

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

As Engrossed: S3/21/03 S3/26/03

A Bill

SENATE BILL 713

5 By: Senators Baker, Wilkinson, Hendren
6 By: Representatives Scroggin, Parks, Rankin
7

For An Act To Be Entitled

10 AN ACT TO PROVIDE FOR THE SUSPENSION OF A
11 PERSON'S DRIVER'S LICENSE FOR VIOLATIONS OF THE
12 ARKANSAS HOT CHECK LAW; AND FOR OTHER PURPOSES.
13

Subtitle

15 AN ACT TO PROVIDE FOR THE SUSPENSION OF
16 A PERSON'S DRIVER'S LICENSE FOR
17 VIOLATIONS OF THE ARKANSAS HOT CHECK
18 LAW.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. (a) As used in this section "office" means the Office of
25 Driver Services of the Department of Finance and Administration.

26 (b) At the time a warrant of arrest is issued for a violation of "The
27 Arkansas Hot Check Law", Arkansas Code §§ 5-37-301 through 5-37-306, for
28 making, uttering, or delivering any one (1) instrument or transaction drawn
29 on insufficient funds or drawn on a nonexistent account for more than two
30 hundred dollars (\$200), the clerk of the court issuing the warrant shall
31 notify the office, that the warrant has been issued, together with the
32 offender's name, address, and any other pertinent information which might
33 assist the office.

34 (c) The office shall suspend the driving privilege of the offender, or
35 shall suspend any nonresident driving privilege of an offender, when it
36 receives the notice from the appropriate clerk issuing the warrant that there



1 exists reasonable grounds to believe the offender has violated "The Arkansas
2 Hot Check Law" for making, uttering, or delivering any one (1) instrument or
3 transaction drawn on insufficient funds or drawn on a nonexistent account for
4 more than two hundred dollars (\$200). The suspension shall be based on the
5 number of previous offenses as follows:

6 (1) Suspension for sixty (60) days for the first offense of
7 violating "The Arkansas Hot Check Law" for making, uttering, or delivering
8 any one (1) instrument or transaction drawn on insufficient funds or drawn on
9 a nonexistent account for more than two hundred dollars (\$200);

10 (2) Suspension for one hundred twenty (120) days for a second
11 offense of violating "The Arkansas Hot Check Law" for making, uttering, or
12 delivering any one (1) instrument or transaction drawn on insufficient funds
13 or drawn on a nonexistent account for more than two hundred dollars (\$200)
14 within any five-year period of the first offense;

15 (3) Suspension for one hundred eighty (180) days for the third
16 offense of violating "The Arkansas Hot Check Law" for making, uttering, or
17 delivering any one (1) instrument or transaction drawn on insufficient funds
18 or drawn on a nonexistent account for more than two hundred dollars (\$200)
19 within any five-year period of the first offense; and

20 (4) Suspension for one (1) year for the fourth or subsequent
21 offense of violating "The Arkansas Hot Check Law" for making, uttering, or
22 delivering any one (1) instrument or transaction drawn on insufficient funds
23 or drawn on a nonexistent account for more than two hundred dollars (\$200)
24 within any five-year period;

25 (d) The office shall then notify the offender by mail that the
26 offender's motor vehicle operator's license has been suspended, effective
27 immediately, and direct the offender to immediately surrender his or her
28 license, permit, or other evidence of driving privilege to the office through
29 a local office of the Revenue Division of the Department of Finance and
30 Administration.

31 (e)(1) Upon the written request of a person whose privilege to drive
32 has been suspended, the office shall grant the person an opportunity to be
33 heard provided the request is received by the office within seven (7)
34 calendar days after the notice of the suspension is given in accordance with
35 this section.

36 (2) The request shall not operate to stay the suspension by the

1 office until the disposition of the hearing.

2 (3)(A) The hearing shall be before the office or its authorized
3 agent in the office of the Revenue Division of the Department of Finance and
4 Administration, and may be conducted by telephone conference call.

5 (B) The hearing shall not be recorded.

6 (C) The scope of the hearing shall cover the following
7 issues:

8 (i) Whether the appropriate prosecuting authority
9 had obtained an independent magisterial determination for an arrest warrant
10 for a violation of "The Arkansas Hot Check Law" for making, uttering, or
11 delivering any one (1) instrument or transaction drawn on insufficient funds
12 or drawn on a nonexistent account for more than two hundred dollars (\$200);

13 (ii) Whether the suspension was based on a charge
14 filed by the appropriate prosecuting authority; and

15 (iii) Any request by the person whose privilege to
16 drive has been suspended for a restricted license.

