

4/13/14

8:00 AM

Chapter No. 473
14/HR40/R1517SG
EST / glj

HOUSE BILL NO. 412

Originated in House  Clerk

HOUSE BILL NO. 412

AN ACT TO AMEND SECTIONS 63-11-30 AND 63-11-31, MISSISSIPPI CODE OF 1972, TO REVISE THE USE OF IGNITION INTERLOCK AND NONADJUDICATION IN IMPLIED CONSENT VIOLATIONS; TO AMEND SECTIONS 63-1-46 AND 63-11-23, MISSISSIPPI CODE OF 1972, TO CONFORM; TO CREATE THE INTERLOCK DEVICE FUND; AND FOR RELATED PURPOSES.

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

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

[Until * * * October 1, 2014, this section shall read:]

63-11-30. (1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance which has impaired such person's ability to operate a motor vehicle; (c) has an alcohol concentration of eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, in the person's blood based upon grams of alcohol per one

hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter; (d) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or (e) has an alcohol concentration of four one-hundredths percent (.04%) or more in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, breath or urine, administered as authorized by this chapter for persons operating a commercial motor vehicle.

(2) (a) Except as otherwise provided in subsection (3), upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. In addition, the Department of Public Safety, the Commissioner of Public Safety or his duly authorized agent shall,

after conviction and upon receipt of the court abstract, suspend the driver's license and driving privileges of such person for a period of not less than ninety (90) days and until such person attends and successfully completes an alcohol safety education program as herein provided. Commercial driving privileges shall be suspended as provided in Section 63-1-216.

The circuit court having jurisdiction in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under subsection (1) of this section, and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars (\$50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon

appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

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

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

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of

the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

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

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

(b) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not less than Six Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Except as may otherwise be provided by paragraph (d) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for two (2) years. Suspension of a commercial driver's license shall be governed by Section 63-1-216. Upon any second conviction as described in this paragraph, the court shall ascertain whether

the defendant is married, and if the defendant is married shall obtain the name and address of the defendant's spouse; the clerk of the court shall submit this information to the Department of Public Safety. Further, the commissioner shall notify in writing, by certified mail, return receipt requested, the owner of the vehicle and the spouse, if any, of the person convicted of the second violation of the possibility of forfeiture of the vehicle if such person is convicted of a third violation of subsection (1) of this section. The owner of the vehicle and the spouse shall be considered notified under this paragraph if the notice is deposited in the United States mail and any claim that the notice was not in fact received by the addressee shall not affect a subsequent forfeiture proceeding.

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

(c) Except as otherwise provided in subsection (3), for any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00), shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; provided, however, that for any such offense which does not result in serious injury or death to

any person, any sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. The law enforcement agency shall seize the vehicle operated by any person charged with a third or subsequent violation of subsection (1) of this section, if such convicted person was driving the vehicle at the time the offense was committed. Such vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53. Except as may otherwise be provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years. . The suspension of a commercial driver's license shall be governed by Section 63-1-216.

(d) Except as otherwise provided in subsection (3), any person convicted of a second violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall successfully complete treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of one (1) year after such person's

driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

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

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

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

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

The court in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective

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

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

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete

an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

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

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

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

(c) Upon any second conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than Five Hundred

Dollars (\$500.00) and shall have his driver's license suspended for one (1) year.

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

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

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

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

(4) In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or who was unconscious at the time of a chemical test and

refused to consent to the introduction of the results of such test in any prosecution, shall suffer an additional suspension of driving privileges as follows:

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

(5) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each such death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for

the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

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

(7) Convictions in other states of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring after July 1, 1992, shall be counted for the purposes of

determining if a violation of subsection (1) of this section is a first, second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

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

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

(10) Suspension of driving privileges for any person convicted of violations of subsection (1) of this section shall run consecutively.

