

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

# A Bill

**SENATE BILL 485**

## 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."

## Subtitle

16  
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 six (6) months for the first offense*  
34 *of operating or being in actual physical control of a motor vehicle while*  
35 *intoxicated or while there was one-tenth of one percent (0.10%) or more by*

1 weight of alcohol in the person\_s blood [§5-65-103] (during the first thirty  
2 (30) days of which no restricted permits may be issued).

3 (ii) Suspension for one hundred eighty (180) days for  
4 the first offense of refusing to submit to a chemical test of blood, breath or  
5 urine for the purpose of determining the alcohol or controlled substance  
6 contents of the person\_s blood [§5-65-202] (during the first thirty (30) days  
7 of which no restricted permits may be issued).

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

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

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

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

30 (D)(i) Revocation for four (4) years for the fourth or  
31 subsequent offense of operating or being in actual physical control of a motor  
32 vehicle while intoxicated or while there was one-tenth of one percent (0.10%)  
33 or more by weight of alcohol in the person\_s blood (§5-65-103) within a *three*  
34 *(3)* year period of the first offense.

35 (ii) Lifetime revocation (during which no restricted

1 permit may be issued) for the fourth or subsequent offense of refusing to  
2 submit to a chemical test of blood, breath or urine for the purpose of  
3 determining the alcohol or controlled substance contents of the person\_s blood  
4 (§5-65-202) within a *three (3)* year period.

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

16                   (ii) If the person is a nonresident, such person\_s  
17 privilege to operate a motor vehicle in Arkansas shall be suspended in the  
18 same manner as that of a resident. The Office of Driver Services shall notify  
19 the office that issued the nonresident\_s motor vehicle license of the action  
20 taken by the Arkansas Office of Driver Services.

21                   (iii) When the person is a nonresident without a  
22 license or permit to operate a motor vehicle, the Office of Driver Services  
23 shall notify the office of issuance for that person\_s state of residence of  
24 action taken by the Arkansas Office of Driver Services.

25                   (5) Upon the written request of a person whose privilege to drive  
26 has been revoked, denied, suspended or who has received a notice of  
27 revocation, suspension or denial by the arresting officer, the Office of  
28 Driver Services shall grant the person an opportunity to be heard provided the  
29 request is received by the Office of Driver Services within seven (7) calendar  
30 days after the notice of the revocation, suspension or denial is given in  
31 accordance with this section or as otherwise provided in this act. Such a  
32 request shall not operate to stay the revocation, suspension or denial by the  
33 Office of Driver Services until the disposition of said hearing.

34                   (6) The hearing shall be before the Office of Driver Services or  
35 its authorized agent, in the office of the Revenue Division of Finance and

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

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

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

25           (1) the testing procedures used were in accordance with existent  
26 rules;

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

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

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

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

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

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

9 (d) After the hearing, the Office of Driver Services or its authorized  
10 agent shall order the revocation, suspension or denial rescinded or sustained  
11 and shall advise any person whose license is revoked, suspended or denied that  
12 he or she may request a restricted permit as otherwise provided for by this  
13 act. The determination of whether to issue a restricted permit may be made at  
14 the time of request with a restricted permit being mailed at a later date or  
15 issued immediately with the effective date on the restricted permit.

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

29 (f) (1) Any decision rendered at an administrative hearing held under  
30 this section shall be independent from and have no effect on any criminal case  
31 arising from any violation of Ark. Code Ann. §5-65-103.

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

35 (g) Any person whose privilege to drive has been denied, suspended or

1 revoked shall remain under such denial, suspension or revocation until such  
2 time that person applies to and is granted by the Office of Driver Services  
3 reinstatement of such privilege to drive and remains subject to penalties as  
4 provided in §5-65-105."

5

6 SECTION 3. Title 5, Chapter 65, Subchapter 1 of the Arkansas Code of  
7 1987 Annotated is hereby amended by adding a new section to read as follows:

8 "5-65-118. The Office of Driver Services shall charge a fee of sixty  
9 dollars (\$60.00) for reinstating a driving privilege suspended or revoked  
10 because of an arrest for operating or being in actual physical control of a  
11 motor vehicle while intoxicated or while there was one-tenth of one percent  
12 (0.10%) or more by weight of alcohol in the person\_s blood (§5-65-103) or  
13 refusing to submit to a chemical test of blood, breath or urine for the  
14 purpose of determining the alcohol or controlled substance contents of the  
15 person\_s blood (§5-65-202) which shall be distributed as follows:

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

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

26

27 SECTION 4. (a) Upon the effective date of this act, the Office of  
28 Driver Services or its designated agent, following the administrative hearing  
29 for suspension or revocation of a driver\_s license as provided for in Arkansas  
30 Code §5-65-104 or upon the request of the person whose privilege to drive has  
31 been denied or suspended, may modify the denial or suspension in cases of  
32 extreme and unusual hardship by the issuance of a Restricted Driving Permit  
33 when it is determined by the Office of Driver Services or its agent that no  
34 other adequate means of transportation exists for that person to allow driving  
35 in any or all of the following situations:



- 1           (1) To and from his or her place of employment; or
- 2           (2) In the course of his or her employment; or
- 3           (3) To and from an educational institution for the purpose of
- 4 attending classes if the person is enrolled and regularly attending classes at
- 5 the institution; or
- 6           (4) To and from the Alcohol Safety Education and Treatment Course
- 7 for drunk drivers.

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

11

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

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

15

16           SECTION 6. All provisions of this act of a general and permanent nature  
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
18 Revision Commission shall incorporate the same in the Code.

19

20           SECTION 7. If any provision of this act or the application thereof to  
21 any person or circumstance is held invalid, such invalidity shall not affect  
22 other provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are declared to be severable.

25

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

28

29           SECTION 9. EMERGENCY. It is hereby found and determined by the General  
30 Assembly that this act provides for administrative revocation and suspension  
31 of drivers\_ licenses for persons charged with the offense of driving while  
32 intoxicated; that based on Arkansas Crime Information Center statistics on DWI  
33 arrests, the Office of Driver Services could anticipate up to sixteen thousand  
34 (16,000) hearings if everyone arrested requested a hearing; that funds will be  
35 necessary for additional staff to handle this program along with significant

1 costs to prepare for and implement this program; and that this act is  
2 necessary immediately in order to insure that sufficient funds are available  
3 for the financial stability of this program. Therefore, an emergency is  
4 hereby declared to exist and this act being necessary for the immediate  
5 preservation of the public peace, health and safety shall be in full force and  
6 effect from and after its passage and approval.

7

8

*/s/ Senator Snyder*