

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Representative Henry *and Young***

5

6

7

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 5, CHAPTER 65,
9 ARKANSAS CODE OF 1987 ANNOTATED, TO PROVIDE FOR
10 ADMINISTRATIVE REVOCATION AND SUSPENSION OF DRIVERS_
11 LICENSES FOR PERSONS CHARGED WITH THE OFFENSE OF DRIVING
12 WHILE INTOXICATED; TO PROVIDE FOR THE ISSUANCE OF A
13 TEMPORARY DRIVING PERMIT BY THE OFFICE OF DRIVER SERVICES
14 IN CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES."

15

16

Subtitle

17 "AN ACT TO PROVIDE FOR THE ADMINISTRATIVE REVOCATION OF
18 DRIVERS_ LICENSES IN CASES OF DRIVING WHILE INTOXICATED."

19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21

22 SECTION 1. Arkansas Code §5-65-102 is hereby amended to read as
23 follows:

24 "§5-65-102. Definitions.

25 As used in this act, unless the context otherwise requires:

26 (1) Intoxicated means influenced or affected by the ingestion of
27 alcohol, a controlled substance, any intoxicant, or any combination thereof,
28 to such a degree that the driver's reactions, motor skills, and judgment are
29 substantially altered and the driver, therefore, constitutes a clear and
30 substantial danger of physical injury or death to himself and other motorists
31 or pedestrians;

32 (2) Controlled substance means a drug, substance, or immediate
33 precursor in Schedules I through VI. The fact that any person charged with a
34 violation of this act is or has been entitled to use that drug or controlled
35 substance under the laws of this state shall not constitute a defense against

1 any charge of violating this act;

2 (3) Victim impact statement means a voluntary written or oral
3 statement of a victim, or relative of a victim, who has sustained serious
4 injury due to a violation of this act.

5 (4) Offense means an arrest for operating or being in actual physical
6 control of a motor vehicle while intoxicated or while there was one-tenth of
7 one percent (0.10%) or more by weight of alcohol in the person_s blood (§5-65-
8 103) or refusing to submit to a chemical test of blood, breath, or urine for
9 the purpose of determining the alcohol or controlled substance contents of the
10 person_s blood (§5-65-202)."

11

12 SECTION 2. Arkansas Code §5-65-104 is hereby amended to read as
13 follows:

14 "§5-65-104. Seizure, suspension, and revocation of license - Temporary
15 permits.

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

26 (2) If the license, permit or other evidence of driving privilege
27 seized by the officer has not expired and otherwise appears valid to the
28 officer, the officer shall issue to the arrested person a dated receipt for
29 that license, permit or other evidence of driving privilege on a form
30 prescribed by the Department of Finance and Administration or its designee.
31 This receipt shall be recognized as a license and shall authorize the arrested
32 person to operate a motor vehicle for a period not to exceed thirty (30) days.
33 The receipt form shall contain and shall constitute a notice of suspension or
34 revocation of driving privileges by the Department of Finance and
35 Administration, Revenue Division, Office of Driver Services, effective in

1 thirty (30) days and of the right to a hearing within twenty (20) days. If
2 the Office of Driver Services is unable to conduct a hearing within the twenty
3 (20) day period, a temporary permit shall be issued and shall be valid until
4 the date of the hearing. The seized license, permit or other evidence of
5 driving privilege and a copy of the receipt form issued to the arrested person
6 shall be attached to the sworn report of the arresting officer and shall be
7 submitted by mail or in person to the Commissioner of Revenue or his
8 designated representative within seventy-two (72) hours of the issuance of the
9 receipt. The failure of the arresting officer to timely file this report
10 shall not affect the authority of the Office of Driver Services to suspend or
11 revoke the driving privilege of the arrested person.

12 (3) Any notices required under this act which are not personally
13 served shall be sent by certified mail and shall be deemed to have been served
14 when sent to the last known address on file with the Office of Driver
15 Services. Refusal of the addressee to accept delivery or attempted delivery
16 of the notice at the address obtained by the arresting law enforcement officer
17 or on file with the Office of Driver Services shall not constitute non-receipt
18 of notice.

