

Mississippi Implied Consent Law

Effective July 1, 2015

§ 63-11-1. Short title

This chapter may be cited as the Mississippi Implied Consent Law.

Source: Codes, 1942, § 8175-01; Laws, 1971, ch. 515, § 1, eff. 4/1/1972.

§ 63-11-3. Definitions

The following words and phrases shall have the meaning ascribed herein, unless the context clearly indicates otherwise:

- (a) "Driving privilege" or "privilege" means both the driver's license of those licensed in Mississippi and the driving privilege of unlicensed residents and the privilege of nonresidents, licensed or not, the purpose of this section being to make unlicensed and nonresident drivers subject to the same penalties as licensed residents.
- (b) "Community service" means work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.
- (c) "Chemical test" means an analysis of a person's blood, breath, urine or other bodily substance for the determination of the presence of alcohol or any other substance which may impair a person's mental or physical ability.
- (d) "Refusal to take breath, urine and/or blood test" means an individual declining to take a chemical test, and/or the failure to provide an adequate breath sample as required by the Implied Consent Law when requested by a law enforcement officer.
- (e) "Alcohol concentration" means either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.
- (f) "Qualified person to withdraw blood" means any person who has been trained to withdraw blood in the course of their employment duties including but not limited to laboratory personnel, phlebotomist, emergency medical personnel, nurses and doctors.
- (g) "Victim impact panel" means a two-hour seminar in which victims of DUI accidents relate their experiences following the accident to persons convicted under the Implied Consent Law. Paneling programs shall be based on a model developed by Mothers Against Drunk Driving (MADD) victim panel or equivalent program approved by the court.
- (h) "Booked" means the administrative step taken after the arrested person is brought to the police station, which involves entry of the person's name, the crime for which the arrest was made, and other relevant facts on the police docket, and which may also include photographing, fingerprinting, and the like.

Source: Codes, 1942, § 8175-24; Laws, 1971, ch. 515, § 24; Laws, 1983, ch. 466, § 1; Laws, 1996, ch. 527, § 3, eff. 7/2/1996.

§ 63-11-5. Implied consent to chemical tests; administration of tests; warnings; form of traffic tickets, citations or affidavits; advice regarding right to request legal or medical assistance; rules and regulations

- (1) 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 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. The test or tests shall be administered at the direction of any highway patrol officer, any sheriff or his duly commissioned deputies, any police officer in any incorporated municipality, any national park ranger, any 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 any 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, 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. No such test shall be administered by any person who has not met all the educational and training requirements of the appropriate course of study prescribed

by the Board on Law Enforcement Officers Standards and Training; provided, however, that sheriffs and elected chiefs of police shall be exempt from such educational and training requirement. No such tests shall be given by any officer or any agency to any person within fifteen (15) minutes of consumption of any substance by mouth.

- (2) 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, such officer shall inform such person that his failure to submit to such chemical test or tests of his breath 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 in the event such 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 such person under Section 63-11-30.
- (3) 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).
- (4) 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.
- (5) The Commissioner of Public Safety and the Mississippi Forensics Laboratory created pursuant to Section 45-1-17 are hereby authorized from and after the passage of this section to adopt procedures, rules and regulations, applicable to the Implied Consent Law.

Source: Codes, 1942, § 8175-09; Laws, 1971, ch. 515, § 9; Laws, 1981, ch. 491, § 1; Laws, 1983, ch. 466, § 2; Laws, 1988, ch. 568, § 1; Laws, 1991, ch. 480, § 4; Laws, 1991, ch. 577, § 1; Laws, 1992, ch. 525, § 1; Laws, 1993, ch. 354, § 1; Laws, 1996, ch. 527, § 4; Laws, 1998, ch. 551, § 1; Laws, 2012, ch. 550, § 2, eff. 7/1/2012. History. Amended by Laws, 2015, ch. TBD, SB 2159, §13, eff. 7/1/2015.