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

(12) A person who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of

sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars (\$1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a

felony and, upon conviction, shall be fined not less than Ten Thousand Dollars (\$10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether such offense was a first, second, third or subsequent offense shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars (\$10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

[From and after * * * October 1, 2014, this section shall read:]

63-11-30. (1) It is unlawful for * * * a person to drive or otherwise operate a vehicle within this state * * * if the person:

(a) Is under the influence of intoxicating liquor;

(b) Is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle;

(c) Is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or

(d) Has an alcohol concentration in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood, or grams of alcohol per two hundred ten (210) liters of breath, as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter, of:

(i) Eight one-hundredths percent (.08%) or more for * * * a person who * * * is above the legal age to purchase alcoholic beverages under state law * * *;

(ii) Two one-hundredths percent (.02%) or more for * * * a person who * * * is below the legal age to purchase alcoholic beverages under state law * * *; or * * *

(iii) Four one-hundredths percent (.04%) or more * * * for * * * a person operating a commercial motor vehicle.

(2) (a) **First offense DUI.** (i) Except as otherwise provided in * * * subsection (3) of this section, upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; * * * the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within one (1) year. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. * * * Fifteen (15) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license and driving privileges of the person for * * * ninety (90) days * * * unless the person has

surrendered his driver's license * * * to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license for ninety (90) days and until the person has attended and successfully completed an alcohol safety education program as provided in Section 63-11-32.

(ii) Commercial driving privileges shall be suspended as provided in Section 63-1-216 for a violation of subsection (1) of this section.

(iii) A qualifying first offense under subsection (1) of this section may be nonadjudicated by the court under subsection (14) of this section. The holder of a commercial driver's license or a commercial learning permit is ineligible for nonadjudication.

* * *

(b) **Second offense DUI.** (i) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not

be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. * * * Fifteen (15) days after receipt of the court abstract, the * * * Department of Public Safety shall suspend the driver's license of the person for * * * one (1) year unless the person has surrendered his driver's license * * * to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license until the person has either been subject to a full one-year suspension of license or has exercised the driving privilege solely under an interlock-restricted driver's license for one (1) full year.

(ii) Suspension of * * * commercial * * * driving privileges shall be governed by Section 63-1-216.

(c) **Third and subsequent offense DUI.** (i) Except as otherwise provided in subsection (3), for any third conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections. For any offense that does not result in serious injury or death to any person, the sentence of incarceration may

be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. * * * The person * * * may exercise the privilege * * * to drive only under * * * a driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31 for three (3) years following release from incarceration and * * * will not be eligible for an unrestricted driver's license for three (3) years.

(ii) The suspension of * * * commercial * * * driving privileges shall be governed by Section 63-1-216.

* * *

(* * *d) Except as otherwise provided in subsection (3), any person convicted of a second or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse, the person shall successfully complete treatment at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee representing the cost of the assessment. Each person who participates in a treatment program shall pay a fee representing the cost of treatment.

(* * *e) The * * * use of ignition interlock devices shall be as provided in Section 63-11-31. * * *

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

(b) (i) A person under the age of twenty-one (21) is eligible for nonadjudication of a qualifying first offense by the court pursuant to subsection (14) of this section.

(ii) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, * * * the person * * * shall be fined Two Hundred Fifty Dollars (\$250.00); * * * the court shall order * * * the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within one (1) year. Fifteen (15) days after receipt of the court abstract, the Department of Public Safety shall suspend the driver's license and driving privileges of the person for ninety (90) days unless the person has surrendered his driver's license to be voided and

obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will not be eligible for any other form of license for ninety (90) days. The court may also require attendance at a victim impact panel.

* * *

(c) * * * A person under the age of twenty-one (21) years * * * who is convicted of a second violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, * * * shall be fined not more than Five Hundred Dollars (\$500.00) * * *. Fifteen (15) days after receipt of the court abstract, the Department of Public Safety shall * * * suspend the driver's license * * * of the person for one (1) year unless the person has surrendered his driver's license to be voided and obtained a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will not be eligible for an unrestricted license until the person has either been subject to a full one-year suspension or has exercised the driving privilege solely under an interlock restricted license for one (1) full year.

