

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Ross**

A Bill

SENATE BILL 41

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 5, CHAPTER 65,
9 ARKANSAS CODE ANNOTATED, DRIVING WHILE INTOXICATED, TO
10 INCREASE THE TIME REQUIREMENT IN DETERMINING PRIOR
11 OFFENSES TO FIVE (5) YEARS, TO CHANGE MINIMUM PENALTIES,
12 TO PROVIDE FOR ADMINISTRATIVE REVOCATION AND SUSPENSION OF
13 DRIVERS' LICENSES; AND FOR OTHER PURPOSES."

14
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16
17 SECTION 1. Arkansas Code Annotated §5-65-101 is amended to read as
18 follows:

19 "5-65-101. Omnibus DWI Act - Application.

20 (a) This act shall be known as the 'Omnibus DWI Act.'

21 (b) The provisions of this act shall govern the prosecution and
22 administrative proceedings for offenses defined by this act and committed
23 after March 21, 1983.

24 (c) The provisions of this act do not apply to offenses committed prior
25 to March 21, 1983. Those offenses shall be construed and punished in
26 accordance with the law existing at the time of the commission of the offense.
27 However, all pleas of guilty and nolo contendere and all findings of guilty
28 of driving while intoxicated within five (5) years prior to March 21, 1983,
29 shall be counted in determining the number of prior offenses for the purposes
30 of enhancing the penalties provided by this act for violating §5-65-103."

31

32 SECTION 2. Arkansas Code Annotated §5-65-102 is amended to add a new
33 subsection as follows:

34 "(4) 'Offense' means an arrest for operating or being in actual physical
35 control of a motor vehicle while intoxicated or while there was one-tenth of

1 one percent (0.10%) or more by weight of alcohol in the person's blood (§5-65-
2 103) or refusing to submit to a chemical test of blood, breath or urine for
3 the purpose of determining the alcohol or controlled substance contents of the
4 person's blood (§5-65-202)."

5

6 SECTION 3. Arkansas Code Annotated §5-65-104 is amended to read as
7 follows:

8 "5-65-104. Seizure, suspension, and revocation of license - Temporary
9 permits.

10 (a) (1) At the time of arrest for operating or being in actual physical
11 control of a motor vehicle while intoxicated or while there was one-tenth of
12 one percent (0.10%) or more by weight of alcohol in the person's blood (§5-65-
13 103) or refusing to submit to a chemical test of blood, breath or urine for
14 the purpose of determining the alcohol or controlled substance contents of the
15 person's blood (§5-65-202) the arrested person shall immediately surrender his
16 license, permit or other evidence of driving privilege to the arresting law
17 enforcement officer. This officer shall seize any such license, permit or
18 other evidence of driving privilege surrendered by the arrested person or
19 found on the arrested person during a search.

20 (2) If the license, permit or other evidence of driving privilege
21 seized by the officer has not expired and otherwise appears valid to the
22 officer, the officer shall issue to the arrested person a dated receipt for
23 that license, permit or other evidence of driving privilege on a form
24 prescribed by the Department of Finance and Administration or its designee.
25 This receipt shall be recognized as a license and shall authorize the arrested
26 person to operate a motor vehicle for a period not to exceed thirty (30) days.
27 The receipt form shall contain and constitute a notice of suspension or
28 revocation of driving privileges by the Department of Finance and
29 Administration, Revenue Division, Office of Driver Services, effective in
30 thirty (30) days and of the right to a hearing within twenty (20) days. The
31 seized license, permit or other evidence of driving privilege and a copy of
32 the receipt form issued to the arrested person shall be attached to the sworn
33 report of the arresting officer and shall be submitted by mail or in person to
34 the Commissioner of Revenue or his designated representative within seventy-
35 two (72) hours of the issuance of the receipt. The failure of the arresting

1 officer to timely file this report shall not affect the authority of the
2 Office of Driver Services to suspend or revoke the driving privilege of the
3 arrested person.

4 (3) Any notices required under this Act which are not personally
5 served shall be sent by mail and shall be deemed to have been served on the
6 third day after mailing. Refusal of the addressee to accept delivery or
7 attempted delivery of the notice at the address obtained by the arresting law
8 enforcement officer or on file with the Office of Driver Services will not
9 constitute non-receipt of notice.

