

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Snyder**

A Bill

ACT 863 OF 1993
SENATE BILL 484

For An Act To Be Entitled

8 "AN ACT TO CREATE A TRAFFIC OFFENSE OF DRIVING UNDER THE
9 INFLUENCE FOR DRIVERS UNDER THE AGE OF TWENTY-ONE (21)
10 YEARS OF AGE; TO PRESCRIBE THE PENALTIES FOR VIOLATIONS OF
11 THE ACT TO INCLUDE LICENSE SUSPENSIONS, FINES AND PUBLIC
12 SERVICE; TO PROVIDE FOR AN UNDERAGE ALCOHOL AND DRIVING
13 EDUCATION PROGRAM FOR OFFENDERS; TO PROVIDE THERE SHALL BE
14 NO PROBATION OR EXPUNGEMENT FOR VIOLATIONS; AND FOR OTHER
15 PURPOSES."

Subtitle

17
18 "AN ACT TO CREATE A TRAFFIC OFFENSE OF DRIVING UNDER THE
19 INFLUENCE FOR DRIVERS UNDER THE AGE OF 21 YEARS OF AGE AND
20 PRESCRIBES PENALTIES."

21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 SECTION 1. The act may be known and cited as the "Underage Driving
25 Under the Influence Law" or the "Underage DUI Law".

26

27 SECTION 2. As used in this act, unless the context otherwise requires:

28 (1) "Influence" means being controlled or affected by the ingestion of
29 an alcoholic beverage or similar intoxicant, or any combination thereof, to
30 such a degree that the driver's reactions, motor skills, and judgment are
31 altered or diminished, even to the slightest scale, and the underage driver,
32 therefore, due to inexperience and lack of skill, constitutes a danger of
33 physical injury or death to himself and other motorists or pedestrians;

34 (2) "Underage" means any person who is under the age of twenty-one (21)
35 years old and therefore may not legally consume alcoholic beverages in
36 Arkansas.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SECTION 3. (a) It is unlawful and punishable as provided in this act for any underage person to operate or be in actual physical control of a motor vehicle while under the influence of an alcoholic beverage or similar intoxicant.

(b) It is unlawful and punishable as provided in this act for any underage person to operate or be in actual physical control of a motor vehicle if at that time there was one-fiftieth of one percent (0.02%), *but less than one-tenth of one percent (0.10%)*, by weight of alcohol in the person's blood as determined by a chemical test of the person's blood or breath, or other bodily substance.

SECTION 4. Seizure, suspension, and revocation of license - Temporary permits.

(a)(1) At the time of arrest for violating Section 3, the arresting officer shall seize the motor vehicle operator's license of the underage person arrested and issue to such person a temporary driving permit to expire on the date of arraignment.

(2) The arresting officer shall remit the seized driver_s license to the court.

(3) Upon arraignment, the judge shall issue such person a temporary permit to expire on the date of the trial.

(4) If the person is convicted of violating Section 3, the court shall transmit the driver_s license to the Office of Driver Services and shall instruct the Office of Driver Services to suspend or revoke the person's driver_s license as follows:

(A) Suspension for not less than ninety (90) days nor more than one hundred twenty (120) days for the first offense;

(B) Suspension for not less than one (1) year nor more than eighteen (18) months for a second offense while underage;

(C) Revocation for the third or subsequent offense occurring while the person is underage. Revocation shall be until the underage person reaches the age of twenty-one (21) or for a period of three (3) years, which ever is longer.

(5) For suspension or revocation purposes under this act, an

1 underage person who has one (1) or more previous convictions for a violation
2 of the Omnibus DWI Act, Arkansas Code §§ 5-65-101 et seq, shall be deemed to
3 have a conviction for a violation of this act for each conviction for DWI.

4 (b)(1) Any underage person who is found guilty or enters a plea of
5 guilty to a first offense under this act may petition the Office of Driver
6 Services that he or she be issued a restricted driver_s permit for employment-
7 related purposes or to attend a state-required alcohol and driving education
8 program.

9 (2) The Office of Driver Services shall notify each underage
10 person that he or she may request a restricted permit and shall advise the
11 person of the time and place for making such request and for the hearing
12 thereon, which shall be conducted within ten (10) days from the guilty plea or
13 conviction.

