

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

Act 1036 of 2003  
HOUSE BILL 2244

5 By: Representative Bond  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE § 5-65-104 TO  
10 REMOVE LANGUAGE DUPLICATED IN OTHER CODE  
11 SECTIONS; AND FOR OTHER PURPOSES.  
12

## Subtitle

13 AN ACT TO AMEND ARKANSAS CODE § 5-65-104  
14 TO REMOVE LANGUAGE DUPLICATED IN OTHER  
15 CODE SECTIONS.  
16  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code § 5-65-104 is amended to read as follows:

22 (a)(1)~~(A)~~ At the time of arrest for operating or being in actual  
23 physical control of a motor vehicle while intoxicated or while there was an  
24 alcohol concentration of eight-hundredths (0.08) or more in the person's  
25 breath or blood, § 5-65-103, ~~or refusing to submit to a chemical test of~~  
26 ~~blood, breath, or urine for the purpose of determining the alcohol or~~  
27 ~~controlled substance contents of the person's blood or breath, § 5-65-202,~~  
28 the arrested person shall immediately surrender his or her license, permit,  
29 or other evidence of driving privilege to the arresting law enforcement  
30 officer as provided by §5-65-402.

31 ~~(B) The officer shall seize the license, permit, or other~~  
32 ~~evidence of driving privilege surrendered by the arrested person or found on~~  
33 ~~the arrested person during a search.~~

34 ~~(2) If the license, permit, or other evidence of driving~~  
35 ~~privilege seized by the officer has not expired and otherwise appears valid~~  
36 ~~to the officer, the officer shall issue to the arrested person a dated~~



1 receipt for that license, permit, or other evidence of driving privilege on a  
 2 form prescribed by the Department of Finance and Administration or its  
 3 designee. This receipt shall be recognized as a license and shall authorize  
 4 the arrested person to operate a motor vehicle for a period not to exceed  
 5 thirty (30) days. The receipt form shall contain and shall constitute a  
 6 notice of suspension or revocation of driving privileges by the Office of  
 7 Driver Services of the Revenue Division of the Department of Finance and  
 8 Administration, effective in thirty (30) days, notice of the right to a  
 9 hearing within twenty (20) days, and as notice that, if a hearing is to be  
 10 requested, the hearing request is required to be made within seven (7)  
 11 calendar days of the notice being given. The receipt shall also contain  
 12 details and phone numbers of the Office of Driver Services telling how to  
 13 request the hearing. If the Office of Driver Services is unable to conduct a  
 14 hearing within the twenty day period, a temporary permit shall be issued and  
 15 shall be valid until the date of the hearing. The seized license, permit, or  
 16 other evidence of driving privilege and a copy of the receipt form issued to  
 17 the arrested person shall be attached to the sworn report of the arresting  
 18 officer and shall be submitted by mail or in person to the Director of the  
 19 Department of Finance and Administration or his designated representative  
 20 within seven (7) days of the issuance of the receipt. The failure of the  
 21 arresting officer to timely file this report shall not affect the authority  
 22 of the Office of Driver Services to suspend or revoke the driving privilege  
 23 of the arrested person.

24           (3) ~~Any notices from the Office of Driver Services required~~  
 25 ~~under this act which are not personally delivered shall be sent by certified~~  
 26 ~~mail and shall be deemed to have been delivered on the date when postmarked~~  
 27 ~~and shall be sent to the last known address on file with the Office of Driver~~  
 28 ~~Services. Refusal of the addressee to accept delivery or attempted delivery~~  
 29 ~~of the notice at the address obtained by the arresting law enforcement~~  
 30 ~~officer or on file with the Office of Driver Services shall not constitute~~  
 31 ~~nonreceipt of notice. For all notices which are personally delivered, the~~  
 32 ~~person shall be asked to sign a receipt acknowledging he or she received the~~  
 33 ~~required notice.~~

34           (4) (2) The Office of Driver Services of the Revenue Division of  
 35 the Department of Finance and Administration or its designated official shall  
 36 suspend or revoke the driving privilege of an arrested person or shall