10 (4) Upon receipt of a written chemical test report reflecting
11 that the arrested person had an alcohol concentration of one-tenth of one
12 percent (0.10%) or more, accompanied by a sworn report from the law
13 enforcement officer that he had reasonable grounds to believe the arrested
14 person had been operating or was in actual physical control of a motor vehicle
15 while intoxicated or while there was one-tenth of one percent (0.10%) or more
16 by weight of alcohol in the person's blood (§5-65-103), or the arrested person
17 refused to submit to a chemical test of blood, breath or urine for the purpose
18 of determining the alcohol or controlled substance contents of the person's
19 blood (as provided in §5-65-202), the designated official of the Office of
20 Driver Services, Department of Finance and Administration, Revenue Division,
21 shall suspend or revoke the license to drive of the arrested person or any
22 nonresident operating privilege on the basis of the number of previous
23 offenses as follows:

24 (A) (i) (I) Suspension for not less than ninety (90) days for
25 the first offense of operating or being in actual physical control of a motor
26 vehicle while intoxicated or while there was one-tenth of one percent (0.10%)
27 or more by weight of alcohol in the person's blood [§5-65-103] (during the
28 first thirty (30) days of which no restricted permits may be issued).

29 (II) Upon a finding of guilt for first offense
30 of operating or being in actual physical control of a motor vehicle while
31 intoxicated or while there was one-tenth of one percent (0.10%) or more by
32 weight of alcohol in the person's blood (§5-65-103) by the court of record,
33 the judge may order the Office of Driver Services to continue the suspension
34 for not less than an additional thirty (30) days or more than an additional
35 ninety (90) days.

1 (ii)(I) Suspension for not less than one hundred
2 eighty (180) days for the first offense of refusing to submit to a chemical
3 test of blood, breath or urine for the purpose of determining the alcohol or
4 controlled substance contents of the person's blood [§5-65-202] (during which
5 no restricted permits may be issued).

6 (II) Upon a finding of guilt by the court, the
7 judge may order the Office of Driver Services to continue the suspension for
8 first offense of refusing to submit to a chemical test of blood, breath or
9 urine for the purpose of determining the alcohol or controlled substance
10 contents of the person's blood (§5-65-202) for not less than an additional
11 ninety (90) days or more than an additional one hundred eighty (180) days.

12 (B)(i)(I) Suspension for not less than one (1) year (during
13 which no restricted permits may be issued) for a second offense of operating
14 or being in actual physical control of a motor vehicle while intoxicated or
15 while there was one-tenth of one percent (0.10%) or more by weight of alcohol
16 in the person's blood (§5-65-103) within a five (5) year period.

17 (II) Upon a finding of guilt by the court, the
18 judge may order the Office of Driver Services to continue the suspension for
19 second offense of operating or being in actual physical control of a motor
20 vehicle while intoxicated or while there was one-tenth of one percent (0.10%)
21 or more by weight of alcohol in the person's blood (§5-65-103) within a five
22 (5) period for not less than an additional sixty (60) days or more than an
23 additional one hundred eighty (180) days.

24 (ii)(I) Suspension for not less than two (2) years
25 (during which no restricted permits may be issued) for second offense of
26 refusing to submit to a chemical test of blood, breath or urine for the
27 purposes of determining the alcohol or controlled substance contents of the
28 person's blood (§5-65-202) within a five (5) year period.

29 (II) Upon a finding of guilt by the court, the
30 judge may order the Office of Driver Services to continue the suspension for
31 second offense of refusing to submit to a chemical test of blood, breath or
32 urine for the purpose of determining the alcohol or controlled substance
33 contents of the person's blood (§5-65-202) within a five (5) year period for
34 not less than an additional one hundred twenty (120) days or more than an
35 additional six (6) months.

1 (C) (i) (I) Suspension for not less than two (2) years
2 (during which no restricted permits may be issued) for the third offense of
3 operating or being in actual physical control of a motor vehicle while
4 intoxicated or while there was one-tenth of one percent (0.10%) or more by
5 weight of alcohol in the person's blood (§5-65-103) within a five (5) year
6 period.

7 (II) Upon a finding of guilt by the court, the
8 judge may order the Office of Driver Services to continue the suspension for
9 third offense of operating or being in actual physical control of a motor
10 vehicle while intoxicated or while there was one-tenth of one percent (0.10%)
11 or more by weight of alcohol in the person's blood (§5-65-103) within a five
12 (5) year period for not less than an additional six (6) months or more than an
13 additional one (1) year.