§ 63-11-7. Authorization of blood test for dead or unconscious accident victims; use of test results

If any person be unconscious or dead as a result of an accident, or unconscious at the time of arrest or apprehension or when the test is to be administered, or is otherwise in a condition rendering him incapable of refusal, such person shall be subjected to a blood test for the purpose of determining the alcoholic content of his blood as provided in this chapter, if the arresting officer has reasonable grounds to believe the 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. The results of such test or tests, however, shall not be used in evidence against such person in any court or before any regulatory body without the consent of the person so tested, or, if deceased, such person's legal representative. However, refusal of release of evidence so obtained by such officer or agency will in criminal actions against such person result in the suspension of his or her driver's license for a period of ninety days as provided in this chapter for conscious and capable persons who have refused to submit to such test. Blood may only be withdrawn under the provisions of Section 63-11-9. It is the intent of this chapter that blood samples taken under this section shall be used exclusively for statistical evaluation of accident causes with safeguards established to protect the identity of such victims and to extend the rights of privileged communications to those engaged in taking, handling and evaluating such statistical evidence.

Source: Codes, 1942, § 8175-10; Laws, 1971, ch. 515, § 10, eff. 4/1/1972.

§ 63-11-8. Testing of motor vehicle operator involved in accident resulting in death

- (1) The operator of any motor vehicle involved in an accident that results in a death shall be tested for the purpose of determining the alcohol content or drug content of such operator's blood, breath or urine. Any blood withdrawal required by this section shall be administered by any qualified person and shall be administered within two (2) hours after such accident, if possible. The exact time of the accident, to the extent possible, and the exact time of the blood withdrawal shall be recorded.
- (2) If any investigating law enforcement officer has reasonable grounds to believe that a person is the operator of a motor vehicle involved in an accident that has resulted in a death, it shall be such officer's duty to see that a chemical test is administered as required by this section.
- (3) The results of a test administered pursuant to this section may be used as evidence in any court or administrative hearing without the consent of the person so tested.
- (4) No person may refuse to submit to a chemical test required under the provisions of this section.
- (5) Analysis of blood or urine to determine alcohol or drug content pursuant to this section shall be conducted

by the Mississippi Forensics Laboratory or a laboratory whose methods and procedures have been approved by the Mississippi Forensics Laboratory.

Source: Laws, 1995, ch. 540, § 4; Laws, 1996, ch. 527, § 5, eff. 7/2/1996. History. Amended by Laws, 2015, ch. TBD, SB 2159, §14, eff. 7/1/2015.

§ 63-11-9. Administration of blood test under 63-11-7

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

Source: Codes, 1942, § 8175-17; Laws, 1971, ch. 515, § 17; Laws, 1996, ch. 527, § 6, eff. 7/2/1996.

§ 63-11-11. Taking of urine specimens

If the test given under the provisions of this chapter is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

Source: Codes, 1942, § 8175-19; Laws, 1971, ch. 515, § 19, eff. 4/1/1972.

§ 63-11-13. Right of accused to have test administered by person of his choice; effect of failure to obtain additional test

The person tested may, at his own expense, have a physician, registered nurse, clinical laboratory technologist or clinical laboratory technician or any other qualified person of his choosing administer a test, approved by the Mississippi Forensics Laboratory created pursuant to Section 45-1-17, in addition to any other test, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by such arrested person shall not preclude the admissibility in evidence of the test taken at the direction of a law enforcement officer.

Source: Codes, 1942, § 8175-18; Laws, 1971, ch. 515, § 18; Laws, 1981, ch. 491, § 2, eff. 7/1/1981. History. Amended by Laws, 2015, ch. TBD, SB 2159, §15, eff. 7/1/2015.

§ 63-11-15. Availability of information concerning test directed by law enforcement officer to accused or his attorney

Upon the written request of the person tested, or his attorney, full information concerning the test taken at the direction of the law enforcement officer shall be made available to him or to his attorney.

Source: Codes, 1942, § 8175-20; Laws, 1971, ch. 515, § 20, eff. 4/1/1972.

§ 63-11-17. Liability for administering test or analysis

No qualified person, hospital, clinic or funeral home shall incur any civil or criminal liability as the result of the proper administration of a test or chemical analysis of a person's breath, blood or urine when requested in writing by a law enforcement officer to administer such a test or perform such chemical analysis.

Source: Codes, 1942, § 8175-21; Laws, 1971, ch. 515, § 21; Laws, 1973, ch. 354, § 1; Laws, 1996, ch. 527, § 7, eff. 7/2/1996.

