
 2 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE TOLLING OF THE  
 3 SUSPENSION PERIOD DURING APPEAL FOR REFUSAL TO SUBMIT TO A  
 4 CHEMICAL TEST; TO BRING FORWARD SECTION 63-11-26, MISSISSIPPI CODE  
 5 OF 1972, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

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

9 63-11-21. If a person refuses upon the request of a law  
 10 enforcement officer to submit to a chemical test of his breath  
 11 designated by the law enforcement agency as provided in Section  
 12 63-11-5, none shall be given, but the officer shall at that point  
 13 demand the driver's license of the person, who shall deliver his  
 14 driver's license into the hands of the officer. If a person  
 15 refuses to submit to a chemical test under the provisions of this  
 16 chapter, the person shall be informed by the law enforcement  
 17 officer that the refusal to submit to the test shall subject him  
 18 to suspension of the privilege to operate a motor vehicle. The  
 19 officer shall give the driver a receipt for his license on forms



20 prescribed and furnished by the Commissioner of Public Safety,  
21 which shall serve as a driver's license while a refusal is  
22 appealed under Section 63-11-25. The officer shall forward the  
23 driver's license together with a sworn report to the Commissioner  
24 of Public Safety stating that he had reasonable grounds and  
25 probable cause to believe the person had been operating a motor  
26 vehicle upon the public highways, public roads and streets of this  
27 state while under the influence of intoxicating liquor or any  
28 other substance which may impair a person's mental or physical  
29 ability, stating the grounds, and that the person had refused to  
30 submit to the chemical test of his breath upon request of the law  
31 enforcement officer.

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

34 63-11-23. (1) **Administrative license suspension for test**  
35 **refusal.** The Commissioner of Public Safety, or his authorized  
36 agent, shall review the sworn report by a law enforcement officer  
37 as provided in Section 63-11-21.

38 (a) If upon review the Commissioner of Public Safety,  
39 or his authorized agent, finds (i) that the law enforcement  
40 officer had reasonable grounds and probable cause to believe the  
41 person had been operating a motor vehicle upon the public  
42 highways, public roads \* \* \* or streets of this state while under  
43 the influence of intoxicating liquor or any other substance that  
44 may impair a person's mental or physical ability; (ii) that the



45 person refused to submit to the chemical test of the person's  
46 breath, blood or urine upon request of the officer; and (iii) that  
47 the person was informed that his license and driving privileges  
48 would be suspended or denied if he refused to submit to the  
49 chemical test of his breath, blood or urine, then the Commissioner  
50 of Public Safety, or his authorized agent, shall give notice to  
51 the licensee that his license or permit to drive, or any  
52 nonresident operating privilege, shall be suspended thirty (30)  
53 days after the date of the notice for a period of ninety (90) days  
54 if the person has not previously been convicted of or  
55 nonadjudicated for a violation of Section 63-11-30, or, for a  
56 period of one (1) year if the person was previously convicted or  
57 nonadjudicated under Section 63-11-30. If the commissioner or his  
58 authorized agent determines that the license or permit should not  
59 be suspended, he shall return the license or permit to the  
60 licensee.

61 (b) The notice of suspension shall be in writing and  
62 conform to Section 63-1-52.

63 (c) A person may continue to drive on either an  
64 interlock-restricted license or under a drug-testing program if so  
65 ordered by a court in the course of a criminal proceeding for a  
66 violation of Section 63-11-30.

67 (2) **Extension or suspension of privilege to drive; request**  
68 **for trial.** (a) If the chemical testing of a person's breath  
69 indicates the blood alcohol concentration was eight one-hundredths



70 percent (.08%) or more for persons who are above the legal age to  
71 purchase alcoholic beverages under state law, or two  
72 one-hundredths percent (.02%) or more for persons who are below  
73 the legal age to purchase alcoholic beverages under state law,  
74 based upon grams of alcohol per one hundred (100) milliliters of  
75 blood or grams of alcohol per two hundred ten (210) liters of  
76 breath as shown by a chemical analysis of the person's blood,  
77 breath, or urine, the arresting officer shall seize the license  
78 and give the driver a receipt for his license on forms prescribed  
79 by the Commissioner of Public Safety and shall promptly forward  
80 the license together with a sworn report to the Commissioner of  
81 Public Safety. The receipt given a person shall be valid as a  
82 permit to operate a motor vehicle for thirty (30) days in order  
83 that the defendant may be processed through the court having  
84 original jurisdiction and a final disposition had.

85 (b) If the defendant requests a trial within thirty  
86 (30) days and trial is not commenced within thirty (30) days, then  
87 the court shall determine if the delay in the trial is the fault  
88 of the defendant or his counsel. If the court finds that it is  
89 not the fault of the defendant or his counsel, then the court  
90 shall order the defendant's privileges to operate a motor vehicle  
91 to be extended until the defendant is convicted upon final order  
92 of the court.

