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Chapter No. 447
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AR / JB/LR

SENATE BILL NO. 2663

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2663

AN ACT TO CREATE NEW SECTION 63-11-31.1, MISSISSIPPI CODE OF 1972, TO PRESCRIBE STANDARDS TO BE MET BY VENDORS PROVIDING DRUG-TESTING SERVICES TO DUI OFFENDERS WHO PARTICIPATE IN COURT-ORDERED DRUG TESTING; TO AMEND SECTION 63-11-31, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 63-11-33, MISSISSIPPI CODE OF 1972, TO PROVIDE PAYMENT FOR SOME COSTS OF DRUG TESTING OF INDIGENT OFFENDERS; TO AMEND SECTION 63-11-5, MISSISSIPPI CODE OF 1972, TO REVISE IMPLIED CONSENT FOR THE TESTING OF A DRIVER'S BLOOD OR URINE FOR THE PRESENCE OF DRUGS TO CONFORM TO THE IMPLIED CONSENT OF TESTING A DRIVER'S BREATH FOR THE PRESENCE OF ALCOHOL; TO AMEND SECTION 63-11-23, MISSISSIPPI CODE OF 1972, TO REVISE THE ADMINISTRATIVE SUSPENSION OF A DRIVER'S LICENSE FOR REFUSAL OF DRUG TESTING OF THE PERSON'S BLOOD OR URINE FOR A SUBSTANCE OTHER THAN ALCOHOL TO CONFORM TO THE ADMINISTRATIVE SUSPENSION FOR REFUSAL OF A BREATH TEST FOR ALCOHOL; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 63-11-31.1, Mississippi Code of 1972:

63-11-31.1. (1) The Mississippi Forensics Laboratory shall promulgate rules and regulations for court-ordered drug testing of DUI/other drug violators and shall approve which vendors are eligible to be utilized by the trial courts when ordering defendants to undergo drug testing as a condition of continuing to

exercise the privilege to drive. The Forensics Laboratory may assess fees to the vendors, and shall prescribe the maximum costs to the offender for drug testing. The Forensics Laboratory may seek the advice of the State Drug Court Advisory Committee in fulfilling these duties.

(2) The Forensics Laboratory must evaluate proposals made by prospective vendors for acceptability, including, without limitation, the following factors:

(a) A description of the method used for assessment;

(b) The frequency with which the offender will be tested;

(c) The procedure used by the vendor to ensure the accuracy of the test results;

(d) The length of time allowed the offender to provide a biological sample after being given notice;

(e) The frequency with which the vendor will make reports to the court;

(f) The list of approved sites for the collection of biological samples for testing.

(3) The Forensics Laboratory must promulgate regulations for the program and for vendors, including at a minimum:

(a) That the offender must pay the cost of the testing program or, if the court finds the offender to be indigent, that the cost be paid from the Interlock Device Fund.

(b) How indigent funds will be accessed by the vendors, and the maximum cost to the offender or the fund.

(4) The Forensics Laboratory will provide the list of approved vendors, subject to continuous updating, to the Mississippi Judicial College for dissemination to the trial courts.

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

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.

<u>(iii) "Court-ordered drug-testing program" means a program that qualifies under Section 63-11-31.1.</u>

(c) A person who can exercise the privilege of driving only under an interlock-restricted license must have an ignition-interlock device installed and operating on all motor vehicles owned or operated by the person.

(d) A person who installs an ignition-interlock device may obtain an interlock-restricted license.

(2) (a) (i) 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, and the costs of court-ordered drug testing shall be borne by the person so ordered, unless the person is determined by the court to be indigent.

(ii) The cost of participating in a court-ordered drug-testing program shall be borne by the person, unless the person is determined by the court 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 unless the person is determined by the court to be indigent.

(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 Interlock Device Fund in the State Treasury unless the person is determined by the court to be indigent.

(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; and

(iv) Obtain an ignition-interlock driver's license.

(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 six (6) months, 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) In order to obtain an interlock-restricted license, a person must:

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

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

(c) Pay the fee set forth in Section 63-1-43 to obtain the license without regard to indigence; no license reinstatement fee under Section 63-1-46 shall be charged for a person obtaining an interlock-restricted license.