19 (4) Upon receipt of a written chemical test report reflecting
20 that the arrested person was intoxicated or had an alcohol concentration of
21 one-tenth of one percent (0.10%) or more, accompanied by a sworn report from
22 the law enforcement officer that he had reasonable grounds to believe the
23 arrested person had been operating or was in actual physical control of a
24 motor vehicle while intoxicated or while there was one-tenth of one percent
25 (0.10%) or more by weight of alcohol in the person_s blood (§5-65-103), or the
26 arrested person refused to submit to a chemical test of blood, breath or urine
27 for the purpose of determining the alcohol or controlled substance contents of
28 the person_s blood (as provided in §5-65-202), the designated official of the
29 Office of Driver Services, Department of Finance and Administration, Revenue
30 Division, shall suspend or revoke the driving privilege of the arrested person
31 or any non-resident driving privilege on the basis of the number of previous
32 offenses as follows:

33 (A) *(i) Suspension for not less than ninety (90) days nor*
34 *more than one hundred twenty (120) days for the first offense of operating or*
35 *being in actual physical control of a motor vehicle while intoxicated or while*

1 there was one-tenth (1/10) of one percent (1%) or more by weight of alcohol in
2 the person's blood [§5-65-103].

3 (ii) Suspension for not less than six (6) months for
4 the first offense of operating or being in actual physical control of a motor
5 vehicle while intoxicated by the ingestion of or by the use of a controlled
6 substance.

7 (iii) Suspension for not less than one hundred eighty
8 (180) days for the first offense of refusing to submit to a chemical test of
9 blood, breath or urine for the purpose of determining the alcohol or
10 controlled substance contents of the person's blood [§5-65-202].

11 (B) (i) Suspension for not less than one (1) year nor more
12 than sixteen (16) months (during which no restricted permits may be issued)
13 for a second offense of operating or being in actual physical control of a
14 motor vehicle while intoxicated or while there was one-tenth of one percent
15 (0.10%) or more by weight of alcohol in the person's blood (§5-65-103) within
16 a three (3) year period.

17 (ii) Suspension for not less than two (2) years
18 (during which no restricted permits may be issued) for second offense of
19 refusing to submit to a chemical test of blood, breath or urine for the
20 purposes of determining the alcohol or controlled substance contents of the
21 person's blood (§5-65-202) within a three (3) year period.

22 (C) (i) Suspension for not less than two (2) years nor more
23 than thirty (30) months (during which no restricted permits may be issued) for
24 the third offense of operating or being in actual physical control of a motor
25 vehicle while intoxicated or while there was one-tenth of one percent (0.10%)
26 or more by weight of alcohol in the person's blood (§5-65-103) within a three
27 (3) year period.

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

33 (D) (i) Revocation for four (4) years (during which no
34 restricted permits may be issued) for the fourth or subsequent offense of
35 operating or being in actual physical control of a motor vehicle while

1 intoxicated or while there was one-tenth of one percent (0.10%) or more by
2 weight of alcohol in the person_s blood (§5-65-103) within a *three (3)* year
3 period of the first offense.

4 (ii) Lifetime revocation (during which no restricted
5 permit may be issued) for the fourth or subsequent offense of refusing to
6 submit to a chemical test of blood, breath or urine for the purpose of
7 determining the alcohol or controlled substance contents of the person_s blood
8 (§5-65-202) within a *three (3)* year period.

9 (E)(i) If the person is a resident without a license or
10 permit to operate a motor vehicle in this state, the Office of Driver Services
11 shall, in addition to any other penalties provided for in this section, deny
12 to that person the issuance of a license or permit for a period of six (6)
13 months for a first offense. For second or subsequent offenses, the Office of
14 Driver Services shall, in addition to any other penalties provided for in this
15 section, deny to that person the issuance of a license or permit for a period
16 of one (1) year. The suspension or revocation or both of the driving
17 privilege of the arrested person shall become effective thirty (30) days after
18 the arrested person is given written notice thereof by the arresting officer
19 or by the Office of Driver Services.

20 (ii) If the person is a nonresident, such person_s
21 privilege to operate a motor vehicle in Arkansas shall be suspended in the
22 same manner as that of a resident. The Office of Driver Services shall notify
23 the office that issued the nonresident_s motor vehicle license of the action
24 taken by the Arkansas Office of Driver Services.

25 (iii) When the person is a nonresident without a
26 license or permit to operate a motor vehicle, the Office of Driver Services
27 shall notify the office of issuance for that person_s state of residence of
28 action taken by the Arkansas Office of Driver Services.

