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Chapter No. 489
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HOUSE BILL NO. 481

Originated in House _____ Clerk

HOUSE BILL NO. 481

AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PERSONS CONVICTED OF DUI WILL ONLY BE ALLOWED TO OPERATE A VEHICLE EQUIPPED WITH AN IGNITION-INTERLOCK DEVICE; TO PROVIDE A DRIVER'S LICENSE THEREFOR; TO REMOVE HARDSHIP PROVISIONS; TO PROVIDE FOR NONADJUDICATION; TO REQUIRE MANDATORY PROBATION; TO PROVIDE FOR THE EXPUNCTION OF CERTAIN CONVICTIONS; TO AMEND SECTION 63-11-31, MISSISSIPPI CODE OF 1972, TO REVISE IGNITION INTERLOCK; TO AMEND SECTION 63-1-21, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE IGNITION-INTERLOCK-RESTRICTED DRIVER'S LICENSE; TO AMEND SECTION 63-1-43, MISSISSIPPI CODE OF 1972, TO PROVIDE A FEE FOR SUCH LICENSE AND TO CREATE THE IGNITION-INTERLOCK DEVICE FUND; TO AMEND SECTION 63-1-47, MISSISSIPPI CODE OF 1972, TO SPECIFY THE TERM AND RENEWAL OF SUCH LICENSE; TO AMEND SECTIONS 63-11-21 AND 63-11-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY; 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:

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 * * * <u>that</u> has impaired * * * <u>the</u> 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 * * * the 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 * * * the person's blood, breath or urine, administered as authorized by this chapter for persons operating a commercial motor vehicle.

(2) (a) **First offense DUI.** (i) Except as otherwise provided in subparagraph (iii) of this subsection (2)(a) and 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; and the court shall order * * * the 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, or 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 * * * the person for a period of * * * ninety (90) days and until such person attends and successfully completes an alcohol safety education program as provided herein or, in the discretion of the court, * * * thirty (30) days and the person's driving privilege shall be exercised only under an ignition-interlock-restricted driver's license for ninety (90) days following the mandatory thirty-day license suspension. The person shall not be eligible for any other form of license until * * * the person attends and successfully completes 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.

* * *

(iii) * * * A qualifying first offense under subsection (1) of this section may be nonadjudicated by the court.

The court shall follow the procedure in Section 99-15-26 for all nonadjudications. 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 as to why nonadjudication is being allowed where a breath test was refused. The person shall not be eligible for any other form of license until the person attends and successfully completes an alcohol safety education program as provided in Section 63-11-32. The judge shall forward a record of every nonadjudicated case to the Department of Public Safety and the Department of Public Safety shall maintain a confidential registry of all cases that are nonadjudicated as provided in this subparagraph (iii). 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. A record of nonadjudication shall be maintained for five (5) years.

(iv) The court may enter an order of nonadjudication concerning a nonresident first offender, taking into consideration the available resources and programs in the offender's home jurisdiction and the ability of the court to monitor the person's compliance with conditions imposed by the court.

(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. * * * Upon notification of conviction, the Commissioner of Public Safety shall suspend the driver's license of * * * the person for * * * forty-five (45) days. The person's driving privilege shall not be restored except by means of an ignition-interlock-restricted driver's license for one (1) year following the mandatory forty-five-day suspension. The person shall not be eligible for any other form of license until the person attends and successfully completes an alcohol safety education program as provided in Section 63-11-32.

(ii) Suspension of a commercial driver's license shall be governed by Section 63-1-216. * * *

* * *

(c) **Third 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. * * * 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 * * * two (2) years. The person will not be eligible for restoration of the driving privilege except by means of an ignition-interlock-restricted driver's license for three (3) years following release from incarceration and following the mandatory two-year driver's license suspension.

(ii) The suspension of a commercial driver's license shall be governed by Section 63-1-216.

(d) **Fourth or subsequent offense DUI.** Except as otherwise provided in subsection (3), * * * for any fourth or subsequent conviction of any person violating subsection (1) of

this section * * *, without regard to the period of time over which the offenses were committed, the person shall be guilty of a felony and fined not less than Three Thousand Dollars ($3,000.00) nor more than Ten Thousand Dollars ($10,000.00) and shall serve not less than two (2) nor more than ten (10) years in the custody of the Department of Corrections. The Commissioner of Public Safety shall suspend the driver's license of the person for five (5) years which shall begin upon the person's release from the custody of the Department of Corrections.