§ 63-11-19. Requirements as to methods of testing and qualifications of test administrators; certification of administrators; testing and certification of accuracy of methods, machines or devices

A chemical analysis of the person's breath, blood or urine, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the Mississippi Forensics Laboratory created pursuant to Section 45-1-17 and the Commissioner of Public Safety and performed by an individual possessing a valid permit issued by the Mississippi Forensics Laboratory for making such analysis. The Mississippi Forensics Laboratory and the Commissioner of Public Safety are authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the Mississippi Forensics Laboratory. The Mississippi Forensics Laboratory shall not approve the permit required herein for any law enforcement officer other than a member of the State Highway Patrol, a sheriff or his deputies, a city policeman, an officer of a state-supported institution of higher learning campus police force, a security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law of 1978, a national park ranger, a national park ranger technician, a military policeman stationed at a United States military base located within this state other than a military policeman of the Army or Air National Guard or of Reserve Units of

the Army, Air Force, Navy or Marine Corps, a marine law enforcement officer employed by the Department of Marine Resources, or a conservation officer employed by the Mississippi Department of Wildlife, Fisheries and Parks. The permit given a marine law enforcement officer shall authorize such officer to administer tests only for violations of Sections 59-23-1 through 59-23-7. The permit given a conservation officer shall authorize such officer to administer tests only for violations of Sections 59-23-1 through 59-23-7 and for hunting related incidents resulting in injury or death to any person by discharge of a weapon as provided under Section 49-4-31. The Mississippi Forensics Laboratory shall make periodic, but not less frequently than quarterly, tests of the methods, machines or devices used in making chemical analysis of a person's breath as shall be necessary to ensure the accuracy thereof, and shall issue its certificate to verify the accuracy of the same.

Source: Codes, 1942, § 8175-16; Laws, 1971, ch. 515, § 16; Laws, 1978, ch. 526, § 1; Laws, 1981, ch. 491, § 3; Laws, 1988, ch. 568, § 2; Laws, 1991, ch. 577, § 2; Laws, 1995, ch. 620, § 5; Laws, 1999, ch. 585, § 6; Laws, 2006, ch. 553, § 5, eff. 7/1/2006. History. Amended by Laws, 2015, ch. TBD, SB 2159, §16, eff. 7/1/2015.

§ 63-11-21. Actions by law enforcement officer upon refusal of driver to submit to test generally

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.

Source: Codes, 1942, § 8175-11; Laws, 1971, ch. 515, § 11; Laws, 1981, ch. 491, § 4; Laws, 1983, ch. 466, § 3; Laws, 1991, ch. 480, § 5; Laws, 1996, ch. 527, § 8, eff. 7/2/1996. History. Amended by Laws, 2013, ch. 489, HB 481, §6, eff. 7/1/2014.

§ 63-11-23. Review of report of law enforcement officer by Commissioner of Public Safety; notice of suspension; seizure of license where test indicates blood alcohol concentration above specified level; temporary permit to drive; denial of permit; representation of state in proceedings

(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).

Source: Codes, 1942, § 8175-12; Laws, 1971, ch. 515, § 12; Laws, 1981, ch. 491, § 5; Laws, 1983, ch. 466, § 4; Laws, 1989, ch. 482, § 25; Laws, 1991, ch. 412, § 2; Laws, 1996, ch. 527, § 9; Laws, 1998, ch. 505, § 1; Laws, 2000, ch. 542, § 2; Laws, 2002, ch. 367, § 2, eff. 7/1/2002. History. Amended by Laws, 2014, ch. 493, HB 412, § 4, eff. 7/1/2014. Amended by Laws, 2013, ch. 489, HB 481, § 7, eff. 7/1/2014.

§ 63-11-25. Appeals from forfeiture, suspension or denial of license by commissioner generally; exercise of driving privilege suspended during pendency of appeal

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

Source: Codes, 1942, § 8175-13; Laws, 1971, ch. 515, § 13; Laws, 1983, ch. 466, § 5; Laws, 1996, ch. 527, § 10, eff. 7/2/1996.

§ 63-11-26. Actions which foreclose judicial review

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

Source: Laws, 1981, ch. 491, § 9; Laws, 1983, ch. 466, § 6, eff. 7/1/1983.