29 (5) Upon the written request of a person whose privilege to drive
30 has been revoked, denied, suspended or who has received a notice of
31 revocation, suspension or denial by the arresting officer, the Office of
32 Driver Services shall grant the person an opportunity to be heard provided the
33 request is received by the Office of Driver Services within seven (7) calendar
34 days after the notice of the revocation, suspension or denial is given in
35 accordance with this section or as otherwise provided in this act. Such a

1 request shall not operate to stay the revocation, suspension or denial by the
2 Office of Driver Services until the disposition of said hearing.

3 (6) The hearing shall be before the Office of Driver Services or
4 its authorized agent, in the office of the Revenue Division of Finance and
5 Administration Department nearest the county wherein the alleged events
6 occurred for which the person was arrested, unless the Office of Driver
7 Services or its authorized agent directs the hearing be held in some other
8 county; or, the Office of Driver Services or its authorized agent may schedule
9 the hearing or any part thereof by telephone and conduct the hearing by
10 telephone conference call. The hearing shall not be recorded. The scope of
11 the hearing shall cover the issues of whether the officer had reasonable
12 grounds to believe the person had been driving or was in actual physical
13 control of a vehicle upon the public roads, highways, streets, turnpikes or
14 other public places of this state while under the influence of alcohol, any
15 other intoxicating substance, or the combined influences of any other
16 intoxicating substances, and whether the person was placed under arrest. At
17 *the hearing, the decision shall be based on a preponderance of the evidence.*

18 (7) If the person requesting the hearing wants the arresting law
19 enforcement officer to testify at the hearing, he shall pay a witness fee of
20 twenty-five dollars (\$25.00) at the time the request for the hearing is made.
21 This fee shall be paid to the arresting law enforcement officer. If the fee
22 is not paid at the time the hearing is requested, the hearing may be held with
23 the arresting law enforcement officer submitting a sworn written statement of
24 his testimony.

25 (b) If the revocation, suspension or denial is based upon a chemical
26 test result indicating that the person was intoxicated or there was one-tenth
27 of one percent (0.10%) or more by weight of alcohol in the person's blood as
28 provided in §5-65-103, and a sworn report from a law enforcement officer, the
29 scope of the hearing shall also 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 otherwise provided for by this
18 act. The determination of whether to issue a restricted permit may be made at
19 the time of request with a restricted permit being mailed at a later date or
20 issued immediately with the effective date on the restricted permit.

21 (e) A person adversely affected by the hearing disposition order of the
22 Office of Driver Services, Revenue Division of the Department of Finance and
23 Administration or its authorized agent may seek review within thirty (30) days
24 in the circuit court in the county in which the offense for which the person
25 was arrested took place. The request for the review will not stay or place in
26 abeyance the decision of the Office of Driver Services or its authorized
27 agent. The administrative hearings held pursuant to this section shall be
28 exempt from the Arkansas Administrative Procedure Act (Ark. Code Ann. §25-15-
29 201, et seq.). The circuit court, upon thirty (30) days_ written notice to
30 the Office of Driver Services, shall hear the case. On review, the circuit
31 court shall hear the case de novo in order to determine whether, based on a
32 *preponderance of the evidence*, grounds exist for revocation, suspension or
33 denial of the person_s privilege to drive.

34 (f) (1) Any decision rendered at an administrative hearing held under
35 this section shall be independent from and have no effect on any criminal case

1 arising from any violation of Ark. Code Ann. §5-65-103.

2 (2) Any decision rendered by a court of law for a criminal case
3 arising from any violation of Ark. Code Ann. §5-65-103 shall be independent
4 from and have no effect on any administrative hearing held under this section.

5 (g) Any person whose privilege to drive has been denied, suspended or
6 revoked shall remain under such denial, suspension or revocation until such
7 time that person applies to and is granted by the Office of Driver Services
8 reinstatement of such privilege to drive and remains subject to penalties as
9 provided in §5-65-105."