* * *

(* * * e) 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.

(f) The Department of Public Safety shall promulgate rules and regulations for the use of * * * ignition-interlock devices as provided in Section 63-11-31 and consistent with the provisions therein. * * * The rules and regulations shall provide

that installation of the device shall occur at the residence of the offender and for the calibration of * * * the devices and shall provide that the cost of the use of * * * the systems shall be borne by the offender. The Department of Public Safety shall approve which vendors * * * shall be used to furnish * * * the systems and may assess fees to such vendors. The maximum costs to the offender as prescribed in the department's rules and regulations shall not exceed One Hundred Fifty Dollars ($150.00) for installation and Two Dollars and Fifty Cents ($2.50) per day for the user fee, and the department shall also prescribe maximum fees for periodic inspections, calibrations and repairs.

(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 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) **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 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 * * * the 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 * * * the person as provided for first, second and third or subsequent offenders in subsection (2) of this section. * * * The 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 * * * the suspension as part of a plea bargain.

(5) **Aggravated DUI.** 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) **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 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) **Out-of-state prior convictions.** 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 * * * 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 to run consecutively.** Suspension of driving privileges for any person convicted of violations of subsection (1) of this section shall run consecutively.

(11) **Ignition interlock.** The court may order the use of any ignition-interlock device as provided in Section 63-11-31. The court shall make specific findings that an ignition-interlock device has been ordered.

(12) **DUI child endangerment.** 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 * * * 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 * * * <u>the</u> 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) (a) Any person who, on or before June 30, 2014, was convicted under subsection (2) of this section of a first offense of driving under the influence may petition the circuit court of the county in which the conviction was had for an order to expunge the record of 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 or 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.

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

63-11-31. (1) * * * For the * * * purposes of this section, "ignition-interlock device" means a device * * * 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.

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

(b) * * * Anyone 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 not less than Thirty Dollars ($30.00) nor more than One Hundred Dollars ($100.00), to be deposited in the Ignition-Interlock Device Fund in the State Treasury. Anyone who receives a nonadjudication under Section 63-11-30 shall be assessed by the court, a fee of Two Hundred Fifty Dollars ($250.00) to be deposited in the Ignition-Interlock Device Fund in the State Treasury.

(3) (a) * * * The specific calibration setting for an ignition-interlock device shall be no * * * more than * * * three

one-hundredths percent (0.03%) blood alcohol concentration for persons twenty-one (21) years of age or older and no more than two one-hundredths percent (0.02%) blood alcohol concentration for persons under twenty-one (21) years of age * * *, over which concentration the ignition-interlock device will prevent the motor vehicle from being started.

* * *

(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 by an entity approved by the department at least semiannually, or more frequently as the circumstances may require;

(* * *iii) * * * Pay the reasonable cost of leasing or buying, monitoring, and maintaining the device * * *.

* * * (4) (a) (i) A person who is limited to driving only under an ignition-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.

(* * *c) A person shall not be in violation of this * * * subsection (4) if:

* * *(i) 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; or

* * *(ii) 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 * * * the 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.

(* * *5) (* * *a) 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:

* * *(i) 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 * * * the person's privilege to do so is cancelled, suspended or revoked as provided by Section 63-11-30; or

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

(* * *b) The provisions of this * * * subsection (* * *5) shall not apply if the vehicle used to commit the violation of Section 63-11-30, was, at the time of * * * the violation, rented or stolen.

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

SECTION 3. Section 63-1-21, Mississippi Code of 1972, is amended as follows:

63-1-21. (1) To obtain a new or original driver's or operator's license, every applicant other than a person holding an out-of-state license shall first obtain a temporary driving permit by paying a fee of One Dollar ($1.00) to the Department of Public Safety, successfully completing the examination provided for in Section 63-1-33, and paying the examination fee provided for in Section 63-1-43.

(2) A temporary driving permit entitles the holder, provided the permit is in his immediate possession, to drive a motor vehicle other than a motorcycle on the highways of the State of Mississippi only when accompanied by a licensed operator who is at least twenty-one (21) years of age and who is actually occupying the seat beside the driver. A temporary driving permit may be issued to any applicant who is at least fifteen (15) years of age.

