MISSISSIPPI LEGISLATURE REGULAR SESSION 2008

By: Senator(s) Walls

To: Judiciary, Division B

SENATE BILL NO. 2221

AN ACT TO AMEND SECTION 63-9-11, MISSISSIPPI CODE OF 1972, TO PROVIDE ALTERNATIVE SENTENCING OF CERTAIN FIRST- OR SECOND-TIME TRAFFIC VIOLATIONS AND TO PROVIDE THAT SUCH TRAFFIC VIOLATIONS WILL NOT BE ENTERED ON THE DRIVING RECORD OF ANY INDIVIDUAL; TO AMEND SECTION 63-9-17, MISSISSIPPI CODE OF 1972, IN CONFORMITY AND TO CORRECT A TECHNICAL ERROR IN THE CODE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 63-9-11, Mississippi Code of 1972, is amended as follows:

63-9-11. (1) It is a misdemeanor for any person to violate any of the provisions of Chapter 3, 5 or 7 of this title, unless such violation is by such chapters or other law of this state declared to be a felony.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of such chapters for which another penalty is not provided shall for first conviction thereof be punished by a fine of not more than One Hundred Dollars ($100.00) or by imprisonment for not more than ten (10) days; for a second such conviction within one (1) year thereafter such person shall be punished by a fine of not more than Two Hundred Dollars ($200.00) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

(3) (a) Whenever a person not covered under Section 63-1-55 is charged with a misdemeanor violation of any of the provisions

of Chapter 3, 5 or 7 of this title, the person shall be eligible to participate in not less than four (4) hours of a traffic safety violator course and thereby have no record of the violation on the person's driving record if the person meets all the following conditions:

(i) The defendant has a valid Mississippi driver's license or permit.

(ii) The defendant has not had a conviction of a violation under Chapter 3, 5 or 7 of this title within three (3) years before the current offense; any conviction entered before October 1, 2002, does not constitute a prior offense for the purposes of this subsection (3).

(iii) The defendant's public and nonpublic driving record as maintained by the Department of Public Safety does not indicate successful completion of a traffic safety violator course under this section in the three-year period before the offense.

(iv) The defendant files an affidavit with the court stating that this is the defendant's first conviction in more than three (3) years or since October 1, 2002, whichever is the lesser period of time; the defendant is not in the process of taking a course under this section; and the defendant has not completed a course under this section that is not yet reflected on the defendant's public or nonpublic driving record.

(v) The offense charged is for a misdemeanor offense under Chapter 3, 5 or 7 of this title.

(vi) The defendant pays the applicable fine, costs and any assessments required by law to be paid upon conviction of such an offense.

(vii) The defendant pays to the court an additional fee of Ten Dollars ($10.00) to elect to proceed under the provisions of this subsection (3).

(b) (i) 1. An eligible defendant may enter a plea of nolo contendere or guilty in person or in writing and present to

the court, in person or by mail postmarked on or before the appearance date on the citation, an oral or written request to participate in a course under this subsection (3).

2. The court shall withhold acceptance of the plea and defer sentencing in order to allow the eligible defendant ninety (90) days to successfully complete not less than four (4) hours of a court-approved traffic safety violator course at the cost of the defendant. Upon proof of successful completion entered with the court, the court shall dismiss the prosecution and direct that the case be closed. The only record maintained thereafter shall be the nonpublic record required under Section 63-9-17 solely for use by the courts in determining eligibility under this subsection (3).

(ii) If a person pleads not guilty to a misdemeanor offense under any of the provisions of Chapter 3, 5 or 7 of this title but is convicted, and the person meets all the requirements under paragraph (a) of this subsection, upon request of the defendant the court shall suspend the sentence for such offense to allow the defendant forty-five (45) days to successfully complete not less than four (4) hours of a court-approved traffic safety violator course at his own cost. Upon successful completion by the defendant of the course, the court shall set the conviction aside, dismiss the prosecution and direct that the case be closed. The court on its own motion shall expunge the record of the conviction, and the only record maintained thereafter shall be the nonpublic record required under Section 63-9-17 solely for use by the courts in determining an offender's eligibility under this subsection (3).

(c) An out-of-state resident shall be allowed to complete a substantially similar program in his home state, province or country provided the requirements of this subsection (3) are met, except that the necessary valid driver's license or permit shall be one issued by the home jurisdiction.