(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 six (6) months, 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 interlock device installation and operation by and court-ordered drug testing of indigent offenders.

(b) The court shall determine a defendant's indigence based upon whether the defendant has access to adequate resources to pay the ignition-interlock fee and the costs of installation and maintenance of an ignition-interlock device, or the costs of court-ordered drug testing or both, and may further base the determination of indigence 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 determined appropriate by the court.

(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) The Commissioner of the Department of Public Safety must promulgate regulations for the program and for vendors, including at a minimum:

(i) That the offender must pay the cost of the testing program or, if the court finds the offender to be indigent, that the cost be paid from the Interlock Device Fund.

(ii) How indigent funds will be accessed by the vendors, and the maximum cost to the offender or the fund.

(* * *e) (i) Money in the Interlock Device Fund will be appropriated to the department to cover part of the costs of court-ordered drug testing and installing, removing and leasing ignition-interlock devices for indigent people who are required, because of a conviction or nonadjudication under Section 63-11-30, to install an ignition-interlock device in all vehicles operated 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.

(iii) If money is available in the Interlock Device Fund, the department shall pay to the vendor an amount not to exceed that promulgated by the Forensics Laboratory for court-ordered drug testing. The department shall not pay any amount above what an offender would be required to pay individually.

(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 submit proof to the Department of Public Safety to substantiate the person's eligibility for an unrestricted license, which may be a court order indicating completion of sentence or final order of nonadjudication; in the absence of a court order, the proof may consist of the following or such other proof as the commissioner may set forth by regulation duly adopted under the Administrative Procedures Act:

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

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

(c) Payment of the driver's license fee required under Section 63-1-43;

(d) A certificate of liability insurance or proof of financial responsibility; and

(e) (i) For those driving under an interlock-restricted license, a declaration from the vendor, in a form provided or approved by the Department of Public Safety, certifying that there have been none of the following incidents in the last thirty (30) days:

1. An attempt to start the vehicle with a breath alcohol concentration of 0.04 or more;

2. Failure to take or pass any required retest; or

3. Failure of the person to appear at the ignition-interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device; or

(ii) For a person who violated Section 63-11-30 with respect to drugs other than alcohol, proof of successful compliance with all court-ordered drug testing; or

(iii) Both subparagraphs (i) and (ii) of this paragraph (e) if applicable.

(9) The court may extend the interlock-restricted period if the person had a violation in the last thirty (30) days.

(10) The court that originally ordered installation of the ignition-interlock device for a violation of Section 63-11-30 and a court in the municipality or county in which the violation occurred have jurisdiction over an offense under this section.

(11) A person who voluntarily obtains an interlock-restricted license may convert at any time to any other form of license for which the person is qualified.

(12) (a) The Department of Public Safety shall require all manufacturers of ignition-interlock devices to report ignition-interlock data in a consistent and uniform format as prescribed by the Department of Public Safety. Ignition-interlock vendors must also use the uniform format when sharing data with courts ordering an ignition interlock, with alcohol safety education programs, or with other treatment providers.

(b) The Department of Public Safety shall require all vendors of drug testing programs approved under Section 63-11-31.1 to report test results in a consistent and uniform format as prescribed by the Forensics Laboratory. Vendors must report test results to the court on a monthly basis, except that a positive test or failure of the testing participant to submit to

verification must be reported to the court within five (5) days of verification of the positive test or the failure to submit.

SECTION 3. Section 63-11-33, Mississippi Code of 1972, is amended as follows:

63-11-33. 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 and court-ordered drug testing for persons determined to be unable to afford the installation and maintenance of an ignition interlock device or costs of drug testing. 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 4. Section 63-11-5, Mississippi Code of 1972, is amended as follows:

63-11-5. (1) (a) Any person who operates a motor vehicle upon the public highways, public roads and streets of this state shall be deemed to have given his consent, subject to the provisions of this chapter, to a chemical test or tests of his breath, blood or urine for the purpose of determining alcohol concentration. A person shall give his consent to a chemical test or tests of his breath, blood or urine for the purpose of determining the presence in his body of any other substance which would impair a person's ability to operate a motor vehicle.