1 suspend any nonresident driving privilege of an arrested person ~~when it~~  
 2 ~~receives a sworn report from the law enforcement officer that the officer had~~  
 3 ~~reasonable grounds to believe the arrested person had been operating or was~~  
 4 ~~in actual physical control of a motor vehicle while intoxicated or while~~  
 5 ~~there was an alcohol concentration of eight hundredths (0.08) or more by~~  
 6 ~~weight of alcohol in the person's blood or breath, § 5-65-103, which is~~  
 7 ~~accompanied by a written chemical test report reflecting that the arrested~~  
 8 ~~person was intoxicated or had an alcohol concentration of eight hundredths~~  
 9 ~~(0.08) or more or is accompanied by a sworn report that the arrested person~~  
 10 ~~refused to submit to a chemical test of blood, breath, or urine for the~~  
 11 ~~purpose of determining the alcohol or controlled substance contents of the~~  
 12 ~~person's blood or breath, as provided in § 5-65-202 § 5-65-402. The~~  
 13 suspension or revocation shall be based on the number of previous offenses as  
 14 follows:

15 (A)(i) Suspension for one hundred twenty (120) days for  
 16 the first offense of operating or being in actual physical control of a motor  
 17 vehicle while intoxicated or while there was an alcohol concentration of at  
 18 least eight hundredths (0.08) but less than fifteen hundredths (0.15) by  
 19 weight of alcohol in the person's blood or breath, § 5-65-103;

20 (ii) Suspension for six (6) months for the first  
 21 offense of operating or being in actual physical control of a motor vehicle  
 22 while intoxicated by the ingestion of or by the use of a controlled  
 23 substance; and

24 ~~(iii) Suspension for one hundred eighty (180) days~~  
 25 ~~for the first offense of refusing to submit to a chemical test of blood,~~  
 26 ~~breath, or urine for the purpose of determining the alcohol or controlled~~  
 27 ~~substance contents of the person's blood or breath, § 5-65-202. Provided,~~  
 28 ~~however, that if the court orders issuance of an ignition interlock~~  
 29 ~~restricted license under § 5-65-118, the suspension period for which no~~  
 30 ~~restricted license shall be available shall be a minimum of ninety (90) days.~~  
 31 ~~The restricted driving permit provision of § 5-65-120 does not apply to this~~  
 32 ~~suspension;~~

33 ~~(iv) (iii)~~ Suspension for one hundred eighty (180)  
 34 days for the first offense of operating or being in actual physical control  
 35 of a motor vehicle while intoxicated and while there was an alcohol  
 36 concentration of fifteen hundredths (0.15) or more by weight of alcohol in

1 the person's blood or breath. Provided, however, that if the court orders  
 2 issuance of an ignition interlock restricted license under § 5-65-118, the  
 3 suspension period for which no restricted license shall be available shall be  
 4 a minimum of thirty (30) days. The restricted driving permit provision of §  
 5 5-65-120 does not apply to this suspension;

6 (B) ~~(i)~~ Suspension for twenty-four (24) months for a  
 7 second offense of operating or being in actual physical control of a motor  
 8 vehicle while intoxicated or while there was an alcohol concentration of  
 9 eight hundredths (0.08) or more by weight of alcohol in the person's blood or  
 10 breath, § 5-65-103, within five (5) years of the first offense. Provided,  
 11 however, that if the court orders issuance of an ignition interlock  
 12 restricted license under § 5-65-118, the suspension period for which no  
 13 restricted license shall be available shall be a minimum of one (1) year;

14 ~~(ii) Suspension for two (2) years, during which no~~  
 15 ~~restricted permits may be issued, for a second offense of refusing to submit~~  
 16 ~~to a chemical test of blood, breath, or urine for the purposes of determining~~  
 17 ~~the alcohol or controlled substance contents of the person's blood or breath,~~  
 18 ~~§ 5-65-202, within five (5) years of the first offense;~~

19 (C) ~~(i)~~ Suspension for thirty (30) months for the third  
 20 offense of operating or being in actual physical control of a motor vehicle  
 21 while intoxicated or while there was an alcohol concentration of eight  
 22 hundredths (0.08) or more by weight of alcohol in the person's blood or  
 23 breath, § 5-65-103, within five (5) years of the first offense. Provided,  
 24 however, that if the court orders issuance of an ignition interlock  
 25 restricted license under § 5-65-118, the suspension period for which no  
 26 restricted license shall be available shall be a minimum of one (1) year; and

27 ~~(ii) Revocation for three (3) years, during which no~~  
 28 ~~restricted permits may be issued, for the third offense of refusing to submit~~  
 29 ~~to a chemical test of blood, breath, or urine for the purpose of determining~~  
 30 ~~the alcohol or controlled substance contents of the person's blood or breath,~~  
 31 ~~§ 5-65-202, within five (5) years of the first offense; and~~

32 (D) ~~(i)~~ Revocation for four (4) years, during which no  
 33 restricted permits may be issued, for the fourth or subsequent offense of  
 34 operating or being in actual physical control of a motor vehicle while  
 35 intoxicated or while there was an alcohol concentration of eight hundredths  
 36 (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-

1 103, within five (5) years of the first offense.