§ 63-11-27. Notification of authorities in home state of suspension of nonresident drivers privilege

When it has been finally determined under the procedures of Sections 63-11-21 through 63-11-25 , that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the commissioner, or his duly authorized agent, shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

Source: Codes, 1942, § 8175-14; Laws, 1971, ch. 515, § 14, eff. 4/1/1972.

§ 63-11-29. Repealed

History. Repealed by Laws, 1983, ch. 466, § 15, eff. 7/1/1983.

§ 63-11-30. Operation of vehicle while under influence of intoxicating liquor or other substances impairing ability to operate vehicle or with blood alcohol concentrations above specified levels; penalties; separate offense of endangering child by driving under influence; penalties; expunction; nonadjudication

- (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. Thirty (30) 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. Thirty (30) 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. Thirty (30) 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). Thirty (30) 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 affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or 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.**

If the court orders 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, the device shall be installed as provided in Section 63-11-31.

(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 first offense under subsection (1) or (3) of this section be nonadjudicated. A person is eligible for nonadjudication only one (1) time under any provision of a law that authorizes nonadjudication.
- (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.
 - a. 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; or
 - b. Suffer a one-hundred-twenty-day suspension of the person's driver's license, whether the license is an in-state or out-of-state driver's license.
 - (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 previous orders of the court. The court shall retain jurisdiction over cases involving nonadjudication for a period of not more than two (2) years.
- (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, clerks 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. The Mississippi Alcohol Safety Education Program shall have access to the confidential registry for research purposes only.

Source: Laws, 1981, ch. 491, § 6; Laws, 1983, ch. 466, §§ 7, 13; Laws, 1989, ch. 565, § 1; Laws, 1991, ch. 480, § 6; Laws, 1992, ch. 500, § 1; Laws, 1994, ch. 340, § 4; Laws, 1995, ch. 540, § 1; Laws, 1996, ch. 527, § 11; Laws, 1998, ch. 505, § 2; Laws, 2000, ch. 542, § 3; Laws, 2002, ch. 367, § 1; Laws, 2004, ch. 503, § 1; Laws, 2007, ch. 438, § 1; Laws of 2012, ch. 510, § 1, eff. 7/1/2012. History. Amended by Laws, 2015, HB 555, eff. 7/1/2014. Amended by Laws, 2014, ch. 493, HB 412, § 1, eff. 7/1/2014. Amended by Laws, 2013, ch. 489, HB 481, § 1, eff. 7/1/2014.

§ 63-11-31. Interlock restricted license; ignition interlock device; impoundment or immobilization of vehicles; use of Interlock Device Fund to offset cost of device installation and operation by indigent offenders; reinstatement of license without interlock restriction

- (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;
 - (ii) If the person does not obtain an interlock-restricted license within thirty (30) 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; and
 - (iii) Must not be charged under Section 63-11-30 for driving under the influence of any drug or controlled substance under the Mississippi Controlled Substances Law.
 - (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 Interlock Device 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.
- (9) Jurisdiction of an offense under this section shall lie in the court that originally ordered installation of the ignition-interlock device for a violation of Section 63-11-30.

Source: Laws, 2000, ch. 542, § 1; Laws, 2001, ch. 477, § 1, eff. 3/23/2001. History. Amended by Laws, 2015, HB 555, eff. 7/1/2014. Amended by Laws, 2014, ch. 493, HB 412, § 2, eff. 7/1/2014. Amended by Laws, 2013, ch. 489, HB 481, § 2, eff. 7/1/2014.

§ 63-11-32. Development, implementation and funding of driver improvement program for first offenders convicted of driving while intoxicated or under influence of another substance which impairs ability to operate motor vehicle

- (1) The State Department of Public Safety in conjunction with the Governor's Highway Safety Program, the State Board of Health, or any other state agency or institution shall develop and implement a driver improvement program for persons identified as first offenders convicted of driving while under the influence of intoxicating liquor or another substance which had impaired such person's ability to operate a motor vehicle, including provision for referral to rehabilitation facilities.
- (2) The program shall consist of a minimum of ten (10) hours of instruction. Each person who participates shall pay a nominal fee to defray a portion of the cost of the program.
- (3) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Mississippi Alcohol Safety Education Program Fund." Monies deposited in such fund shall be expended by the Board of Trustees of State Institutions of Higher Learning as authorized and appropriated by the Legislature to defray the costs of the Mississippi Alcohol Safety Education Program operated pursuant to the provisions of this section. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the General Fund.
- (4) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Federal-State Alcohol Program Fund." Monies deposited in such fund shall be expended by the Department of Public Safety as authorized and appropriated by the Legislature to defray the costs of alcohol and traffic safety programs. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the General Fund.
- (5) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Mississippi Forensics Laboratory Implied Consent Law Fund." Monies deposited in such fund shall be expended by the Department of Public Safety as authorized and appropriated by the Legislature to defray the costs of equipment replacement and operational