93 (c) If a receipt or permit to drive issued under this  
94 subsection expires without a trial having been requested as



95 provided in this subsection, then the Commissioner of Public  
96 Safety, or his authorized agent, shall suspend the license or  
97 permit to drive or any nonresident operating privilege for the  
98 applicable period of time as provided in subsection (1) of this  
99 section.

100 (3) **Offenders driving without a license.** If the person is a  
101 resident without a license or permit to operate a motor vehicle in  
102 this state, the Commissioner of Public Safety, or his authorized  
103 agent, shall deny to the person the issuance of a license or  
104 permit for a period of one (1) year beginning thirty (30) days  
105 after the date of notice of the suspension.

106 (4) **Appeal.** It shall be the duty of the municipal  
107 prosecuting attorney, county prosecuting attorney, an attorney  
108 employed under the provisions of Section 19-3-49, or if there is  
109 not a prosecuting attorney for the municipality or county, the  
110 duty of the district attorney to represent the state in any  
111 hearing on a de novo appeal held under the provisions of Section  
112 63-11-25, Section 63-11-37 or Section 63-11-30.

113 (5) **Suspension subsequent to conviction.** Unless the person  
114 obtains an interlock-restricted license or the court orders the  
115 person to exercise the privilege to operate a motor vehicle only  
116 under an interlock-restricted license or while participating in a  
117 court-ordered drug-testing program, thirty (30) days after receipt  
118 of the court abstract documenting a person's conviction under  
119 Section 63-11-30, the Department of Public Safety shall suspend



120 the driver's license and privileges of the person to operate a  
121 motor vehicle as follows:

122 (a) When sentenced under Section 63-11-30(2):

123 (i) For a first offense: one hundred twenty (120)  
124 days;

125 (ii) For a second offense: one (1) year;

126 (iii) For a third offense: for the full period of  
127 the person's sentence; upon release from incarceration, the person  
128 will be eligible for only an interlock-restricted license for  
129 three (3) years;

130 (iv) For a fourth or subsequent offense: for the  
131 full period of the person's sentence; upon release from  
132 incarceration, the person will be eligible for only an  
133 interlock-restricted license for ten (10) years and will further  
134 be subject to court-ordered drug testing if the original offense  
135 involved operating a motor vehicle under the influence of a drug  
136 other than alcohol.

137 (b) When sentenced under Section 63-11-30(3) (Zero  
138 Tolerance for Minors):

139 (i) For a first offense: one hundred twenty (120)  
140 days;

141 (ii) For a second offense: one (1) year;

142 (iii) For a third offense occurring within five  
143 (5) years, suspend or deny the driving privilege for two (2) years



144 or until the person reaches the age of twenty-one (21), whichever  
145 is longer.

146 (6) **Suspensions.** (a) Notices of suspension given under  
147 this section shall be in writing and conform to Section 63-1-52.

148 (b) Suspensions under this and any other chapter shall  
149 run consecutively and not concurrently.

150 (7) **License reinstatement.** A person is eligible for an  
151 unrestricted license when the person has completed an alcohol  
152 safety education program as provided in Section 63-11-32, has  
153 satisfied all other conditions of law and of the person's sentence  
154 or nonadjudication, and is not otherwise barred from obtaining an  
155 unrestricted license.

156 **SECTION 3.** Section 63-11-25, Mississippi Code of 1972, is  
157 amended as follows:

158 63-11-25. If the forfeiture, suspension or denial of  
159 issuance is sustained by the Commissioner of Public Safety, or his  
160 duly authorized agent pursuant to subsection (1) of Section  
161 63-11-23, upon such hearing, the person aggrieved may file within  
162 ten (10) days after the rendition of such decision a petition in  
163 the circuit or county court having original jurisdiction of the  
164 violation for review of such decision and such hearing upon review  
165 shall proceed as a trial de novo before the court without a jury.  
166 The petition shall be served upon the Attorney General and the  
167 Commissioner of Public Safety. Provided further, that no such  
168 party shall be allowed to exercise the driving privilege while any



169 such appeal is pending. The appeal shall toll the forfeiture,  
170 suspension or denial for a reasonable amount of time during such  
171 appeal.

172 **SECTION 4.** Section 63-11-26, Mississippi Code of 1972, is  
173 brought forward as follows:

174 63-11-26. When the Commissioner of Public Safety, or his  
175 authorized agent, shall suspend the driver's license or permit to  
176 drive of a person or shall deny the issuance of a license or  
177 permit to a person as provided in Section 63-11-30, the person  
178 shall not be entitled to any judicial review of or appeal from the  
179 actions of the commissioner. A final conviction under said  
180 section shall finally adjudicate the privilege of such convicted  
181 person to operate a motor vehicle upon the public highways, public  
182 roads and streets of this state.

183 **SECTION 5.** This act shall take effect and be in force from  
184 and after July 1, 2024.

