

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Senators Snyder, Webb, Walker, Hopkins, Keet, Russ, Hunter, Jeffries, Boozman,**  
5 **Cassady and Brown**

# **A Bill**

**ACT 802 OF 1995**  
**SENATE BILL 546**

## **For An Act To Be Entitled**

9 "AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 5, CHAPTER 65,  
10 ARKANSAS CODE OF 1987 ANNOTATED, TO PROVIDE FOR  
11 ADMINISTRATIVE REVOCATION AND SUSPENSION OF DRIVERS\_  
12 LICENSES FOR PERSONS CHARGED WITH THE OFFENSE OF DRIVING  
13 WHILE INTOXICATED; TO PROVIDE FOR THE ISSUANCE OF A  
14 TEMPORARY DRIVING PERMIT BY THE OFFICE OF DRIVER SERVICES  
15 IN CERTAIN CIRCUMSTANCES; TO PROVIDE FOR A DRIVER LICENSE  
16 REINSTATEMENT FEE FOR LICENSES SUSPENDED OR REVOKED UNDER  
17 THIS PROGRAM; AND FOR OTHER PURPOSES."

### **Subtitle**

18  
19  
20 "TO PROVIDE FOR THE ADMINISTRATIVE  
21 REVOCATION OF DRIVERS\_ LICENSES IN CASES  
22 OF DRIVING WHILE INTOXICATED."  
23

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

25  
26 SECTION 1. Arkansas Code §5-65-104 is amended to read as follows:

27 "5-65-104. Seizure, suspension, and revocation of license - Temporary  
28 permits.

29 (a) (1) At the time of arrest for operating or being in actual physical  
30 control of a motor vehicle while intoxicated or while there was one-tenth of  
31 one percent (0.10%) or more by weight of alcohol in the person\_s blood (§5-65-  
32 103) or refusing to submit to a chemical test of blood, breath or urine for  
33 the purpose of determining the alcohol or controlled substance contents of the  
34 person\_s blood (§5-65-202), the arrested person shall immediately surrender  
35 his license, permit or other evidence of driving privilege to the arresting  
36 law enforcement officer. The officer shall seize the license, permit or other

1 evidence of driving privilege surrendered by the arrested person or found on  
2 the arrested person during a search.

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

28           (3) Any notices from the Office of Driver Services required  
29 under this act which are not personally delivered shall be sent by certified  
30 mail and shall be deemed to have been delivered on the date when postmarked  
31 and shall be sent to the last known address on file with the Office of Driver  
32 Services. Refusal of the addressee to accept delivery or attempted delivery  
33 of the notice at the address obtained by the arresting law enforcement officer  
34 or on file with the Office of Driver Services shall not constitute non-receipt  
35 of notice. For all notices which are personally delivered, the person shall

1 be asked to sign a receipt acknowledging they received the required notice.

2           (4) The Office of Driver Services, Department of Finance and  
3 Administration, Revenue Division or its designated official shall suspend or  
4 revoke the driving privilege of an arrested person or shall suspend any non-  
5 resident driving privilege of an arrested person when it receives a sworn  
6 report from the law enforcement officer that he had reasonable grounds to  
7 believe the arrested person had been operating or was in actual physical  
8 control of a motor vehicle while intoxicated or while there was one-tenth of  
9 one percent (0.10%) or more by weight of alcohol in the person\_s blood (§5-65-  
10 103), which is accompanied by a written chemical test report reflecting that  
11 the arrested person was intoxicated or had an alcohol concentration of one-  
12 tenth of one percent (0.10%) or more, or is accompanied by a sworn report that  
13 the arrested person refused to submit to a chemical test of blood, breath or  
14 urine for the purpose of determining the alcohol or controlled substance  
15 contents of the person\_s blood (as provided in §5-65-202). The suspension or  
16 revocation shall be based on the number of previous offenses as follows:

17           (A) (i) Suspension for one hundred twenty (120) days for the  
18 first offense of operating or being in actual physical control of a motor  
19 vehicle while intoxicated or while there was one-tenth (0.10%) of one percent  
20 (1%) or more by weight of alcohol in the person's blood (§5-65-103);

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

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 (§5-65-202);

28           (B) (i) Suspension for sixteen (16) months (during which no  
29 restricted permits may be issued) for a second offense of operating or being  
30 in actual physical control of a motor vehicle while intoxicated or while there  
31 was one-tenth of one percent (0.10%) or more by weight of alcohol in the  
32 person\_s blood (§5-65-103) within three (3) years of the first offense;

33           (ii) Suspension for two (2) years (during which no  
34 restricted permits may be issued) for second offense of refusing to submit to  
35 a chemical test of blood, breath or urine for the purposes of determining the

1 alcohol or controlled substance contents of the person\_s blood (§5-65-202)  
2 within three (3) years of the first offense;

3 (C) (i) Suspension for thirty (30) months (during which no  
4 restricted permits may be issued) for the third offense of operating or being  
5 in actual physical control of a motor vehicle while intoxicated or while there  
6 was one-tenth of one percent (0.10%) or more by weight of alcohol in the  
7 person\_s blood (§5-65-103) within three (3) years of the first offense;

8 (ii) Revocation for three (3) years (during which no  
9 restricted permits may be issued) for the third offense of refusing to submit  
10 to a chemical test of blood, breath or urine for the purpose of determining  
11 the alcohol or controlled substance contents of the person\_s blood (§5-65-202)  
12 within three (3) years of the first offense;

13 (D) (i) Revocation for four (4) years (during which no  
14 restricted permits may be issued) for the fourth or subsequent offense of  
15 operating or being in actual physical control of a motor vehicle while  
16 intoxicated or while there was one-tenth of one percent (0.10%) or more by  
17 weight of alcohol in the person\_s blood (§5-65-103) within a three-year period  
18 of the first offense.

19 (ii) Lifetime revocation (during which no restricted  
20 permit may be issued) for the fourth or subsequent offense of refusing to  
21 submit to a chemical test of blood, breath or urine for the purpose of  
22 determining the alcohol or controlled substance contents of the person\_s blood  
23 (§5-65-202) within three (3) years of the first offense; and

24 (5) If the person is a resident without a license or permit to  
25 operate a motor vehicle in this state, the Office of Driver Services shall, in  
26 addition to any other penalties provided for in this act, deny to that person  
27 the issuance of a license or permit for a period of six (6) months for a first  
28 offense. For second or subsequent offenses by a resident without a license or  
29 permit to operate a motor vehicle, the Office of Driver Services shall, in  
30 addition to any other penalties provided for in this act, deny to that person  
31 the issuance of a license or permit for a period of one (1) year.

32 (6) (A) If the person is a nonresident, such person\_s privilege to  
33 operate a motor vehicle in Arkansas shall be suspended in the same manner as  
34 that of a resident. The Office of Driver Services shall notify the office  
35 that issued the nonresident\_s motor vehicle license of the action taken by the

1 Arkansas Office of Driver Services.

2 (B) When the person is a nonresident without a license or  
3 permit to operate a motor vehicle, the Office of Driver Services shall notify  
4 the office of issuance for that person\_s state of residence of action taken by  
5 the Arkansas Office of Driver Services.

6 (7) Upon the written request of a person whose privilege to drive  
7 has been revoked, denied, suspended or who has received a notice of  
8 revocation, suspension or denial by the arresting officer, the Office of  
9 Driver Services shall grant the person an opportunity to be heard provided the  
10 request is received by the Office of Driver Services within seven (7) calendar  
11 days after the notice of the revocation, suspension or denial is given in  
12 accordance with this section or as otherwise provided in this act. Such a  
13 request shall not operate to stay the revocation, suspension or denial by the  
14 Office of Driver Services until the disposition of said hearing.