support of the Mississippi Forensics Laboratory relating to enforcement of the Implied Consent Law. Any revenue in the fund which is not encumbered at the end of the fiscal year shall not lapse to the General Fund but shall remain in the fund.

Source: Laws, 1973, ch. 408, § 1; Laws, 1979, ch. 305; Laws, 1981, ch. 491, § 7; Laws, 1983, ch. 466, § 8; Laws, 1990, ch. 329, § 11; Laws, 1991, ch. 356 § 2; Laws, 1996, ch. 527, § 12, eff. 7/2/1996. History. Amended by Laws, 2015, ch. TBD, SB 2159, §17, eff. 7/1/2015.

§ 63-11-33. Interlock Device Fund; purpose; use of monies

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.

History. Added by Laws, 2014, ch. 493, HB 412, §5, eff. 7/1/2014.

§ 63-11-35. Repealed

History. Repealed by Laws, 1981, ch. 491, § 16, eff. 7/1/1981.

§ 63-11-37. Contents and disposition of record of conviction under 63-11-30

It shall be the duty of the trial judge, upon conviction of any person under Section 63-11-30 , to mail a true and correct copy of the traffic ticket, citation or affidavit evidencing the arrest that resulted in the conviction and a copy of the abstract of the court record within five (5) days to the Commissioner of Public Safety at Jackson, Mississippi. The trial judge in municipal and justice courts shall show on the docket and the trial judge in courts of record shall show on the minutes:

- (a) Whether or not a chemical test was given and the results of the test;
- (b) Where conviction was based in whole or in part on the results of such a test.

The abstract of the court record shall show the date of the conviction, the results of the test if there was one and the penalty so that a record of same may be made by the Department of Public Safety.

For the purposes of Section 63-11-30, a bond forfeiture shall operate as and be considered as a conviction.

Source: Codes, 1942, § 8175-08; Laws, 1971, ch. 515, § 8; Laws, 1981, ch. 491, § 8; Laws, 1983, ch. 466, § 9; Laws, 1985, ch. 346; Laws, 1991, ch. 480, § 7, eff. 7/1/1991.

§ 63-11-39. Reduction of charges under chapter

The court having jurisdiction or the prosecutor shall not reduce any charge under this chapter to a lesser charge.

Source: Laws, 1992, ch. 500, § 5; Laws, 1996, ch. 527, § 13, eff. 7/2/1996.

§ 63-11-40. Driving while driving license or privilege cancelled, suspended or revoked

Any person whose driver's license, or driving privilege has been cancelled, suspended or revoked under the provisions of this chapter and who drives any motor vehicle upon the highways, streets or public roads of this state, while such license or privilege is cancelled, suspended or revoked, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than forty-eight (48) hours nor more than six (6) months, and fined not less than two hundred dollars (\$ 200.00) nor more than five hundred dollars (\$ 500.00). The commissioner of public safety shall suspend the driver's license or driving privilege of any person convicted under the provisions of this section for an additional six (6) months. Such suspension shall begin at the end of the original cancellation, suspension or revocation and run consecutively.

Source: Laws, 1983, ch. 466, § 11, eff. 7/1/1983.

§ 63-11-41. Admissibility in criminal prosecution of evidence of refusal to submit to chemical test

If a person under arrest refuses to submit to a chemical test under the provisions of this chapter, evidence of refusal shall be admissible in any criminal action under this chapter.

Source: Codes, 1942, § 8175-22; Laws, 1971, ch. 515, § 22, eff. 4/1/1972.

§ 63-11-43. Repealed

History. Repealed by Laws, 1991, ch. 573, § 141, eff. 7/1/1991.