14 (ii) (I) Revocation of driving privileges for five (5)
15 years (during which no restricted permits may be issued) for the third offense
16 of refusing to submit to a chemical test of blood, breath or urine for the
17 purpose of determining the alcohol or controlled substance contents of the
18 person's blood (§5-65-202) within a five (5) year period.

19 (II) Upon a finding of guilt by the court, the
20 judge may order the Office of Driver Services to continue the revocation for
21 third offense of refusing to submit to a chemical test of blood, breath or
22 urine for the purpose of determining the alcohol or controlled substance
23 contents of the person's blood (§5-65-202) within a five (5) year period for
24 not less than an additional one (1) year or more than an additional two (2)
25 years.

26 (D) (i) (I) Revocation for the fourth or subsequent offense
27 of operating or being in actual physical control of a motor vehicle while
28 intoxicated or while there was one-tenth of one percent (0.10%) or more by
29 weight of alcohol in the person's blood (§5-65-103) within a five (5) year
30 period. Revocation of driving privileges (during which no restricted permit
31 may be issued) shall continue for a period of four (4) years.

32 (II) Upon a finding of guilt by the court, the
33 judge may order lifetime revocation of driving privilege for the fourth or
34 subsequent offense of operating or being in actual physical control of a motor
35 vehicle while intoxicated or while there was one-tenth of one percent (0.10%)

1 or more by weight of alcohol in the person's blood (§5-65-103) within a five
2 (5) year period.

3 (ii) Lifetime revocation (during which no restricted
4 permit may be issued) for the fourth or subsequent offense of refusing to
5 submit to a chemical test of blood, breath or urine for the purpose of
6 determining the alcohol or controlled substance contents of the person's blood
7 (§5-65-202) within a five (5) year period.

8 (E)(i) If the person is a resident without a license or
9 permit to operate a motor vehicle in this state, the Office of Driver Services
10 shall deny to that person the issuance of a license or permit for a period of
11 six (6) months after the date of arrest. For second or subsequent offenses,
12 the Office of Driver Services shall deny to that person the issuance of a
13 license or permit for a period of one (1) year after the date of arrest. In
14 addition, a fine of not less than two hundred fifty dollars (\$250) and not
15 more than five hundred dollars (\$500) shall be imposed and collected by the
16 court with fifty dollars (\$50) retained by the municipal court. The remaining
17 moneys will be remitted at least quarterly to the Department of Finance and
18 Administration, Revenue Division, Office of Driver Services or its authorized
19 agent for use in supporting the administrative operator's licensing sanctions
20 programs of the same. Failure to pay the fine assigned by the court will
21 result in ten (10) days imprisonment and denial of license or permit issuance
22 until such time proof of payment on a form prescribed by the Department of
23 Finance and Administration, Revenue Division is presented. Suspension and/or
24 revocation of the license of the arrested person shall become effective thirty
25 (30) days after the arrested person is given written notice thereof by the
26 arresting officer or by the Office of Driver Services.

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

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

1 (5) Upon the written request of a person whose privilege to drive
2 has been revoked, denied, suspended or who has received a notice of
3 revocation, suspension or denial by the arresting officer, the Office of
4 Driver Services shall grant the person an opportunity to be heard provided the
5 request is received by the Office of Driver Services within seven (7) calendar
6 days after the notice of the revocation, suspension or denial is given in
7 accordance with this section or as otherwise provided in this Act. Such a
8 request shall not operate to stay the revocation, suspension or denial by the
9 Office of Driver Services until the disposition of said hearing. A temporary
10 driving permit shall not be issued prior to final disposition of the hearing.

11 (6) The hearing shall be before the Office of Driver Services or
12 its authorized agent, in the office of the Revenue Division of Finance and
13 Administration Department nearest the county wherein the alleged events
14 occurred for which the person was arrested, unless the Office of Driver
15 Services or its authorized agent directs the hearing be held in some other
16 county; or, the Office of Driver Services or its authorized agent may, with
17 the consent of the person requesting the hearing, schedule the hearing by
18 telephone and conduct the hearing by telephone conference call. The hearing
19 shall be recorded and its scope shall cover the issues of whether the officer
20 had reasonable grounds to believe the person had been driving or was in actual
21 physical control of a vehicle upon the public roads, highways, streets,
22 turnpikes or other public places of this state while under the influence of
23 alcohol, any other intoxicating substance, or the combined influences of any
24 other intoxicating substances, and whether the person was placed under arrest.