(d) * * * A person under the age of twenty-one (21) years * * * who is convicted of a third or subsequent violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, * * * shall be fined not more

than One Thousand Dollars (\$1,000.00) and, upon receipt of the court abstract, the Department of Public Safety shall * * * suspend the driver's license * * * of the person until the person reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period * * * of driver's license * * * suspension reduced to six (6) months if * * * the person receives an in-depth diagnostic assessment, and as a result of * * * the assessment is determined to be in need of treatment * * * for alcohol * * * or drug abuse * * * and successfully completes treatment * * * for alcohol * * * or drug abuse * * * at a program site certified by the Department of Mental Health. * * * Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

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

* * *

(4) **DUI test refusal.** In addition to the other penalties provided in this section, every person refusing a law enforcement

officer's request to submit to a chemical test of * * * the person's breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of the test in any prosecution, shall suffer an additional administrative suspension of driving privileges as * * * set forth in Section 63-11-23 unless the person surrenders his driver's license to be voided and obtains a new driver's license that is restricted to operation of vehicles equipped with an ignition interlock device that complies with Section 63-11-31; the person will be limited to exercise of the driving privilege only under an interlock-restricted driver's license for twice the period imposed for administrative driver's license suspension under Section 63-11-23. * * * Any other license restriction or suspension imposed upon the person under this chapter will run consecutively and not concurrently with the administrative suspension for test refusal imposed under this section or Section 63-11-23.

(5) **Aggravated DUI.** (a) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each * * * victim who suffers death, mutilation, disfigurement or other injury and shall be committed to the custody of the State

Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each * * * death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(b) The court may order an ignition-interlock restriction on the offender's privilege to drive as a condition of probation or post-release supervision not to exceed four (4) years.

(6) **DUI citations.** Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The * * * court clerk shall * * * send a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction or other order of the court, * * * to the * * *

Department of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) **Out-of-state prior convictions.** Convictions in * * * another state, territory or possession of the United States, or under the law of a federally recognized Native American tribe, of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring * * * within five (5) years before an offense shall be counted for the purposes of determining if a violation of subsection (1) of this section is a second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) **Charging of subsequent offenses.** For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the indictment shall not be required to enumerate previous convictions. It shall only be necessary that the indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty

shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third or subsequent offense of this section.

(9) **License eligibility for underage offenders.** Any person under the legal age to obtain a license to operate a motor vehicle convicted under this section shall not be eligible to receive a driver's license until the person reaches the age of eighteen (18) years.

(10) **License suspensions and restrictions to run consecutively.** Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of subsection (1) of this section shall run consecutively and not concurrently.

(11) **Ignition interlock.** The court * * * shall order * * * installation and use of * * * an ignition interlock device as provided in Section 63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section. * * *

(12) **DUI child endangerment.** A person over the age of twenty-one (21) who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle. The offense of endangering a child by driving

under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars (\$1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars (\$10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether the offense was a first, second, third or subsequent offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars (\$10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

(13) **Expunction.** (a) Any person * * * convicted under subsection (2) or (3) of this section of a first offense of driving under the influence and who was not the holder of a commercial driver's license or a commercial learning permit may petition the circuit court of the county in which the conviction was had for an order to expunge the record of the conviction at least five (5) years after successful completion of all terms and conditions of the sentence imposed for the conviction. Expunction under this subsection will only be available to a person:

(i) Who has successfully completed all terms and conditions of the sentence imposed for the conviction;

(ii) Who did not refuse to submit to a test of his blood or breath;

(iii) Whose blood alcohol concentration tested below sixteen one-hundredths percent (.16%) if test results are available;

(iv) Who has not been convicted of * * * and does not have pending any other offense of driving under the influence; and

(v) Who has provided the court with justification as to why the conviction should be expunged.

(b) A person is eligible for only one (1) expunction under this subsection, and the Department of Public Safety shall maintain a confidential registry of all cases of expunction under this subsection for the sole purpose of determining a person's eligibility as a first offender under this section.

(c) The court in its order of expunction shall state in writing the justification for which the expunction was granted and forward the order to the Department of Public Safety within five (5) days of the entry of the order.

(14) Nonadjudication. (a) For the purposes of this chapter, "nonadjudication" means that the court withholds adjudication of guilt, either at the conclusion of a trial on the merits, or upon the entry of a plea of guilt by a defendant. Nonadjudication must be conditioned upon the successful completion of any conditions imposed by the court under this subsection.

(b) The court may rule that a qualifying first offense under subsection (1) or (3) of this section be nonadjudicated. A person is eligible for nonadjudication only one (1) time. A qualifying first offense is one where a breath test was not

refused unless the court provides written findings why nonadjudication is being allowed where a breath test was refused.

(c) Nonadjudication may be initiated upon the filing of a petition for nonadjudication or at any stage of the proceedings before conviction in the discretion of the court; the court may withhold adjudication of guilt, defer sentencing, and enter an order imposing requirements on the offender.