14 (3) The notice shall be given by mailing the notice to the last
15 known address of the person whose driver_s license is suspended.

16 (4) Any previously issued temporary permit shall remain in effect
17 until the hearing date.

18 (5) Furthermore, the sentencing court may postpone acceptance of
19 a guilty plea or sentencing following a conviction until a determination of
20 the request for a restricted driver_s permit has been made.

21 (6) If at the hearing it is determined that the underage person
22 has no reasonable alternative mode of transportation to and from his or her
23 place of employment, or to a state-required alcohol and driving education
24 program, or that driving of a motor vehicle is an essential part of the
25 person's work, and he or she has no previous convictions for a violation of
26 this act or the Omnibus DWI Act, Arkansas Code §§ 5-65-101 et seq, the
27 restricted driver permit may be issued. If the court has required an alcohol
28 and driving education program that exceeds the length of the suspension under
29 this section, a restricted driver permit may be issued for the purpose of
30 completing the required program. Any person to whom a restricted permit has
31 been issued who shall operate a motor vehicle other than for the purposes and
32 under the conditions prescribed in the permit shall, upon conviction therefor,
33 be imprisoned for two (2) days.

34 (c) The Office of Driver Services shall charge a fee of twenty-five
35 dollars (\$25.00) for reinstating a driver_s license suspended because of a

1 conviction for a violation of Section 3. Forty percent (40%) of the revenues
2 derived from this fee shall be deposited in the State Treasury as special
3 revenues and credited to the Public Health Fund to be used exclusively for the
4 Department of Health-Blood Alcohol Program.

5

6 SECTION 5. Fines.

7 (a) Any person who pleads guilty, nolo contendere, or is found guilty
8 of violating Section 3 shall be fined:

9 (1) No less than one hundred dollars (\$100) nor more than five
10 hundred dollars (\$500) for the first offense;

11 (2) No less than two hundred dollars (\$200) nor more than one
12 thousand dollars (\$1,000) for the second offense occurring underage;

13 (3) No less than five hundred dollars (\$500) nor more than two
14 thousand dollars (\$2,000) for the third or subsequent offense occurring
15 underage.

16 (b) For the purpose of determining an underage person_s fines under
17 this act, an underage person who has one (1) or more previous convictions for
18 a violation of the Omnibus DWI Act, Arkansas Code §§ 5-65-101 et seq, shall be
19 deemed to have a conviction for a violation of this act for each conviction
20 for DWI.

21

22 SECTION 6. Public service work. Any underage person who pleads guilty,
23 nolo contendere, or is found guilty of violating Section 3 shall be ordered by
24 the court to perform public service work of the type and for the duration as
25 deemed appropriate by the court.

26

27 SECTION 7. Alcohol and driving education program.

28 (a) Any underage person who pleads guilty or nolo contendere, or is
29 found guilty of violating Section 3, shall, in addition to other penalties
30 provided herein, be required to complete an alcohol and driving education
31 program for underage drivers as prescribed and approved by the Arkansas
32 Highway Safety Program. The Arkansas Highway Safety Program shall approve
33 only those programs in alcohol and driving education which are targeted at the
34 underage driving group and are intended to intervene and prevent repeat
35 occurrences of driving under the influence or DWI. The alcohol and driving

1 education program may collect a program fee of up to fifty dollars (\$50.00)
2 per enrollee to offset program costs. A person ordered to complete an alcohol
3 and driving education program under this section, may be required to pay, in
4 addition to the costs collected for the program, a fee of up to twenty-five
5 dollars (\$25.00) to off-set the additional costs associated with reporting
6 requirements under this act. An approved alcohol and driving education
7 program shall report semi-annually to the Arkansas Highway Safety Program all
8 revenue derived from these fees.

9 (b) Prior to reinstatement of a driver's license suspended or revoked
10 under this act, the driver shall furnish proof of attendance at and completion
11 of the alcohol and driving education program.