§ 63-11-45. Denial of insurance coverage on ground of refusal to submit to test or upon basis of test results

No coverage otherwise afforded under any policy of insurance shall be denied on the ground that any person has refused any test provided for by this chapter nor on the basis of the results of any such test. Any provision to such effect in any insurance policy hereinafter issued shall be void.

Source: Codes, 1942, § 8175-25; Laws, 1971, ch. 515, § 29, eff. 4/1/1972.

§ 63-11-47. Selection and purchase of equipment and supplies

The Commissioner of Public Safety, acting in concert with the Mississippi Forensics Laboratory created pursuant to Section 45-1-17, is hereby expressly authorized and directed to determine the equipment and supplies which are adequate and necessary from both a medical and law enforcement standpoint for administration of this chapter. The Commissioner of Public Safety, upon receiving such recommendation from the Mississippi Forensics Laboratory, shall recommend an equipment standard for such equipment to the Department of Finance and Administration. The Department of Finance and Administration, using such a uniform standard for said equipment, shall advertise its intention of purchasing said equipment by one (1) publication in at least one (1) newspaper having general circulation in the State of Mississippi at least ten (10) days before the purchase of such equipment and supplies, and the advertisement shall clearly and distinctly describe the articles to be purchased, and shall receive sealed bids thereon which shall be opened in public at a time and place to be specified in the advertisement.

The Department of Finance and Administration shall accept the lowest and best bid for said equipment and supplies; in its discretion, it may reject any and all bids submitted. The lowest and best bid for said equipment and supplies accepted by the Department of Finance and Administration shall be the state-approved price of said equipment for purchase by the state, county and city governments.

Title to all such testing equipment in the state purchased hereunder shall remain in the Commissioner of Public Safety regardless of what entity pays the purchase price.

The state, counties and municipalities may purchase in the name of the Commissioner of Public Safety such equipment and supplies from other vendors of said equipment and supplies necessary to implement this chapter, provided they purchase of the same quality and standard as certified to the Department of Finance and Administration and approved by the department. However, such equipment and supplies shall not be purchased by the state, counties and municipalities unless it is at a price equivalent to or lower than that approved by the Department of Finance and Administration, pursuant to the bid procedure as outlined herein.

Source: Codes, 1942, § 8175-26; Laws, 1971, ch. 515, § 30; Laws, 1981, ch. 491, § 13; Laws, 1984, ch. 488, § 263, eff. 7/1/1984. History. Amended by Laws, 2015, ch. TBD, SB 2159, §18, eff. 7/1/2015.

§ 63-11-49. Authorization for impoundment and forfeiture of vehicle seized under chapter; notice of intention to forfeit; forfeiture to spouse; request for judicial review

- (1) When a vehicle is seized under Section 63-11-30(2)(c) or (d), the arresting officer shall impound the vehicle and the vehicle shall be held as evidence until a court of competent jurisdiction makes a final disposition of the case and the vehicle may be forfeited by the administrative forfeiture procedures provided for in this section upon final disposition as provided in Section 63-11-30(2)(c).
- (2) The attorney for the law enforcement agency shall provide notice of intention to forfeit the seized vehicle administratively, by certified mail, return receipt requested, to all persons who are required to be notified pursuant to Section 63-11-51.
- (3) In the event that notice of intention to forfeit the seized vehicle administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for the law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.
- (4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:
 - (a) A description of the vehicle;
 - (b) The approximate value of the vehicle;
 - (c) The date and place of the seizure;
 - (d) The connection between the vehicle and the violation of Section 63-11-30 ;