15 (8) (A) The hearing shall be before the Office of Driver Services  
16 or its authorized agent, in the office of the Revenue Division of Finance and  
17 Administration Department nearest the county wherein the alleged events  
18 occurred for which the person was arrested, unless the Office of Driver  
19 Services or its authorized agent and the arrested person agree otherwise to  
20 the hearing being held in some other county; or, the Office of Driver Services  
21 or its authorized agent may schedule the hearing or any part thereof by  
22 telephone and conduct the hearing by telephone conference call. The hearing  
23 shall not be recorded. The scope of the hearing shall cover the issues of  
24 whether the officer had reasonable grounds to believe the person had been  
25 operating or was in actual physical control of a vehicle while intoxicated or  
26 while there was one-tenth of one percent (0.10%) or more by weight of alcohol  
27 in the person's blood or refused to submit to a chemical test of the blood,  
28 breath, or urine for the purpose of determining the alcohol or controlled  
29 substance contents of the person's blood and whether the person was placed  
30 under arrest. At the hearing, the burden of proof shall be on the State and  
31 the decision shall be based on a preponderance of the evidence.

32 (B) If the revocation, suspension or denial is based upon a  
33 chemical test result indicating that the person was intoxicated or there was  
34 one-tenth of one percent (0.10%) or more by weight of alcohol in the person\_s  
35 blood as provided in §5-65-103, and a sworn report from a law enforcement

1 officer, the scope of the hearing shall also cover the issues as to whether:

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

7 (ii) the breath, blood or urine specimen was obtained  
8 from the person within the established and certified criteria of the Arkansas  
9 Department of Health;

10 (iii) the testing procedures used were in accordance  
11 with existing rules; and

12 (iv) the test result in fact reflects an alcohol  
13 concentration, presence of other intoxicating substances or a combination  
14 thereof.

15 (C) If the revocation, suspension or denial is based upon  
16 the refusal of the person to submit to a chemical test as provided in §5-65-  
17 202, reflected in a sworn report by a law enforcement officer, the scope of  
18 the hearing shall also include whether:

19 (i) the person refused to submit to the test or  
20 tests; and

21 (ii) the person was informed that his privilege to  
22 drive would be revoked, suspended or denied if the person refused to submit to  
23 the test or tests.

24 (9) In order to determine the number of previous offenses to  
25 consider when suspending or revoking the arrested person's driving privileges,  
26 the Office of Driver Services shall consider as a previous offense:

27 (A) any convictions for offenses of operating or being in  
28 actual physical control of a motor vehicle while intoxicated or while there is  
29 one-tenth of one percent (0.10%) or more by weight of alcohol in the person's  
30 blood under § 5-65-103 or refusing to submit to a chemical test under §5-65-  
31 202 which occurred prior to July 1, 1996; and

32 (B) any suspension or revocation of driving privileges for  
33 arrests for operating or being in actual physical control of a motor vehicle  
34 while intoxicated or while there is one-tenth of one percent (0.10%) or more  
35 by weight of alcohol in the person's blood under § 5-65-103 or refusing to

1 submit to a chemical test under §5-65-202 occurring on or after July 1, 1996  
2 where the person was not subsequently acquitted of the criminal charges.

3 (b) After the hearing, the Office of Driver Services or its authorized  
4 agent shall order the revocation, suspension or denial to be rescinded or  
5 sustained and shall then advise any person whose license is revoked, suspended  
6 or denied that he or she may request a restricted permit as otherwise provided  
7 for by this act.

8 (c) A person adversely affected by the hearing disposition order of the  
9 Office of Driver Services, Revenue Division of the Department of Finance and  
10 Administration or its authorized agent may file a de novo petition for review  
11 within thirty (30) days in the circuit court in the county in which the  
12 offense took place. The filing of a petition for review will not stay or  
13 place in abeyance the decision of the Office of Driver Services or its  
14 authorized agent. The administrative hearings held pursuant to this section  
15 shall be exempt from the Arkansas Administrative Procedure Act (Ark. Code Ann.  
16 §25-15-201, et seq.). On review, the circuit court shall hear the case de  
17 novo in order to determine whether, based on a preponderance of the evidence,  
18 grounds exist for revocation, suspension or denial of the person\_s privilege  
19 to drive.