12 (c) Within six (6) months of the final adjudication of guilt, the
13 driver shall furnish proof of attendance at and completion of the alcohol and
14 driving education program. If the proof is not furnished, the driver shall be
15 cited for contempt of court and assessed an additional court cost of two
16 hundred dollars (\$200), with fifty dollars (\$50.00) retained by the municipal
17 court. The remaining moneys received from this additional court costs shall
18 be remitted at least quarterly, by January 1, April 1, July 1, and October 1
19 to the Director of the Department of Finance and Administration. The moneys
20 so received by the director shall be deposited in the State Treasury to be
21 credited to the Highway Safety Special Fund for use to support programs of the
22 Arkansas Highway Safety Program.

23 (d) The Arkansas Highway Safety Program is authorized to promulgate
24 rules and regulations reasonably necessary to carry out the purposes of this
25 section regarding the approval and monitoring of the alcohol and driving
26 education programs.

27

28 SECTION 8. No probation prior to adjudication of guilt.

29 (a) Arkansas Code §§ 16-93-301 et seq. allows judges of circuit and
30 municipal courts to place on probation first offenders who plead guilty or
31 nolo contendere prior to an adjudication of guilt and, upon successful
32 completion of probation, the judge may discharge the accused without a court
33 adjudication of guilt and expunge the record.

34 (b) No circuit judge or municipal judge may utilize the provisions of
35 Arkansas Code §§ 16-93-301 et seq. in instances where an underage person is

1 charged with violating Section 3 of this act.

2 (c) Every magistrate or judge of a court shall keep or cause to be kept
3 a record of every violation of this act presented to that court and shall keep
4 a record of every official action by that court in reference thereto
5 including, but not limited to, a record of every finding of guilt, plea of
6 guilty or nolo contendere, judgment of acquittal, and the amount of fine and
7 other sentence.

8 (d) Within thirty (30) days after sentencing a person who has been
9 found guilty, or pleaded guilty or nolo contendere on a charge of violating
10 any provision of this act, every magistrate of the court or clerk of the court
11 shall prepare and immediately forward to the Office of Driver Services an
12 abstract of the record of the court covering the case in which the person was
13 found guilty, or pleaded guilty or nolo contendere, which abstract shall be
14 certified by the person so required to prepare it to be true and correct.

15 (e) The abstract shall be made upon a form furnished by the Office of
16 Driver Services and shall include:

- 17 (1) The name and address of the party charged;
- 18 (2) The number, if any, of the driver_s license of the party
19 charged;
- 20 (3) The registration number of the vehicle involved;
- 21 (4) The date of hearing;
- 22 (5) The plea;
- 23 (6) The judgment; and
- 24 (7) The amount of the fine and other sentence, as the case may
25 be.

26

27 SECTION 9. Implied consent.

28 (a) Any underage person who operates a motor vehicle or is in actual
29 physical control of a motor vehicle in this state shall be deemed to have
30 given consent, subject to the provisions of the Omnibus DWI Act, Arkansas Code
31 § 5-65-203, to a chemical test or tests of his or her blood, breath, or urine
32 for the purpose of determining the alcohol or controlled substance content of
33 his or her blood if:

- 34 (1) The driver is arrested for any offense arising out of acts
35 alleged to have been committed while the underage person was driving while

1 under the influence or driving while there was one-fiftieth of one percent
2 (0.02%), *but less than one-tenth of one percent (0.10%)*, of alcohol in the
3 person's blood; or

4 (2) The underage person is involved in an accident while
5 operating or in actual physical control of a motor vehicle; or

6 (3) The underage person is stopped by a law enforcement officer
7 who has reasonable cause to believe that the person, while operating or in
8 actual physical control of a motor vehicle, is under the influence or has one-
9 fiftieth of one percent (0.02%), *but less than one-tenth of one percent*
10 (0.10%), of alcohol in his or her blood.

11 (b) Any underage person who is dead, unconscious, or otherwise in a
12 condition rendering him incapable of refusal shall be deemed not to have
13 withdrawn the consent provided by subsection (a) of this section, and the
14 tests may be administered subject to the provisions of Arkansas Code §
15 5-65-203.