- (e) The instructions for filing a request for judicial review; and
 - (f) A statement that the vehicle will be forfeited to the law enforcement agency if a request for judicial review is not timely filed.
- (5) In the event that a spouse of the owner of the seized vehicle makes a showing to the department that the seized vehicle is the only source of transportation for the spouse, the chief law enforcement officer shall declare that the vehicle is thereby forfeited to such spouse. A written declaration of forfeiture of a vehicle pursuant to this subsection shall be sufficient cause for the title to the vehicle to be transferred to the spouse. The provisions of this subsection shall apply only to one (1) forfeiture per vehicle; if the vehicle is the subject of a subsequent forfeiture proceeding by virtue of a subsequent conviction of either spouse, the spouse to whom the vehicle was forfeited pursuant to the first forfeiture proceeding may not utilize the remedy provided herein in another forfeiture proceeding.
- (6) Persons claiming an interest in the seized vehicle may initiate judicial review of the seizure and proposed forfeiture by filing a request for judicial review with the attorney for the law enforcement agency within thirty (30) days after receipt of the certified letter or within thirty (30) days after the first publication of notice, whichever is applicable.
- (7) If no request for judicial review is timely filed, the attorney for the law enforcement agency shall prepare a written declaration of forfeiture of the subject vehicle and the forfeited vehicle shall be disposed of in accordance with the provisions of Section 63-11-53.
- (8) Upon receipt of a timely request for judicial review, the attorney for the law enforcement agency shall promptly file a petition for forfeiture and proceed as provided in Section 63-11-51.

Source: Laws, 1992, ch. 500, § 2; Laws, 1996, ch. 527, § 14, eff. 7/2/1996.

§ 63-11-51. Institution of forfeiture proceedings; filing and service of petition for forfeiture

- (1) Except as otherwise provided in Section 63-11-49, when a vehicle is seized under Section 63-11-30(2)(c) or (d), proceedings under this section shall be instituted promptly upon final conviction.
- (2) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi, the county or the municipality and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized vehicle is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized vehicle is within the jurisdictional limits of the county court as set forth in Section 9-9-21. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:
- (a) The owner of the vehicle, if address is known;
 - (b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;
 - (c) Any other bona fide lienholder or secured party or other person holding an interest in the vehicle in the nature of a security interest of whom the law enforcement agency has actual knowledge;
 - (d) Any person in possession of the vehicle subject to forfeiture at the time that it was seized.
- (3) If the vehicle is susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the law enforcement agency shall inquire of the State Tax Commission as to what the records of the State Tax Commission show regarding who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.
- (4) If the vehicle is not titled in the State of Mississippi, then the law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the agency shall inquire of the appropriate agency of that state as to what the records of the agency show regarding who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.
- (5) In the event the answer to an inquiry states that the record owner of the vehicle is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, which affects the vehicle,

the law enforcement agency shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the vehicle in the nature of a security interest, to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

- (6) If the owner of the vehicle cannot be found and served with a copy of the petition of forfeiture, the law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of . . .," filling in the blank space with a reasonably detailed description of the vehicle subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37 for publication of notice for attachments at law.

Source: Laws, 1992, ch. 500, § 3; Laws, 1996, ch. 527, § 15, eff. 7/2/1996.

§ 63-11-53. Disposition of forfeited vehicles; disposition of money derived from forfeited vehicles

- (1) All money derived from the seizure and forfeiture of vehicles under Section 63-11-30(2)(c) and (d) and Sections 63-11-49 and 63-11-51 by the Mississippi Highway Safety Patrol shall be forwarded to the State Treasurer and deposited in a special fund which is hereby created for use by the Department of Public Safety upon appropriation by the Legislature. Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special fund shall be deposited to the credit of the special fund. All other law enforcement agencies shall establish a special fund which is to be used for law enforcement purposes to purchase equipment for the law enforcement agency, and any interest earned on the amount in such special fund shall be deposited to the credit of the special fund.
- (2) Except as otherwise provided in subsection (3), all vehicles that have been forfeited shall be sold at a public auction for cash by the law enforcement agency, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the county in which the vehicle was seized. Such notices shall contain a description of the vehicle to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the vehicle present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:
- (a) To any bona fide lienholder, secured party, or other party holding an interest in the vehicle in the nature of a security interest, to the extent of his interest; and
 - (b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be deposited in the manner described in subsection (1) of this section.
- (3) The law enforcement agency may maintain, repair, use and operate for official purposes all vehicles that have been forfeited if the vehicles are free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the nature of a security interest. The agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the vehicle can be released for its use. If the vehicle is susceptible of titling under the Mississippi Motor Vehicle Title Law, the agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (4) of this section.
- (4) The State Tax Commission shall issue a certificate of title to any person who purchases vehicles under the provisions of this section when a certificate of title is required under the laws of this state.

Source: Laws, 1992, ch. 500, § 4; Laws, 1996, ch. 527, § 16, eff. 7/2/1996.