A temporary driving permit shall be valid for a period of two (2) years from the date of issue.

(3) (a) An intermediate license allows unsupervised driving from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:30 p.m. Friday and Saturday, and allows unsupervised driving any time for a person traveling directly to or from work. At all other times the intermediate licensee must be supervised by a parent, guardian or other person age twenty-one (21) years or older who holds a valid driver's license under this article and who is actually occupying the seat beside the driver.

(b) The fee for issuance of an intermediate license shall be Five Dollars ($5.00).

(4) An ignition-interlock-restricted driver's license allows a person to drive only a motor vehicle equipped with an ignition-interlock device.

(* * *5) Except as otherwise provided by Section 63-1-6, every applicant for a restricted motorcycle operator's license or a motorcycle endorsement shall first obtain a temporary motorcycle driving permit by paying a fee of One Dollar ($1.00) to the Department of Public Safety, successfully completing the examination provided for in Section 63-1-33, and paying the examination fee provided for in Section 63-1-43. All applicants for a temporary motorcycle permit shall:

(a) Be at least fifteen (15) years of age;

(b) Operate a motorcycle only under the direct supervision of a person at least twenty-one (21) years of age who possesses either a valid driver's or operator's license with a motorcycle endorsement or a valid restricted motorcycle operator's license;

(c) Be prohibited from transporting a passenger on a motorcycle;

(d) Be prohibited from operating a motorcycle upon any controlled access highway; and

(e) Be prohibited from operating a motorcycle during the hours of 6:00 p.m. through 6:00 a.m. Temporary motorcycle driving permits shall be valid for the same period of time and may be renewed upon the same conditions as temporary driving permits issued for vehicles other than motorcycles.

SECTION 4. Section 63-1-43, Mississippi Code of 1972, is amended as follows:

63-1-43. (1) The fee for receiving the application and issuing the regular driver's or operator's license and the fee for renewing the license shall be:

(a) Eighteen Dollars ($18.00) plus the applicable photograph fee for each applicant for a four-year license;

(b) Forty Dollars ($40.00) plus the applicable photograph fee for each applicant for an eight-year license;

(c) Three Dollars ($3.00) plus the applicable photograph fee for each applicant for a one-year license, except as provided in paragraph (d) of this subsection;

(d) Eighteen Dollars ($18.00) plus the applicable photograph fee for a license for an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government; * * *

(e) (i) Fifty Dollars ($50.00) plus the applicable photograph fee for an ignition-interlock-restricted driver's license which shall be provided to the Department of Public Safety to defray the costs associated with the department's duties and responsibilities regarding ignition-interlock device usage.

(ii) There is created in the State Treasury a special fund to be known as the Ignition-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 by the court 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:

1. Monies appropriated by the Legislature for the purposes of funding the Driver's License Bureau;

2. The interest accruing to the fund;

3. Monies paid by a person for an ignition-interlock device under Section 63-11-31(2)(a); and

4. Monies received from such other sources as may be provided by law; and

(* * *f) In addition to the fees required in paragraph (a) of this subsection, an applicant may contribute an additional One Dollar ($1.00) which shall be deposited into the Statewide Litter Prevention Fund. The applicant shall be informed that he may contribute an additional One Dollar ($1.00) which shall be deposited into the Statewide Litter Prevention Fund and shall be expended solely for the purpose of funding litter prevention projects or litter education programs, as recommended by the Statewide Litter Prevention Program of Keep Mississippi Beautiful, Inc.

All originals and renewals of regular operators' licenses shall be in compliance with Section 63-1-47.

(2) The fee for receiving the application and issuing a motorcycle endorsement shall be Five Dollars ($5.00) when issued as an endorsement to a four-year license, and Ten Dollars ($10.00) when issued as an endorsement to an eight-year license. Motorcycle endorsements shall be valid for the same period of time as the applicant's operator's license.

(3) The fee for receiving the application and issuing a restricted motorcycle operator's license and the fee for renewing such license shall be:

(a) Eleven Dollars ($11.00) plus the applicable photograph fee for a four-year license;

(b) Eight Dollars ($8.00) plus the applicable photograph fee for a one-year license; and

(c) Twenty-two Dollars ($22.00) plus the applicable photograph fee for an eight-year license.