(i) The court shall order the person to:

1. Pay the nonadjudication fee imposed under Section 63-11-31;

2. Pay all fines, penalties and assessments that would have been imposed for conviction;

3. Attend and complete an alcohol safety education program as provided in Section 63-11-32;

4. Install an ignition interlock device on every motor vehicle driven by the person, obtain an interlock restricted license, and maintain that license for one hundred twenty (120) days; failure to obtain an interlock restricted license will result in a ninety-day driver's license suspension pursuant to Section 63-11-31; and

5. Obtain from the interlock vendor proof that the person has not had violations of an ignition interlock device.

(ii) Other conditions to be imposed by the court may include, but are not limited to, alcohol or drug screening, or

both, proof that the person has not committed any other traffic violations while under court supervision, proof of immobilization or impoundment of vehicles owned by the offender if required, and attendance at a victim-impact panel.

(d) The court may enter an order of nonadjudication only if the court finds, after a hearing, that the offender has successfully completed all conditions imposed by law and the court.

(e) The clerk shall forward a record of every nonadjudicated case to the Department of Public Safety which shall maintain a confidential registry of all cases that are nonadjudicated as provided in this subsection (14). Judges and prosecutors involved in the trial of implied consent violations shall have access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and is therefore ineligible for another nonadjudication. The Driver Services Bureau of the department shall have access to the confidential registry for the purpose of determining whether a person is eligible for a form of license not restricted to operating a vehicle equipped with an ignition interlock device.

SECTION 2. Section 63-11-31, Mississippi Code of 1972, is amended as follows:

[Until October 1, 2014, this section shall read:]

63-11-31. (1) In addition to the penalties authorized for any second or subsequent convictions of Section 63-11-30, the court shall order either the impoundment or immobilization of all vehicles registered to the person convicted for the entire length of license suspension to commence upon conviction and persist during the entire driver's license suspension period. However, a county, municipality, sheriff's department or the Department of Public Safety shall not be required to keep, store, maintain, serve as a bailee or otherwise exercise custody over a motor vehicle impounded under the provisions of this section.

(2) (a) If other licensed drivers living in the household are dependent upon the vehicle subject to impoundment or immobilization for necessary transportation, the court may order the installation of an ignition interlock system on the vehicle in lieu of impoundment or immobilization. Additionally, the court shall order the installation of an ignition interlock system on all vehicles registered to the person for a minimum period of six (6) months to occur upon reinstatement of the person's driver's license if the court determines it is a vehicle to which the person has access and which should be subject to ignition interlock. The cost associated with impoundment, immobilization or ignition interlock shall be paid by the person convicted. For the purpose of this section, "ignition interlock device" means a device which connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from

starting if the driver's blood alcohol level exceeds the calibrated setting on the device.

(b) A person may not tamper with, or in any way attempt to circumvent the immobilization or impoundment of vehicles ordered by the court. A violation of this paragraph (b) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year or both.

(c) When a court orders a person to operate only a motor vehicle which is equipped with a functioning ignition interlock device, the court shall establish a specific calibration setting no lower than two one-hundredths percent (.02%) nor more than four one-hundredths percent (.04%) blood alcohol concentration at which the ignition interlock device will prevent the motor vehicle from being started.

(d) Upon ordering use of an ignition interlock device, the court shall:

(i) State on the record the requirement for and the period of use of the device, and so notify the Department of Public Safety;

(ii) Direct that the records of the department reflect that the person may not operate a motor vehicle that is not equipped with an ignition interlock device;

(iii) Direct the department to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person may operate only a motor vehicle equipped with an ignition interlock device;

(iv) Require proof of the installation of the device and periodic reporting by the person for verification of the proper operation of the device;

(v) Require the person to have the system monitored for proper use and accuracy by an entity approved by the department at least semiannually, or more frequently as the circumstances may require;

(vi) Require the person to pay the reasonable cost of leasing or buying, monitoring, and maintaining the device, and may establish a payment schedule therefore.

(e) (i) 1. A person prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

2. A person may not attempt to start or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock device.

3. A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition interlock device that has been installed in a motor vehicle.

4. A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person who the provider of such vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition interlock device.