16

17 SECTION 10. Refusal to submit.

18 (a) If an underage person under arrest refuses upon the request of a
19 law enforcement officer to submit to a chemical test designated by the law
20 enforcement agency, as provided in Section 9 of this act, none shall be given,
21 and the person's driver_s license shall be seized by the law enforcement
22 officer, and the officer shall immediately deliver to the person from whom the
23 license was seized a temporary driving permit which shall expire on the date
24 of arraignment.

25 (b) The arresting officer shall remit the seized driver_s license to
26 the court, and, upon an arraignment, the judge shall issue that person a
27 temporary permit to expire on the date of trial.

28 (c) If the judge determines that the law enforcement officer had
29 reasonable cause to believe the arrested underage person had been driving
30 under the influence or while there was one-fiftieth of one percent (0.02%),
31 *but less than one-tenth of one percent (0.10%)*, of alcohol in the person's
32 blood, and the underage person refused to submit to the test upon the request
33 of the law enforcement officer, the judge shall order the Office of Driver
34 Services to suspend the person's driver_s license as follows:

35 (1) Suspension for not less than ninety (90) days nor more than

1 one hundred eighty (180) days if the underage person had not previously
2 refused the test while underage and if the underage person had not been
3 convicted of driving while under the influence or driving while there was one-
4 fiftieth of one percent (0.02%), *but less than one-tenth of one percent*
5 *(0.10%)*, of alcohol in the person's blood while underage;

6 (2) Suspension for not less than one (1) year nor more than
7 eighteen (18) months if the underage person had previously refused the test
8 while underage or if the underage person had been convicted of driving while
9 under the influence or driving while there was one-fiftieth of one percent
10 (0.02%), *but less than one-tenth of one percent (0.10%)*, of alcohol in the
11 person's blood while underage;

12 (d) If the underage person is a resident without a license or permit to
13 operate a motor vehicle in this state, the Office of Driver Services shall
14 deny to the person the issuance of a license or permit for a period of two (2)
15 years after the date of the arrest.

16 (e) (1) If the person is a nonresident, that person's privilege of
17 operating a motor vehicle in Arkansas shall be suspended for not less than six
18 (6) months.

19 (2) When a nonresident's privilege to operate a motor vehicle in
20 this state has been suspended, the Office of Driver Services shall notify the
21 office of issuance of that person's nonresident motor vehicle license of
22 action taken by the Arkansas Office of Driver Services.

23

24 SECTION 11. Relationship to other laws.

25 (a) Penalties prescribed in this act for underage driving under the
26 influence shall be in addition to all other penalties prescribed by law for
27 the offenses under other laws of the State of Arkansas.

28 (b) For the purposes of this act, there is no presumption, as there is
29 found in Arkansas Code § 5-65-206, that a person is not under the influence of
30 an intoxicating substance, such as alcohol or similar intoxicant, if the
31 person's blood alcohol concentration is five hundredths of one percent (0.05%)
32 or less.

33 (c) The administration of the chemical tests for blood alcohol, the
34 machines and instruments used to administer those tests, the procedures used
35 to calibrate and maintain those machines and instruments, and the use of the

1 test results as evidence shall be the same as for those tests and machines and
2 instrument used for testing blood alcohol concentrations under the Omnibus DWI
3 Act, Arkansas Code §§ 5-65-101 et seq.

4 (d) *If there is evidence of more than one-twentieth of one percent*
5 *(0.05%) but less than one-tenth of one percent (0.10%) by weight of alcohol in*
6 *a person's blood, breath, or other bodily substances, this fact shall not*
7 *preclude a person under twenty-one (21) years of age from being prosecuted for*
8 *driving while intoxicated under Arkansas Code §§5-65-101 et seq.*

9
10

11 SECTION 12. All provisions of this act of general and permanent nature
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
13 Revision Commission shall incorporate the same in the Code.

14

15 SECTION 13. If any provisions of this act or the application thereof to
16 any person or circumstance is held invalid, the invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provisions or application, and to this end the provisions of this
19 act are declared to be severable.

20

21 SECTION 14. All laws and parts of laws in conflict with this act are
22 hereby repealed.

23

/s/ Senator Snyder

24

25

APPROVED: 4/2/93

26

27

28

29

30

31

32

33

34

35

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9