2 ~~(ii) Lifetime revocation, during which no restricted~~  
 3 ~~permit may be issued, for the fourth or subsequent offense of refusing to~~  
 4 ~~submit to a chemical test of blood, breath, or urine for the purpose of~~  
 5 ~~determining the alcohol or controlled substance contents of the person's~~  
 6 ~~blood or breath, § 5-65-202, within five (5) years of the first offense.~~

7 ~~(5)(A) If the person is a resident without a license or~~  
 8 ~~permit to operate a motor vehicle in this state, the Office of Driver~~  
 9 ~~Services shall, in addition to any other penalties provided for in this act,~~  
 10 ~~deny to that person the issuance of a license or permit for a period of six~~  
 11 ~~(6) months for a first offense. For a second or subsequent offense by a~~  
 12 ~~resident without a license or permit to operate a motor vehicle in this~~  
 13 ~~state, the Office of Driver Services shall, in addition to any other~~  
 14 ~~penalties provided for in this act, deny to that person the issuance of a~~  
 15 ~~license or permit for a period of one (1) year.~~

16 ~~(B) (3) If a person is a resident who is convicted of driving~~  
 17 ~~without a license or permit to operate a motor vehicle and the underlying~~  
 18 ~~basis for the suspension, revocation, or restriction of the license was for a~~  
 19 ~~violation of § 5-65-103, the court may order, in addition to any other~~  
 20 ~~penalties provided for under law, that the Office of Driver Services only~~  
 21 ~~issue an ignition interlock restricted permit for a period of one (1) year~~  
 22 ~~prior to the reinstatement or reissuance of a license or permit after the~~  
 23 ~~person would otherwise be eligible for reinstatement or reissuance of the~~  
 24 ~~person's license.~~

25 ~~(6)(A) If the person is a nonresident, such person's privilege~~  
 26 ~~to operate a motor vehicle in Arkansas shall be suspended in the same manner~~  
 27 ~~as that of a resident. The Office of Driver Services shall notify the office~~  
 28 ~~that issued the nonresident's motor vehicle license of the action taken by~~  
 29 ~~the Office of Driver Services.~~

30 ~~(B) When the person is a nonresident without a license or~~  
 31 ~~permit to operate a motor vehicle, the Office of Driver Services shall notify~~  
 32 ~~the office of issuance for that person's state of residence of action taken~~  
 33 ~~by the Office of Driver Services.~~

34 ~~(7) Upon the written request of a person whose privilege to~~  
 35 ~~drive has been revoked, denied, or suspended or who has received a notice of~~  
 36 ~~revocation, suspension, or denial by the arresting officer, the Office of~~

~~1 Driver Services shall grant the person an opportunity to be heard provided  
 2 the request is received by the Office of Driver Services within seven (7)  
 3 calendar days after the notice of the revocation, suspension, or denial is  
 4 given in accordance with this section or as otherwise provided in this act.  
 5 Such a request shall not operate to stay the revocation, suspension, or  
 6 denial by the Office of Driver Services until the disposition of said  
 7 hearing.~~

~~8 (8)(A)(i) The hearing shall be before the Office of Driver  
 9 Services or its authorized agent in the office of the Revenue Division of the  
 10 Department of Finance and Administration nearest the county wherein the  
 11 alleged events occurred for which the person was arrested, unless the Office  
 12 of Driver Services or its authorized agent and the arrested person agree  
 13 otherwise to the hearing's being held in some other county, or the Office of  
 14 Driver Services or its authorized agent may schedule the hearing or any part  
 15 thereof by telephone and conduct the hearing by telephone conference call.~~

~~16 (ii) The hearing shall not be recorded.~~

~~17 (iii) The scope of the hearing shall cover the  
 18 issues of whether the officer had reasonable grounds to believe that the  
 19 person had been operating or was in actual physical control of a vehicle  
 20 while intoxicated or while there was an alcohol concentration of eight  
 21 hundredths (0.08) or more in the person's breath or blood, or refused to  
 22 submit to a chemical test of the blood, breath, or urine for the purpose of  
 23 determining the alcohol or controlled substance contents of the person's  
 24 breath or blood, and whether the person was placed under arrest.~~