17 (D) At the hearing, the burden of proof shall be on the
18 state, and the decision shall be based on a preponderance of the evidence.

19 (4) In order to determine the number of previous offenses to
20 consider when suspending the offender's driving privileges, the office shall
21 consider as a previous offense any offense under "The Arkansas Hot Check Law"
22 for making, uttering, or delivering any one (1) instrument or transaction
23 drawn on insufficient funds or drawn on a nonexistent account for more than
24 two hundred dollars (\$200) to which the offender plead guilty or nolo
25 contendere to, or was found guilty of since the effective date of this act.

26 (5) After the hearing, the office or its authorized agent shall
27 order the suspension to be rescinded or sustained.

28 (f)(1) A person adversely affected by the hearing disposition order of
29 the office may file a de novo petition for review within thirty (30) days in
30 the circuit court of the county in which the offender resides, or the Pulaski
31 County Circuit Court.

32 (2) The filing of a petition for review will not stay or place
33 in abeyance the decision of the office or its authorized agent.

34 (3) The administrative hearings held under this section shall be
35 exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

36 (4) On review, the circuit court shall hear the case de novo in

1 order to determine whether, based on a preponderance of the evidence, grounds
2 exist for the suspension of the person's privilege to drive.

3 (g)(1) Any decision rendered at an administrative hearing held under
4 this section shall have no effect on any criminal case arising from any
5 violation of "The Arkansas Hot Check Law" for making, uttering, or delivering
6 any one (1) instrument or transaction drawn on insufficient funds or drawn on
7 a nonexistent account for more than two hundred dollars (\$200).

8 (2) Any decision rendered by a court of law for a criminal case
9 arising from any violation of "The Arkansas Hot Check Law" for making,
10 uttering, or delivering any one (1) instrument or transaction drawn on
11 insufficient funds or drawn on a nonexistent account for more than two
12 hundred dollars (\$200) shall affect the administrative suspension of the
13 driver's license as follows:

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

17 (B) An acquittal on the charges or a dismissal of charges
18 will serve to reverse the suspension of the driver's license suspension,
19 effective immediately.

20 (3) If a person is acquitted of the charges of violating "The
21 Arkansas Hot Check Law" for making, uttering, or delivering any one (1)
22 instrument or transaction drawn on insufficient funds or drawn on a
23 nonexistent account for more than two hundred dollars (\$200), or if the
24 charges are dismissed, the office shall immediately reinstate the person's
25 driver license at no cost to the person, and the charges shall not be used to
26 determine the number of previous offenses when administratively suspending
27 the driving privilege of any arrested person in the future.

28 (h) Any person whose privilege to drive has been suspended shall
29 remain under suspension until granted reinstatement by the office of the
30 privilege to drive, or until he or she is acquitted of violating "The
31 Arkansas Hot Check Law" for making, uttering, or delivering any one (1)
32 instrument or transaction drawn on insufficient funds or drawn on a
33 nonexistent account for more than two hundred dollars (\$200).

34 (i) The administrative suspension of a driver's license under this
35 section shall be supplementary to and in addition to the suspensions or
36 revocations of driver licenses which are ordered by a court of competent

1 jurisdiction for any other traffic or criminal offense for which a suspension
2 of the driver's license is a penalty.

3 (j) All violations of "The Arkansas Hot Check Law" occurring before
4 the effective date of this act, which have not reached a final judgment in
5 court, shall be decided under the law in effect at the time the offense
6 occurred, and any defendant shall be subject to the penalty provisions in
7 effect at that time and not the penalty provisions of this section.

8 (k)(1)(A) The Office of Driver Services shall charge a fee of fifteen
9 dollars (\$15.00) for reinstating a driver's license administratively
10 suspended because of a violation of "The Arkansas Hot Check Law" for making,
11 uttering, or delivering any one (1) instrument or transaction drawn on
12 insufficient funds or drawn on a nonexistent account for more than two
13 hundred dollars (\$200) when the person is not subsequently acquitted of the
14 charge.

15 (B) The fee shall be in addition to any other fee imposed
16 for reinstatement of driving privileges.

17 (2) The revenues derived from this reinstatement fee shall be
18 deposited as special revenues to the State Central Services Fund and credited
19 as direct revenues to be used by the Revenue Division to offset the costs of
20 administering this act.

21 (3) The fee imposed by subsection (k)(1) shall not apply to the
22 reinstatement of driver's licenses suspended by order of a court for a
23 conviction under "The Arkansas Hot Check Law" for making, uttering, or
24 delivering any one (1) instrument or transaction drawn on insufficient funds
25 or drawn on a nonexistent account for more than two hundred dollars (\$200).

26 /s/ Baker
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