(b) The test or tests shall be administered at the direction of any authorized officer, when such officer has reasonable grounds and probable cause to believe that the person was driving or had under his actual physical control a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor or any other substance which had impaired such person's ability to operate a motor vehicle.

(2) (* * *a) * * * A breath analysis test must be administered by * * * a person who has * * * met all the educational and training requirements of the appropriate course of study prescribed by the Board on Law Enforcement Officers Standards and Training; * * * however, * * * sheriffs and elected chiefs of police * * * are exempt from * * * the educational and training requirement. * * * A breath analysis test must not be

given * * * to any person within fifteen (15) minutes of consumption of any substance by mouth.

(* * *b) For purposes of this * * * section, the term "authorized officer" means any highway patrol officer, sheriff or his duly commissioned deputies, police officer in any incorporated municipality, national park ranger, officer of a state-supported institution of higher learning campus police force if such officer is exercising this authority in regard to a violation that occurred on campus property, or security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law of 1978 if such officer is exercising this authority in regard to a violation that occurred within the limits of the Pearl River Valley Water Supply District.

(* * *3) If the officer has reasonable grounds and probable cause to believe such person to have 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 has impaired the person's ability to operate a motor vehicle, * * * the officer shall inform * * * the person that his failure to submit to such chemical test or tests of his breath, blood or urine shall result in the suspension of his privilege to operate a motor vehicle upon the public streets and highways of this state for a period of ninety (90) days * * * if the person has not previously been convicted of a violation of

Section 63-11-30, or, for a period of one (1) year * * * if the person has a prior conviction under Section 63-11-30.

(* * *4) The traffic ticket, citation or affidavit issued to a person arrested for a violation of this chapter shall conform to the requirements of Section 63-9-21(3)(b), and, if filed electronically, shall conform to Section 63-9-21(8).

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

(* * *6) The Commissioner of Public Safety and the Mississippi Forensics Laboratory created pursuant to Section 45-1-17 are authorized to adopt procedures, rules and regulations applicable to the Implied Consent Law.

SECTION 5. Section 63-11-23, Mississippi Code of 1972, is amended as follows:

63-11-23. (1) **Administrative license suspension for test refusal.** 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.

(a) If upon review the Commissioner of Public Safety, or his authorized agent, finds (i) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been operating 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; (ii) that * * * the person refused to submit to the chemical test of the person's breath, blood or urine upon request of the officer; and (iii) 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 of his breath, blood or urine, 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 if the person has not previously been convicted of or nonadjudicated for a violation of Section 63-11-30, or, for a period of one (1) year if the person was previously convicted or nonadjudicated under Section 63-11-30. If the commissioner or his authorized agent determines that the license or permit should not be suspended, he shall return the license or permit to the licensee.

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

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

(2) **Extension or suspension of privilege to drive; request for trial.** (a) 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 the person's blood, 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 shall be valid as a permit to operate a motor vehicle for thirty (30) days in order that the defendant may be processed through the court having original jurisdiction and a final disposition had.

(b) 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 privileges to operate a motor vehicle

to be extended until the defendant is convicted upon final order of the court.

(c) If a receipt or permit to drive issued under this subsection expires without a trial having been requested as provided 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 in subsection (1) of this section.

(3) **Offenders driving without a license.** 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 the suspension.

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

(5) **Suspension subsequent to conviction.** Unless the person obtains an interlock-restricted license or the court orders the person to exercise the privilege to operate a motor vehicle only

under an interlock-restricted license or while participating in a court-ordered drug-testing program, thirty (30) days after receipt of the court abstract documenting a person's conviction under Section 63-11-30, the Department of Public Safety shall suspend the driver's license and privileges of the person to operate a motor vehicle as follows:

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

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

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

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

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

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

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

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

(iii) For a third offense occurring within five (5) years, suspend or deny the driving privilege for two (2) years or until the person reaches the age of twenty-one (21), whichever is longer.

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

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

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

SECTION 6. This act shall take effect and be in force from and after July 1, 2020.

PASSED BY THE SENATE
March 28, 2018

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2018

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

April 13, 2018
9:10 Am