~~25 (iv) At the hearing, the burden of proof shall be on  
 26 the state, and the decision shall be based on a preponderance of the  
 27 evidence.~~

~~28 (B) If the revocation, suspension, or denial is based upon  
 29 a chemical test result indicating that the person was intoxicated or there  
 30 was an alcohol concentration of eight hundredths (0.08) or more in the  
 31 person's breath or blood, as provided in § 5-65-103, and a sworn report from  
 32 a law enforcement officer, the scope of the hearing shall also cover the  
 33 issues as to whether:~~

~~34 (i) The person was advised that his or her privilege  
 35 to drive would be revoked, suspended, or denied if the test result reflected  
 36 an alcohol concentration of eight hundredths (0.08) or more or the presence~~

1 ~~of other intoxicating substances or a combination of intoxicating substances;~~  
2 ~~(ii) The breath, blood, or urine specimen was~~  
3 ~~obtained from the person within the established and certified criteria of the~~  
4 ~~Department of Health;~~

5 ~~(iii) The testing procedures used were in accordance~~  
6 ~~with existing rules; and~~

7 ~~(iv) The test result in fact reflects an alcohol~~  
8 ~~concentration or the presence of other intoxicating substances, or a~~  
9 ~~combination thereof.~~

10 ~~(C) If the revocation, suspension, or denial is based upon~~  
11 ~~the refusal of the person to submit to a chemical test as provided in § 5-65-~~  
12 ~~202, reflected in a sworn report by a law enforcement officer, the scope of~~  
13 ~~the hearing shall also include whether:~~

14 ~~(i) The person refused to submit to the test or~~  
15 ~~tests; and~~

16 ~~(ii) The person was informed that his or her~~  
17 ~~privilege to drive would be revoked, suspended, or denied if the person~~  
18 ~~refused to submit to the test or tests.~~

19 ~~(9) (4)~~ In order to determine the number of previous offenses to  
20 consider when suspending or revoking the arrested person's driving  
21 privileges, the Office of Driver Services shall consider as a previous  
22 offense:

23 (A) Any convictions for offenses of operating or being in  
24 actual physical control of a motor vehicle while intoxicated or while there  
25 was an alcohol concentration of eight-hundredths (0.08) or more in the  
26 person's breath or blood under § 5-65-103 or refusing to submit to a chemical  
27 test under § 5-65-202 which occurred prior to July 1, 1996; and

28 (B) Any suspension or revocation of driving privileges for  
29 arrests for operating or being in actual physical control of a motor vehicle  
30 while intoxicated or while there is an alcohol concentration of eight-  
31 hundredths (0.08) or more in the person's breath or blood under § 5-65-103 or  
32 refusing to submit to a chemical test under § 5-65-202 occurring on or after  
33 July 1, 1996, where the person was not subsequently acquitted of the criminal  
34 charges.

35 ~~(b) After the hearing, the Office of Driver Services or its authorized~~  
36 ~~agent shall order the revocation, suspension, or denial to be rescinded or~~

1 ~~sustained and shall then advise any person whose license is revoked,~~  
 2 ~~suspended, or denied that he or she may request a restricted permit as~~  
 3 ~~otherwise provided for by this act.~~

4 ~~(c) A person adversely affected by the hearing disposition order of~~  
 5 ~~the Office of Driver Services of the Revenue Division of the Department of~~  
 6 ~~Finance and Administration or its authorized agent may file a de novo~~  
 7 ~~petition for review within thirty (30) days in the circuit court in the~~  
 8 ~~county in which the offense took place. The filing of a petition for review~~  
 9 ~~will not stay or place in abeyance the decision of the Office of Driver~~  
 10 ~~Services or its authorized agent. The administrative hearings held pursuant~~  
 11 ~~to this section shall be exempt from the Arkansas Administrative Procedure~~  
 12 ~~Act, § 25-15-201 et seq. On review, the circuit court shall hear the case de~~  
 13 ~~novo in order to determine whether, based on a preponderance of the evidence,~~  
 14 ~~grounds exist for revocation, suspension, or denial of the person's privilege~~  
 15 ~~to drive.~~

16 ~~(d)(1) Any decision rendered at an administrative hearing held under~~  
 17 ~~this section shall have no effect on any criminal case arising from any~~  
 18 ~~violation of § 5-65-103 or § 5-65-202.~~