25 (b) If the revocation, suspension or denial is based upon a chemical
26 test result indicating there was one-tenth of one percent (0.10%) or more by
27 weight of alcohol in the person's blood as provided in §5-65-103, and a sworn
28 report from a law enforcement officer, the scope of the hearing shall also
29 cover the issues as to whether:

30 (1) the testing procedures used were in accordance with existent
31 rules;

32 (2) the person was advised that his privilege to drive would be
33 revoked, suspended or denied if the test result reflected an alcohol
34 concentration of one-tenth of one percent (0.10%) or more or the presence of
35 other intoxicating substances or combination of intoxicating substances;

1 (3) the test result in fact reflects such alcohol concentration,
2 presence of other intoxicating substances or combination thereof; and

3 (4) the breath, blood or urine specimen was obtained from the
4 person within the established criteria for such as certified by the Arkansas
5 Department of Health.

6 (c) If the revocation, suspension or denial is based upon the refusal
7 of the person to submit to a chemical test as provided in §5-65-202, reflected
8 in a sworn report by a law enforcement officer, the scope of the hearing shall
9 also include whether:

10 (1) the person refused to submit to the test or tests; and

11 (2) the person was informed that his privilege to drive would be
12 revoked, suspended or denied if the person refused to submit to the test or
13 tests.

14 (d) After the hearing, the Office of Driver Services or its authorized
15 agent shall order the revocation, suspension or denial rescinded or sustained
16 and shall advise any person whose license is revoked, suspended or denied that
17 he or she may request a restricted permit as provided in Section 2(a)(4)(A)
18 and Section 3 and shall advise the person of the date and place for making
19 such a request. The hearing thereon shall be conducted within ten (10) days
20 after the receipt of such a request. Such order and notice shall be given by
21 mailing the notice to the last known address of the person whose operator's
22 license is suspended or denied.

23 (e) A person adversely affected by the hearing disposition order of the
24 Office of Driver Services, Revenue Division of the Department of Finance and
25 Administration or its authorized agent may seek review within thirty (30) days
26 in the circuit court in the county in which the offense for which the person
27 was arrested took place. The request for the review will not stay or place in
28 abeyance the decision of the Office of Driver Services or its authorized
29 agent. The circuit court, upon thirty (30) days' written notice to the Office
30 of Driver Services, shall hear the case. On review, it is for the court to
31 determine only whether reasonable grounds exist for revocation, suspension or
32 denial of the person's privilege to drive based on the record of the
33 administrative proceeding.

34 (f)(1) Any person whose privilege to drive has been denied, suspended
35 or revoked shall remain under such denial, suspension or revocation until such

1 time that person applies to and is granted by the Office of Driver Services
2 reinstatement of such privilege to drive and remains subject to penalties as
3 provided in §5-65-105.

4 (2) (A) Any person whose privilege to drive has been denied,
5 suspended or revoked shall present to the Office of Driver Services at the
6 time of application for reinstatement of such privileges proof of completion
7 of court orders resultant from the conviction of operating or being in actual
8 physical control of a motor vehicle while intoxicated or while there was one-
9 tenth of one percent (0.10%) or more by weight of alcohol in the person's
10 blood (§5-65-103) and/or of refusing to submit to a chemical test of blood,
11 breath or urine for the purpose of determining the alcohol or controlled
12 substance contents of the person's blood (§5-65-202) including, but not
13 limited to, court costs and fines, prison terms, education and/or treatment,
14 or other orders issued by the court and proof of compliance with all existent
15 driver's licensing requirements. Proof shall be submitted on forms prescribed
16 by the Department of Finance and Administration, Revenue Division, Office of
17 Driver Services or its authorized agent.

18 (B) Upon application for reinstatement, the Office of
19 Driver Services may, upon notification by the court, on forms prescribed by
20 the Department of Finance and Administration, Revenue Division, Office of
21 Driver Services or its authorized agent, grant a permit for driving privileges
22 not to exceed ninety (90) days when a finding has not been issued by the court
23 through no fault of the person whose driving privilege has been denied,
24 suspended or revoked.