All originals and renewals of restricted motorcycle licenses shall be valid for the same period of time that an original regular driver's license may be issued to such person in compliance with Section 63-1-47.

(4) From and after January 1, 1990, every person who makes application for an original license or a renewal license to operate a vehicle as a common carrier by motor vehicle, taxicab, passenger coach, dray, contract carrier or private commercial carrier as such terms are defined in Section 27-19-3, except for those vehicles for which a Class A, B or C license is required under Article 5 of this chapter, shall, in lieu of the regular driver's license above provided for, apply for and obtain a Class D commercial driver's license. Except as otherwise provided in subsection (5) of this section, the fee for the issuance of a Class D commercial driver's license shall be Twenty-three Dollars ($23.00) plus the applicable photograph fee for a period of four

(4) years; however, except as required under Article 5 of this chapter, no driver of a pickup truck shall be required to have a commercial license regardless of the purpose for which the pickup truck is used.

Except as otherwise provided in subsection (5) of this section, all originals and renewals of commercial licenses issued under this section shall be valid for a period of four (4) years, in compliance with Section 63-1-47. Only persons who operate the above-mentioned vehicles in the course of the regular and customary business of the owner shall be required to obtain a Class D commercial operator's license, and persons operating such vehicles for private purposes or in emergencies shall not be required to obtain such license.

(5) The original and each renewal of a commercial driver's license issued under this section to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall be issued for a period of one (1) year for a fee of Eight Dollars ($8.00) plus the applicable photograph fee and shall expire one (1) year from the date of issuance. Such person may renew a commercial license issued under this section within thirty (30) days of expiration of the license.

(6) The Commissioner of Public Safety, by rule or regulation, shall establish a driver's license photograph fee which shall be the actual cost of the photograph rounded off to

the next highest dollar. Monies collected for the photograph fee shall be deposited into a special photograph fee account which the Department of Public Safety shall use to pay the actual cost of producing the photographs. Any monies collected in excess of the actual costs of the photography shall be used by the department to defray the cost of future photography and driver's license technology initiatives.

SECTION 5. Section 63-1-47, Mississippi Code of 1972, is amended as follows:

63-1-47. (1) Except as otherwise provided in this section, each applicant for an original license issued pursuant to this article, who is entitled to issuance of same, shall be issued a four-year license or an eight-year license, at the option of the applicant, which will expire at midnight on the licensee's birthday.

(a) Except as otherwise provided in this section, all renewal licenses shall be for a four-year period or an eight-year period, at the option of the applicant, and may be renewed any time within six (6) months before the expiration of the license upon application and payment of the required fee, unless required to be reexamined.

(b) From and after January 1, 1990, no commercial driver's license shall be issued under the provisions of this article for any commercial motor vehicle, the lawful operation of which requires the driver to obtain a Class A, B or C commercial

driver's license under Article 5 of this chapter; however, from time to time, the holder of a commercial license may apply for a commercial driver's license under Article 5 of this chapter; and, if he fails to pass the required test for such license, he shall be entitled to an extension of his license that shall be valid for one hundred twenty (120) days or until he again is tested under Article 5 of this chapter, whichever occurs first. The extension shall entitle the license holder to operate all vehicles which such license authorized him to operate prior to taking the required test. The first extension shall be without charge; however, a fee of Fifteen Dollars ($15.00) shall be imposed for any subsequent extension. No extension shall be valid past March 31, 1992.

(2) Any commercial driver's license issued under this article before January 1, 1990, which expires after March 31, 1992, shall be void on April 1, 1992, for the operation of any commercial vehicle requiring a commercial license to be issued under Article 5 of this chapter; however, if the holder of any such license applies for a commercial driver's license under Article 5 of this chapter, passes the required tests for such license, pays all applicable fees under Article 5 of this chapter except the Forty Dollars ($40.00) license fee and otherwise meets all requirements for the issuance of such license, then such person shall be issued a license under Article 5 of this chapter

which shall expire on the expiration date of the commercial driver's license being replaced.

(3) The fee for the issuance of an original and renewals of a Class D commercial driver's license under this article to an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government and the period for which such license will be valid and expire shall be as prescribed in Section 63-1-43.