19 ~~(2) Any decision rendered by a court of law for a criminal case~~  
 20 ~~arising from any violation of § 5-65-103 or § 5-65-202 shall affect the~~  
 21 ~~administrative suspensions or revocation of the driver's license as follows:~~

22 ~~(A) A plea of guilty or nolo contendere or a finding of~~  
 23 ~~guilt by the court will have no effect on any administrative hearing held~~  
 24 ~~under this section; and~~

25 ~~(B) An acquittal on the charges or a dismissal of charges~~  
 26 ~~will serve to reverse the suspension or revocation of the driver's license~~  
 27 ~~suspended or revoked under this section.~~

28 ~~(3) If a person is acquitted of the charges of violating § 5-65-~~  
 29 ~~103 or § 5-65-202, or if the charges are dismissed, the Office of Driver~~  
 30 ~~Services shall reinstate the person's driver license at no cost to the~~  
 31 ~~person, and the charges shall not be used to determine the number of previous~~  
 32 ~~offenses when administratively suspending or revoking the driving privilege~~  
 33 ~~of any arrested person in the future.~~

34 ~~(e) Any person whose privilege to drive has been denied, suspended, or~~  
 35 ~~revoked shall remain under such denial, suspension, or revocation, until such~~  
 36 ~~time that person applies to and is granted by the Office of Driver Services~~



1 ~~for reinstatement of such privilege to drive, and remains subject to~~  
 2 ~~penalties as provided in § 5-65-105 or until he is acquitted of violating §~~  
 3 ~~5-65-103.~~

4 ~~(f) The administrative suspension or revocation of a driver's license~~  
 5 ~~as provided for by this section shall be supplementary to and in addition to~~  
 6 ~~the suspensions or revocations of driver licenses which are ordered by a~~  
 7 ~~court of competent jurisdiction for offenses under §§ 5-64-710, 5-65-116, and~~  
 8 ~~27-16-914 or any other traffic or criminal offense wherein a suspension or~~  
 9 ~~revocation of the driver's license is a penalty for the violation.~~

10 ~~(g) For all arrests or offenses occurring before July 1, 1996, but~~  
 11 ~~which have not reached a final disposition as to judgment in court, the~~  
 12 ~~offenses shall be decided under the law in effect at the time the offense~~  
 13 ~~occurred, and any defendant shall be subject to the penalty provisions in~~  
 14 ~~effect at that time and not under the provisions of this section.~~

15 ~~(h)(b)(1)~~ Any person whose license is suspended or revoked pursuant to  
 16 this section shall, unless the charges are dismissed or the person is  
 17 acquitted of the charges upon which the suspension or revocation is based, be  
 18 required to complete an alcohol education program as prescribed and approved  
 19 by the Highway Safety Program or an alcohol treatment program as approved by  
 20 the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health.  
 21 The alcohol education program may collect a program fee of up to fifty  
 22 dollars (\$50.00) per enrollee to offset program costs. A person required to  
 23 complete an alcohol education program under this section may be required to  
 24 pay, in addition to the costs collected for education, a fee of up to twenty-  
 25 five dollars (\$25.00) to the alcohol education program to offset the  
 26 additional costs associated with reporting requirements under this  
 27 subchapter. The alcohol education program shall report semiannually to the  
 28 Highway Safety Program all revenue derived from this fee.

29 (2) A person whose license is suspended or revoked pursuant to  
 30 this section shall furnish proof of attendance at, and completion of, the  
 31 alcoholism treatment or education program before reinstatement of his or her  
 32 suspended or revoked driver's license or shall furnish proof of dismissal or  
 33 acquittal of the charge on which the suspension or revocation is based.

34 (3) Even if a person has filed a de novo petition for review  
 35 pursuant to subsection (c) of this section, the person shall be entitled to  
 36 reinstatement of driving privileges upon complying with this subsection and

1 shall not be required to postpone reinstatement until the disposition of the  
2 de novo review in circuit court has occurred.

3 ~~(i)(1) A person whose license is suspended or revoked pursuant to this~~  
4 ~~section shall furnish proof of attendance at and completion of the alcohol~~  
5 ~~education or treatment program before reinstatement of his or her suspended~~  
6 ~~or revoked driver's license.~~

7 ~~(2) Application for reinstatement shall be made to the Office of~~  
8 ~~Driver Services.~~

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11 APPROVED: 4/2/2003  
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