25 (C) The person who has been granted temporary driving
26 privileges by the Office of Driver Services under subsection (f) (2) (B) of this
27 section shall apply for renewal of these driving privileges under the
28 conditions provided under subsection (f) (2) (B) of this section until such time
29 license reinstatement conditions are met. Any person whose privilege to drive
30 has been denied, suspended or revoked remains subject to being imprisoned for
31 ten (10) days (penalties provided under §5-65-105) until the temporary driving
32 privilege permit has been applied for and granted by the Office of Driver
33 Services.

34 (g) *The Office of Driver Services shall charge a fee of twenty-five*
35 *dollars (\$25.00) for reinstating an operator's license suspended for operating*

1 or being in actual physical control of a motor vehicle while intoxicated or
2 while there was one-tenth of one percent (0.10%) or more by weight of alcohol
3 in the person's blood (§5-65-103) or refusing to submit to a chemical test of
4 blood, breath or urine for the purpose of determining the alcohol or
5 controlled substance contents of the person's blood (§5-65-202). Forty
6 percent (40%) of the revenues derived from this fee shall be deposited in the
7 State Treasury as special revenues and credited to the Public Health Fund to
8 be used exclusively for the Department of Health-Blood Alcohol Program."
9

10 SECTION 4. (a) Effective the date of enactment, the Office of Driver
11 Services or its designated agent, following the administrative hearing or upon
12 the request of the person whose privilege to drive has been denied or
13 suspended, may modify the denial or suspension in cases of extreme and unusual
14 hardship by the issuance of a Restricted Permit when it is determined by the
15 Office of Driver Services or its agent that no other adequate means of
16 transportation exists for that person to allow driving in any or all of the
17 following situations:

- 18 (1) To and from his/her place of employment; or
- 19 (2) In the course of his/her employment; or
- 20 (3) To and from an educational institution for the purpose of
21 attending classes if the person is enrolled and regularly attending classes at
22 such an institution; or
- 23 (4) To and from the Alcohol Safety Education/Treatment Course for
24 drunk drivers as required by the court; or
- 25 (5) To permit the person to comply with any existing court order.

26 (b) Such Restricted Permit shall state the specific times and
27 circumstances under which driving is permitted but shall not be granted where
28 prohibited under §5-65-104.
29

30 SECTION 5. Arkansas Code Annotated §5-65-111 is amended to read as
31 follows:

32 "5-65-111. Prison terms - Exception.

33 (a) Any person who pleads guilty, nolo contendere, or is found guilty
34 of violating §5-65-103 may, for a first offense, be imprisoned for no less
35 than twenty-four (24) hours and no more than one (1) year, except that the

1 court may order a minimum of ten (10) days of public service in lieu of jail,
2 and, in such instance, the court shall include the reasons therefor in its
3 written order or judgment.

4 (b) Any person who pleads guilty, nolo contendere, or is found guilty
5 of violating §5-65-103 shall be imprisoned:

6 (1) For no less than seven (7) days, *48 hours of which must be*
7 *served consecutively*, and no more than one (1) year for the second offense
8 occurring within five (5) years of the first offense, *except that the court*
9 *may order a minimum of ten (10) days of public service in lieu of jail, and,*
10 *in such instance, the court shall include the reasons therefor in its written*
11 *order or judgement;*

12 (2) For no less than ninety (90) days nor more than one (1) year
13 for the third offense occurring within five (5) years of the first offense;

14 (3) For at least one (1) year but no more than six (6) years for
15 the fourth or subsequent offense occurring within five (5) years of the first
16 offense and shall be guilty of a felony."
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18 SECTION 6. All provisions of this act of a general and permanent nature
19 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
20 Revision Commission shall incorporate the same in the Code.
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22 SECTION 7. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.
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28 SECTION 8. All laws and parts of laws in conflict with this act are
29 hereby repealed.
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31 SECTION 9. EMERGENCY CLAUSE. It is hereby found and determined by the
32 Seventy-Eighth General Assembly that the act of driving a motor vehicle while
33 under the influence of intoxicating alcoholic beverages and/or other
34 intoxicating substances constitutes a serious and immediate threat to the
35 safety of all citizens of this state, and that increasing the penalty for this

1 dangerous conduct may serve as a deterrent to such behavior. Further it is
2 found that increased income derived from levying such penalties can best be
3 utilized to provide for the sufficiency of administrative licensing sanction
4 programs. Therefore, an emergency is hereby declared to exist, and this act
5 being necessary for the immediate preservation of the public peace, health and
6 safety shall be in full force and effect from and after its passage and
7 approval.

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/s/Ross