20 (d) (1) Any decision rendered at an administrative hearing held under  
21 this section shall have no effect on any criminal case arising from any  
22 violation of Arkansas Code § 5-65-103 or § 5-65-202.

23 (2) Any decision rendered by a court of law for a criminal case  
24 arising from any violation of Arkansas Code § 5-65-103 or § 5-65-202 shall  
25 affect the administrative suspensions or revocation of the driver\_s license as  
26 follows:

27 (A) a plea of guilty, nolo contendere or a finding of guilt  
28 by the court will have no effect on any administrative hearing held under this  
29 section;

30 (B) an acquittal on the charges or a dismissal of charges  
31 will serve to reverse the suspension or revocation of the driver\_s license  
32 suspended or revoked under this section.

33 (3) If a person is acquitted of the charges of violating Arkansas  
34 Code § 5-65-103 or § 5-65-202 or if the charges are dismissed, the Office of  
35 Driver Services shall reinstate the person\_s driver license at no cost to the

1 person and the charges shall not be used to determine the number of previous  
2 offenses when administratively suspending or revoking the driving privilege of  
3 any arrested person in the future.

4 (e) Any person whose privilege to drive has been denied, suspended or  
5 revoked shall remain under such denial, suspension or revocation until such  
6 time that person applies to and is granted by the Office of Driver Services  
7 reinstatement of such privilege to drive and remains subject to penalties as  
8 provided in § 5-65-105 or until they are acquitted of violating § 5-65-103.

9 (f) The administrative suspension or revocation of a driver's license  
10 as provided for by this section shall be supplementary to and in addition to  
11 the suspensions or revocations of driver licenses which are ordered by a court  
12 of competent jurisdiction for offenses under Arkansas Code § 5-64-710, § 5-65-  
13 116, and § 27-16-914 or any other traffic or criminal offense wherein a  
14 suspension or revocation of the driver's license is a penalty for the  
15 violation."

16

17 SECTION 2. Title 5, Chapter 65, Subchapter 1 of the Arkansas Code of  
18 1987 Annotated is amended by adding a new section to read as follows:

19 "5-65-119. Distribution of fee.

20 The Office of Driver Services shall charge a fee of *seventy-five* dollars  
21 (\$75.00) for reinstating a driving privilege suspended or revoked because of  
22 an arrest for operating or being in actual physical control of a motor vehicle  
23 while intoxicated or while there was one-tenth of one percent (0.10%) or more  
24 by weight of alcohol in the person\_s blood (§5-65-103) or refusing to submit  
25 to a chemical test of blood, breath or urine for the purpose of determining  
26 the alcohol or controlled substance contents of the person\_s blood (§5-65-202)  
27 which shall be distributed as follows:

28 (1) *Fourteen percent (14%)* of the revenues derived from this fee shall  
29 be deposited in the State Treasury as special revenues and credited to the  
30 Public Health Fund to be used exclusively for the Department of Health-Blood  
31 Alcohol Program;

32 (2) *Sixty-six percent (66%)* of the revenues derived from this fee shall  
33 be deposited as special revenues to the State Treasury into the Constitutional  
34 Officers Fund and the State Central Services Fund as a direct revenue to be  
35 used by the Department of Finance and Administration, Revenue Division, Office



1 of Driver Services for use in supporting the administrative driver\_s licensing  
2 revocation and sanctions programs provided for in this section; and

3       (3) *Twenty percent (20%) of the revenues derived from this fee shall be*  
4 *deposited in the State Treasury, and the State Treasurer shall credit them, as*  
5 *general revenues, to the various funds in the respective amounts to each and*  
6 *to be used for the purposes as provided in the Revenue Stabilization Law, §*  
7 *19-5-101 et seq."*

8

9       SECTION 3. Title 5, Chapter 65, Subchapter 1 of the Arkansas Code of  
10 1987 Annotated is amended by adding a new section to read as follows:

11       "5-65-120. Restricted driving permit.