(ii) A violation of this paragraph (e) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(iii) A person shall not be in violation of this paragraph (e) if:

1. The starting of a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not operate the vehicle;
or

2. The court finds that a person is required to operate a motor vehicle in the course and scope of the person's employment. If the vehicle is owned by the person's employer, the person may operate that vehicle during regular working hours for the purposes of employment without installation of an ignition

interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is kept with the vehicle at all times. This employment exemption does not apply if the business entity that owns the vehicle is owned or controlled by the person who is prohibited from operating the motor vehicle not equipped with an ignition interlock device.

(f) (i) A judge may also order that the vehicle owned or operated by a person or a family member of any person who committed a violation of Section 63-11-30 be equipped with an ignition interlock device for all or a portion of the time the driver's license of the operator of such vehicle is suspended or restricted pursuant to this section, if:

1. The operator of the vehicle used to violate Section 63-11-30 has at least one (1) prior conviction for driving a motor vehicle when such person's privilege to do so is cancelled, suspended or revoked as provided by Section 63-11-30; or

2. The driver's license of the operator of such vehicle was cancelled, suspended or revoked at the time of the violation of Section 63-11-30.

(ii) The provisions of this paragraph (f) shall not apply if the vehicle used to commit the violation of Section 63-11-30, was, at the time of such violation, rented or stolen.

(3) The provisions of this section are supplemental to the provisions of Section 63-11-30.

[From and after * * * October 1, 2014, this section shall read:]

63-11-31. (1) (a) The provisions of this section are supplemental to the provisions of Section 63-11-30.

(b) (i) * * * "Ignition interlock device" means a device approved by the Department of Public Safety that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if the driver's blood alcohol level exceeds the calibrated setting on the device.

(ii) "Interlock restricted license" means a driver's license bearing a restriction that limits the person to operation of vehicles equipped with an ignition interlock device.

(c) A person who can exercise the privilege of driving only under an interlock restricted license:

(i) Must have an ignition interlock device installed and operating on all motor vehicles driven by the person; or

(ii) If the person does not obtain an interlock restricted license within fifteen (15) days after the department receives the court abstract of a conviction or other order affecting the person's privilege to drive under Section 63-11-30:

1. The Department of Public Safety must suspend the person's driving privilege; notice of the suspension shall be given as provided in Section 63-1-52; and

2. For a second or subsequent violation of Section 63-11-30, all motor vehicles owned by the person must be either impounded or immobilized as provided in subsection (6) of this section.

(d) A person who installs an ignition interlock device and obtains an interlock restricted license before conviction or nonadjudication shall be given credit for the time period the ignition interlock device has been in use at the time of sentencing or nonadjudication.

(2) (a) The cost of installation and operation of an ignition interlock device shall be borne by the person to whom * * * an * * * interlock-restricted driver's license is issued unless * * * the person is determined to be indigent.

(b) * * * (i) A person convicted under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of * * * Fifty Dollars (\$50.00), to be deposited in the * * * Interlock Device Fund in the State Treasury.

* * * (ii) A person nonadjudicated under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Two Hundred Fifty Dollars (\$250.00) to be deposited in the * * * Fund in the State Treasury.

(3) (a) The * * * Department of Public Safety shall promulgate rules and regulations for the use of an ignition interlock device * * *. The Department of Public Safety shall approve which vendors shall be used to furnish the systems, may assess fees to the vendors, and shall prescribe the maximum costs to the offender for installation, removal, monthly operation, periodic inspections, calibrations and repairs.

(b) A person who has an ignition interlock device installed in a vehicle shall:

(i) Provide proof of the installation of the device and periodic reporting for verification of the proper operation of the device;

(ii) Have the system monitored for proper use and accuracy * * * as required by departmental regulation;

(iii) Pay the reasonable cost of leasing or buying, monitoring, and maintaining the device * * * unless the person is determined to be indigent.

(4) (a) (i) A person who is limited to driving only under an * * * interlock-restricted driver's license shall not operate a vehicle that is not equipped with an ignition interlock device.

(ii) A person prohibited from operating a motor vehicle that is not equipped with an ignition interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

(iii) A person may not start or attempt to start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not equipped with an ignition interlock device.

(iv) A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition interlock device that has been installed in a motor vehicle.

(v) A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person who the provider of the vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition interlock device.

(b) A violation of this subsection (4) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both * * *, unless the starting of a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the restriction does not operate the vehicle * * *.