(d) A court shall not approve a traffic safety violator course under this subsection (3) that does not supply at least four (4) hours of instruction, an instructor's manual setting forth an appropriate curriculum, student workbooks, some scientifically verifiable analysis of the effectiveness of the curriculum and provide minimum qualifications for instructors.

(e) A court shall inform a defendant making inquiry or entering a personal appearance of the provisions of this subsection (3).

(f) The Department of Public Safety shall cause notice of the provisions of this subsection (3) to be available on its official Web site.

(g) Failure of a defendant to elect to come under the provisions of this subsection (3) for whatever reason, in and of itself, shall not invalidate a conviction.

(h) No employee of the sentencing court shall personally benefit from a defendant's attendance of a traffic safety violator course. Violation of this prohibition shall result in termination of employment.

(i) The additional fee of Ten Dollars ($10.00) imposed under this subsection (3) shall be forwarded by the court clerk to the State Treasurer for deposit into a special fund created in the State Treasury. Monies in the special fund may be expended by the Department of Public Safety, upon legislative appropriation, to defray the costs incurred by the department in maintaining the nonpublic record of persons who are eligible for participation under the provisions of this subsection (3).

(4) Whenever, in a misdemeanor case, a person is convicted of violating any of the provisions of Chapter 3, 5 or 7 of this title, has not had more than one (1) such violation within the past three (3) years, and pleads guilty to the violation, the court imposing sentence is authorized to impose a double fine and

withhold reporting of the conviction to the Department of Public Safety from inclusion in the person's driving record.

(5) The provisions of subsections (3) and (4) of this section shall not be applicable to violation of any of the provisions of Chapter 3, 5 or 7 of this title committed by the holder of a commercial driver's license issued under the Mississippi Commercial Driver's License Law, regardless of whether the violation occurred while operating a commercial motor vehicle or some other motor vehicle.

SECTION 2. Section 63-9-17, Mississippi Code of 1972, is amended as follows:

63-9-17. (1) Every court shall keep a full record of the proceedings of every case in which a person is charged with any violation of law regulating the operation of vehicles on the highways, streets or roads of this state.

(2) Unless otherwise sooner required by law, within five (5) days after the conviction of a person upon a charge of violating any law regulating the operation of vehicles on the highways, streets or roads of this state, every court in which such conviction was had shall prepare and immediately forward to the Department of Public Safety an abstract of the record of said court covering the case in which said person was so convicted, which abstract must be certified by the person so authorized to prepare the same to be true and correct.

(3) Said abstract must be made upon a form approved by the Department of Public Safety, and shall include the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, and if the fine was satisfied by prepayment or appearance bond forfeiture, and the amount of the fine or forfeiture, as the case may be.

(4) Every court shall also forward a like report to the Department of Public Safety upon the conviction of any person of

manslaughter or other felony in the commission of which a vehicle was used.

(5) Every court shall also forward a like report to the Department of Public Safety after the satisfactory completion by a defendant of an approved traffic safety violator course under Section 63-9-11, and the department shall make and maintain a private, nonpublic record to be kept for a period of ten (10) years. The record shall be solely for the use of the courts in determining eligibility under Section 63-9-11, as a first-time offender, and shall not constitute a criminal record for the purpose of private or administrative inquiry. Reports forwarded to the Department of Public Safety under this subsection shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(6) Every court shall also forward a like report to the Department of Public Safety upon the entry of a plea of guilty under Section 63-9-11(4), and the department shall make and maintain a private, nonpublic record solely for the use of the courts in determining eligibility under Section 63-9-11(4) as a first- or second-time offender, which shall not constitute a criminal record for the purpose of private or administrative inquiry. Reports forwarded to the Department of Public Safety under this subsection shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(7) The failure by refusal or neglect of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

(8) The Department of Public Safety shall keep copies of all abstracts received hereunder for a period of three (3) years at its main office and the same shall be open to public inspection during reasonable business hours. This subsection shall not apply

to nonpublic records maintained solely for the use of the courts in determining offender eligibility.

SECTION 3. This act shall take effect and be in force from and after July 1, 2008.

ST: Traffic violations; double fine and no record for certain first or second offenses.