12       (a) Upon the effective date of this act, the Office of Driver Services  
13 or its designated agent, following the administrative hearing for suspension  
14 or revocation of a driver\_s license as provided for in Arkansas Code §5-65-104  
15 or upon the request of the person whose privilege to drive has been denied or  
16 suspended, may modify the denial or suspension in cases of extreme and unusual  
17 hardship by the issuance of a Restricted Driving Permit when it is determined  
18 by the Office of Driver Services or its agent that no other adequate means of  
19 transportation exists for that person to allow driving in any or all of the  
20 following situations:

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

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

23               (3) To and from an educational institution for the purpose of  
24 attending classes if the person is enrolled and regularly attending classes at  
25 the institution; or

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

28       (b) The restricted driving permit shall state the specific times and  
29 circumstances under which driving is permitted but shall not be granted where  
30 prohibited under §5-65-104."

31

32       SECTION 4. Arkansas Code § 5-65-205 is amended to read as follows:

33       "5-65-205. Refusal to submit.

34       (a) If a person under arrest refuses upon the request of a law  
35 enforcement officer to submit to a chemical test designated by the law

1 enforcement agency, as provided in § 5-65-202, none shall be given, and the  
2 person's motor vehicle operator's license shall be seized by the law  
3 enforcement officer, and the officer shall immediately deliver to the person  
4 from whom the license was seized a temporary driving permit.

5 (b) The Office of Driver Services shall then proceed to suspend or  
6 revoke the driving privilege of the arrested person or any non-resident  
7 driving privilege on the basis of the number of previous offenses in  
8 accordance with the provisions of Arkansas Code § 5-65-104."

9

10 SECTION 5. (a) Sections 1,3, and 4 of this act shall be effective for  
11 all arrests or offenses occurring on or after July 1, 1996. For all arrests  
12 or offenses occurring before July 1, 1996, but which have not reached a final  
13 disposition as to judgement in court, the offenses shall be decided under the  
14 law in effect at the time the offense occurred and any defendant shall be  
15 subject to the penalty provisions in effect at that time and not under the  
16 provisions of this act.

17 (b) Section 2 of this act regarding the charging of the reinstatement  
18 fee for the driver licenses suspended for driving while intoxicated offenses  
19 shall be effective on July 1, 1995.

20

21 SECTION 6. All provisions of this act of general and permanent nature  
22 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
23 Revision Commission shall incorporate the same in the Code.

24

25 SECTION 7. If any provisions of this act or the application thereof to  
26 any person or circumstance is held invalid, the invalidity shall not affect  
27 other provisions or applications of the act which can be given effect without  
28 the invalid provisions or application, and to this end the provisions of this  
29 act are declared to be severable.

30

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

33

34 SECTION 9. EMERGENCY. It is hereby found and determined by the General  
35 Assembly that this act provides for administrative revocation and suspension

1 of drivers\_ licenses for persons charged with the offense of driving while  
2 intoxicated; that based on Arkansas Crime Information Center statistics on DEI  
3 arrests, the Office of Driver Services could anticipate up to sixteen thousand  
4 (16,000) hearings if everyone arrested requested a hearing; that funds will be  
5 necessary for additional staff to handle this program along with significant  
6 costs to prepare for and implement this program; and that this act is  
7 necessary immediately in order to insure that sufficient funds are available  
8 for the financial stability of this program. Therefore, an emergency is  
9 hereby declared to exist and this act being necessary for the immediate  
10 preservation of the public peace, health and safety shall be in full force and  
11 effect from and after its passage and approval.

12 */s/Snyder et al*

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14 APPROVED: 3-27-95  
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