* * *

(* * *5) * * * (a) In order to obtain an interlock restricted license, a person must:

(i) Be otherwise qualified to operate a motor vehicle, and will be subject to all other restrictions on the privilege to drive provided by law;

(ii) Submit proof that an ignition interlock device is installed and operating on all motor vehicles driven by the person; and

(iii) Pay the fee set forth in Section 63-1-43 to obtain the license.

(b) (i) If the person's privilege to drive has been suspended due to the person's violation of Section 63-11-30, the person must also pay the reinstatement fee set forth in Section 63-1-46(2)(a).

(ii) If the person obtains an interlock restricted license before suspension of the driving privilege is imposed, the reinstatement fee will not be assessed.

(6) (a) In addition to the penalties authorized for any second or subsequent conviction under Section 63-11-30, the court shall order that all vehicles owned by the offender that are not equipped with an ignition interlock device must be either impounded or immobilized pending further order of the court lifting the offender's driving restriction. However, no county, municipality, sheriff's department or the Department of Public Safety shall be required to keep, store, maintain, serve as a bailee or otherwise exercise custody over a motor vehicle impounded under the provisions of this section. The cost

associated with any impoundment or immobilization shall be paid by the person convicted without regard to ability to pay.

(b) A person may not tamper with, or in any way attempt to circumvent, vehicle immobilization or impoundment ordered by the court under this section. A violation of this paragraph (b) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(7) (a) The Department of Public Safety shall promulgate rules and regulations for the use of monies in the Interlock Device Fund to offset the cost of device installation and operation by indigent offenders.

(b) Indigence shall be determined based on proof of enrollment in one or more of the following types of public assistance:

(i) Temporary Assistance for Needy Families (TANF);

(ii) Medicaid assistance;

(iii) The Supplemental Nutritional Assistance Program (SNAP), also known as "food stamps";

(iv) Supplemental security income (SSI);

(v) Participation in a federal food distribution program;

(vi) Federal housing assistance;

(vii) Unemployment compensation; or

(viii) Other criteria approved by the department.

(c) No more than ten percent (10%) of the money in the Interlock Device Fund in any fiscal year shall be expended by the department for the purpose of administering the fund.

(d) (i) Money in the Interlock Device Fund will be appropriated to the department to cover part of the costs of installing, removing and leasing ignition interlock devices for indigent people who are required, pursuant to a conviction or nonadjudication under Section 63-11-30, to install an ignition interlock device in all vehicles driven by the person.

(ii) If money is available in the Interlock Device Fund, the department shall pay to the vendor, for one (1) vehicle per offender, up to Fifty Dollars (\$50.00) for the cost of installation, up to Fifty Dollars (\$50.00) for the cost of removal, and up to Thirty Dollars (\$30.00) monthly for verified active usage of the ignition interlock device. The department shall not pay any amount above what an offender would be required to pay for the installation, removal or usage of an ignition interlock device.

(8) In order to reinstate a form of driver's license that is not restricted to operation of an ignition interlock equipped vehicle, the person must:

(a) Submit proof of successful completion of an alcohol safety program as provided in Section 63-11-32 if so ordered by the court;

(b) Pay the reinstatement fee required under Section 63-1-46(1)(a);

(c) Pay the driver's license fee required under Section 63-1-43.

SECTION 3. Section 63-1-46, Mississippi Code of 1972, is amended as follows:

63-1-46. (1) (a) Except as otherwise provided in this section, a fee of One Hundred Dollars (\$100.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended, revoked or cancelled.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) Twenty-five Dollars (\$25.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars (\$25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars (\$25.00) shall be deposited into the special fund created in Section 63-1-45(3) for

purchases of equipment by the Mississippi Highway Safety Patrol;
and

(iv) Twenty-five Dollars (\$25.00) shall be deposited into the * * * Interlock Device Fund created in Section * * * 5 of this act.

(2) (a) A fee of One Hundred Seventy-five Dollars (\$175.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended or revoked under the provisions of the Mississippi Implied Consent Law or as a result of a conviction of a violation of the Uniform Controlled Substances Law under the provisions of Section 63-1-71.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) One Hundred Dollars (\$100.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars (\$25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars (\$25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol;
and

(iv) Twenty-five Dollars (\$25.00) shall be deposited into the * * * Interlock Device Fund created in Section * * * 5 of this act.