10

11 SECTION 3. Title 5, Chapter 65, Subchapter 1 of the Arkansas Code of
12 1987 Annotated is hereby amended by adding a new section to read as follows:

13 "5-65-118. The Office of Driver Services shall charge a fee of sixty
14 dollars (\$60.00) for reinstating a driving privilege suspended or revoked
15 because of an arrest for operating or being in actual physical control of a
16 motor vehicle while intoxicated or while there was one-tenth of one percent
17 (0.10%) or more by weight of alcohol in the person_s blood (§5-65-103) or
18 refusing to submit to a chemical test of blood, breath or urine for the
19 purpose of determining the alcohol or controlled substance contents of the
20 person_s blood (§5-65-202) which shall be distributed as follows:

21 (1) Eighteen percent (18%) of the revenues derived from this fee
22 shall be deposited in the State Treasury as special revenues and credited to
23 the Public Health Fund to be used exclusively for the Department of Health-
24 Blood Alcohol Program;

25 (2) Eighty-two percent (82%) of the revenues derived from this
26 fee shall be deposited as special revenues to the Driver_s License Color
27 Photograph Program Fund as a direct revenue to be used by the Department of
28 Finance and Administration, Revenue Division, Office of Driver Services or its
29 authorized agent for use in supporting the administrative driver_s licensing
30 revocation and sanctions programs provided for in this section."

31

32 SECTION 4. (a) Upon the effective date of this act, the Office of
33 Driver Services or its designated agent, following the administrative hearing
34 for suspension or revocation of a driver_s license as provided for in Arkansas
35 Code §5-65-104 or upon the request of the person whose privilege to drive has

1 been denied or suspended, may modify the denial or suspension in cases of
2 extreme and unusual hardship by the issuance of a Restricted Driving Permit
3 when it is determined by the Office of Driver Services or its agent that no
4 other adequate means of transportation exists for that person to allow driving
5 in any or all of the following situations:

6 (1) To and from his or her place of employment; or

7 (2) In the course of his or her employment; or

8 (3) To and from an educational institution for the purpose of
9 attending classes if the person is enrolled and regularly attending classes at
10 the institution; or

11 (4) To and from the Alcohol Safety Education and Treatment Course
12 for drunk drivers.

13 (b) The Restricted Driving Permit shall state the specific times and
14 circumstances under which driving is permitted but shall not be granted where
15 prohibited under §5-65-104.

16

17 SECTION 5. (a) Sections 1, 2 and 4 of this act shall be effective on
18 July 1, 1994.

19 (b) Section 3 of this act shall be effective on July 1, 1993.

20

21 *SECTION 6. There is hereby established on the books of the State*
22 *Treasurer, the State Auditor, and the Chief Fiscal Officer of the State, a*
23 *special fund to be known as the Driver's License Color Photograph Program Fund*
24 *of the Department of Finance and Administration, Revenue Division. The*
25 *Driver's License Color Photograph Program Fund shall consist of special*
26 *revenues as set forth in Section 3 of this act, to be used to support the*
27 *administrative driver's licensing revocation and sanctions programs, and for*
28 *other related purposes as required by the Commissioner in carrying out the*
29 *functions, powers, and duties of the Revenue Division of the Department of*
30 *Finance and Administration.*

31

32 SECTION 7. All provisions of this act of a general and permanent nature
33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
34 Revision Commission shall incorporate the same in the Code.

35

1 SECTION 8. If any provision of this act or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall not affect
3 other provisions or applications of the act which can be given effect without
4 the invalid provision or application, and to this end the provisions of this
5 act are declared to be severable.

6

7 SECTION 9. All laws and parts of laws in conflict with this act are
8 hereby repealed.

9

10 SECTION 10. EMERGENCY. It is hereby found and determined by the
11 General Assembly that this act provides for administrative revocation and
12 suspension of drivers_ licenses for persons charged with the offense of
13 driving while intoxicated; that based on Arkansas Crime Information Center
14 statistics on DWI arrests, the Office of Driver Services could anticipate up
15 to sixteen thousand (16,000) hearings if everyone arrested requested a
16 hearing; that funds will be necessary for additional staff to handle this
17 program along with significant costs to prepare for and implement this
18 program; and that this act is necessary immediately in order to insure that
19 sufficient funds are available for the financial stability of this program.
20 Therefore, an emergency is hereby declared to exist and this act being
21 necessary for the immediate preservation of the public peace, health and
22 safety shall be in full force and effect from and after its passage and
23 approval.

24

25 */s/Carol Henry, et al*

26

27

28

29

30

31

32

33

34

35

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