(4) The Commissioner of Public Safety shall notify, by United States mail addressed to the last-known address of record with the Department of Public Safety, all holders of a commercial driver's license issued under this article before January 1, 1990, and which * * * expires after March 31, 1992, that such license will be void on and after April 1, 1992, for the operation of any vehicle for which a commercial driver's license is required to be issued under Article 5 of this chapter.

(5) Any person holding a valid commercial driver's license issued under this article before January 1, 1990, shall continue thereafter, until expiration of such license, to be entitled to operate all vehicles which such license authorized him to operate immediately before January 1, 1990, except that from and after April 1, 1992, such license shall not entitle the licensee to operate a commercial motor vehicle the lawful operation of which requires a commercial driver's license under Article 5 of this chapter.

(6) (a) All applications by an operator under eighteen (18) years of age must be accompanied by documentation that the applicant is in compliance with the education requirements of Section 63-1-9(1)(g), and the documentation used in establishing compliance must be dated no more than thirty (30) days prior to the date of application.

(b) All applications by an operator under eighteen (18) years of age, if applicable, must be accompanied by documentation signed and notarized by the parent or guardian of the applicant and the appropriate school official, authorizing the release of the applicant's attendance records to the Department of Public Safety as required under Section 63-1-10.

(c) The commissioner shall suspend the driver's license, intermediate license or temporary learning permit of a student under eighteen (18) years of age who has been reported by the Department of Education as required by Section 63-1-10.1, and shall give notice of the suspension to the licensee as provided in Section 63-1-52(4). A school superintendent or designee may request that the driver's license, intermediate license or temporary learning permit that has been suspended under the provisions of this subsection be reinstated after the student has successfully completed nine (9) weeks of school attendance without an unlawful absence.

(7) (a) Any original or renewal license issued under this article to a person who is not a United States citizen and who

does not possess a social security number issued by the United States government shall expire four (4) years from the date of issuance or on the expiration date of the applicant's authorized stay in the United States, whichever is the lesser period of time, and may be renewed, if the person is otherwise qualified to renew the license, within thirty (30) days of expiration. The fee for any such license and for renewal shall be as prescribed in Section 63-1-43.

(b) Any applicant for an original or renewal license under this subsection (7) must present valid documentary evidence documenting that the applicant:

(i) Is a citizen or national of the United States;

(ii) Is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) Has conditional permanent residence status in the United States;

(iv) Has approved application for asylum in the United States or has entered into the United States in refugee status;

(v) Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into or lawful presence in the United States;

(vi) Has a pending application for asylum in the United States;

(vii) Has a pending or approved application for temporary protected status in the United States;

(viii) Has approved deferred action status;

(ix) Has pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or

(x) Has a valid employment authorization card issued by the United States Department of Homeland Security.

(8) The term of an ignition-interlock-restricted driver's license issued pursuant to this article shall be four (4) years.

SECTION 6. Section 63-11-21, Mississippi Code of 1972, is amended as follows:

63-11-21. If a person refuses upon the request of a law enforcement officer to submit to a chemical test of his breath designated by the law enforcement agency as provided in Section 63-11-5, none shall be given, but the officer shall at that point demand the driver's license of the person, who shall deliver his driver's license into the hands of the officer. If a person refuses to submit to a chemical test under the provisions of this chapter, the person shall be informed by the law enforcement officer that the refusal to submit to the test shall subject him to * * * punishment consistent with the penalties prescribed * * * for conviction under Section 63-11-30 * * * and Section 63-11-31. The officer shall give the driver a receipt for his license on

forms prescribed and furnished by the Commissioner of Public Safety. The officer shall forward the driver's license together with a sworn report to the Commissioner of Public Safety stating that he 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 which may impair a person's mental or physical ability, stating such grounds, and that the person had refused to submit to the chemical test of his breath upon request of the law enforcement officer.

SECTION 7. 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 * * * <u>that</u> 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 * * * <u>it</u> 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).

(5) The provisions of this section shall not apply to any person who has been nonadjudicated under Section 63-11-30.

SECTION 8. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE HOUSE OF REPRESENTATIVES
April 2, 2013

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 2, 2013

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

4/11/13
4:22 pm