(3) A fee of Twenty-five Dollars (\$25.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended for nonpayment of child support under the provisions of Sections 93-11-151 through 93-11-163. The funds received under the provisions of this subsection shall be deposited into the State General Fund in accordance with Section 45-1-23.

(4) The procedure for the reinstatement of a license issued under this article that has been suspended for being out of compliance with an order for support, as defined in Section 93-11-153, and the payment of any fees for the reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(5) All reinstatement fees charged under this section shall be in addition to the fee provided for application for a driver's license in Section 63-1-43.

SECTION 4. Section 63-11-23, Mississippi Code of 1972, is amended as follows:

63-11-23. (1) The Commissioner of Public Safety, or his authorized agent, shall review the sworn report by a law enforcement officer as provided in Section 63-11-21. If upon review the Commissioner of Public Safety, or his authorized agent,

finds (a) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor or any other substance that may impair a person's mental or physical ability; (b) that he refused to submit to the test upon request of the officer; and (c) that the person was informed that his license and driving privileges would be suspended or denied if he refused to submit to the chemical test, then the Commissioner of Public Safety, or his authorized agent, shall give notice to the licensee that his license or permit to drive, or any nonresident operating privilege, shall be suspended thirty (30) days after the date of the notice for a period of ninety (90) days in the event the person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year in the event of any previous conviction of the person under Section 63-11-30. In the event the commissioner or his authorized agent determines that the license should not be suspended, he shall return the license or permit to the licensee.

The notice of suspension shall be in writing and given in the manner provided in Section 63-1-52(2)(a).

(2) If the chemical testing of a person's breath indicates the blood alcohol concentration was eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent

(.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, or breath, or urine, the arresting officer shall seize the license and give the driver a receipt for his license on forms prescribed by the Commissioner of Public Safety and shall promptly forward the license together with a sworn report to the Commissioner of Public Safety. The receipt given a person as provided herein shall be valid as a permit to operate a motor vehicle for a period of thirty (30) days in order that the defendant be processed through the court having original jurisdiction and a final disposition had. If the defendant requests a trial within thirty (30) days and trial is not commenced within thirty (30) days, then the court shall determine if the delay in the trial is the fault of the defendant or his counsel. If the court finds that it is not the fault of the defendant or his counsel, then the court shall order the defendant's driving privileges to be extended until the defendant is convicted. If a receipt or permit to drive issued pursuant to the provisions of this subsection expires without a trial having been requested as provided for in this subsection, then the Commissioner of Public Safety or his authorized agent shall suspend the license or permit to drive or any nonresident

operating privilege for the applicable period of time as provided for in subsection (1) of this section.

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

(4) It shall be the duty of the county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or in the event there is no such prosecuting attorney for the county, the duty of the district attorney to represent the state in any hearing held under the provisions of Section 63-11-25, under the provisions of Section 63-11-37(2) or under the provisions of Section 63-11-30(2)(a).

* * *

SECTION 5. There is created in the State Treasury a special fund to be known as the Interlock Device Fund. The purpose of the fund shall be to provide funding for the Driver's License Bureau of the Department of Public Safety and also to provide funding assistance for ignition interlock devices for persons determined to be unable to afford the installation and maintenance of an ignition interlock device. Monies from the fund shall be distributed by the State Treasurer upon warrants issued by the

Department of Public Safety. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature for the purposes of funding the Driver's License Bureau;
- (b) The interest accruing to the fund;
- (c) Monies paid by a person for deposit into the fund under Section 63-11-31; and

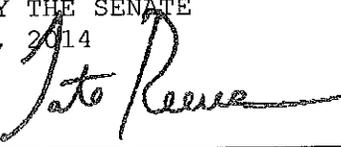
(d) Monies received from such other sources as may be provided by law.

SECTION 6. This act shall take effect and be in force from and after July 1, 2014.

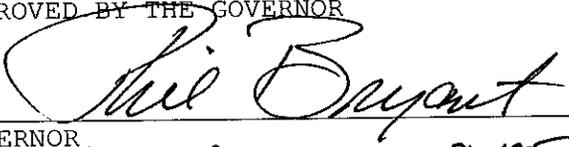
PASSED BY THE HOUSE OF REPRESENTATIVES
March 31, 2014


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 30, 2014


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

4/16/14

8:45 am