

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

# A Bill

Act 541 of 2003  
HOUSE BILL 1956

5 By: Representative Bond  
6  
7

## For An Act To Be Entitled

9 AN ACT TO CLARIFY THE PROCEDURE FOR APPEALING A  
10 DECISION OF THE OFFICE OF DRIVER SERVICES  
11 CONCERNING THE SUSPENSION OF A DRIVER'S LICENSE  
12 FOR OPERATING A MOTOR VEHICLE WHILE INTOXICATED  
13 OR IMPAIRED; TO CLARIFY THE USE OF PRIOR  
14 OFFENSES; AND FOR OTHER PURPOSES.

## Subtitle

15  
16 CLARIFIES PROCEDURE FOR APPEALING A  
17 DECISION OF THE OFFICE OF DRIVER  
18 SERVICES CONCERNING THE SUSPENSION OF A  
19 DRIVER'S LICENSE FOR OPERATING A MOTOR  
20 VEHICLE WHILE INTOXICATED OR IMPAIRED;  
21 TO CLARIFY THE USE OF PRIOR OFFENSES.  
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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27 Section 1. Arkansas Code § 5-65-104(a)(9), concerning calculating the  
28 number of prior offenses, is amended to add a new subsection to read as  
29 follows:

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

34 (A) Any convictions for offenses of operating or being in  
35 actual physical control of a motor vehicle while intoxicated or while there  
36 was an alcohol concentration of eight-hundredths (0.08) or more in the



1 person's breath or blood under § 5-65-103 or refusing to submit to a chemical  
2 test under § 5-65-202 which occurred prior to July 1, 1996; ~~and~~

3 (B) Any suspension or revocation of driving privileges for  
4 arrests for operating or being in actual physical control of a motor vehicle  
5 while intoxicated or while there is an alcohol concentration of eight-  
6 hundredths (0.08) or more in the person's breath or blood under § 5-65-103 or  
7 refusing to submit to a chemical test under § 5-65-202 occurring on or after  
8 July 1, 1996, where the person was not subsequently acquitted of the criminal  
9 charges; and

10 (C) Any conviction under the law of another state for  
11 operating or being in actual physical control of a motor vehicle while  
12 intoxicated or while there is an alcohol concentration of eight-hundredths  
13 (0.08) or more in a person's breath or blood.

14  
15 Section 2. Arkansas Code § 5-65-402(c), concerning the procedure to  
16 appeal decisions of the Office of Driver Services, is amended to read as  
17 follows:

18 (c)(1)(A) A person adversely affected by the hearing disposition order  
19 of the Office of Driver Services or its authorized agent may file a de novo  
20 petition for review within thirty (30) days in the circuit court in the  
21 county in which the offense took place.

22 (B) A copy of the decision of the office shall be attached  
23 to the petition.

24 (2) The filing of a petition for review will not stay or place  
25 in abeyance the decision of the Office of Driver Services or its authorized  
26 agent.

27 (3) The administrative hearings held pursuant to this section  
28 shall be exempt from the Arkansas Administrative Procedure Act, § 25-15-201  
29 et seq.

30 (4)(A) On review, the circuit court shall hear the case de novo  
31 in order to determine whether, based on a preponderance of the evidence,  
32 grounds exist for revocation, suspension, disqualification, or denial of the  
33 person's privilege to drive.

34 (B) If the results of a chemical test of blood, breath, or  
35 urine are used as evidence in the suspension, revocation, or disqualification  
36 of the person's privilege to drive, then the provisions of § 5-65-206 shall

1 apply in the circuit court proceeding.

2

3 Section 3. Arkansas Code § 5-65-402(d), concerning the effect of court  
4 decisions on administrative driver’s license suspensions, is amended to add  
5 an additional subdivision, to read as follows:

6 (d)(1) Any decision rendered at an administrative hearing held under  
7 this section shall have no effect on any criminal case arising from any  
8 violation of § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-  
9 114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5).

10 (2) Any decision rendered by a court of law for a criminal case  
11 arising from any violation of § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310,  
12 § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5) shall affect the  
13 administrative suspension, disqualification, or revocation of the driver’s  
14 license as follows:

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

18 (B)(i) An acquittal on the charges or a dismissal of  
19 charges will serve to reverse the suspension, disqualification, or revocation  
20 of the driver’s license suspended or revoked under this section.

21 (ii) The Office of Driver Services shall reinstate  
22 the person’s driver’s license at no cost to the person, and the charges shall  
23 not be used to determine the number of previous offenses when  
24 administratively suspending, disqualifying, or revoking the driving privilege  
25 of any arrested person in the future; and

26 (C) The Office of Driver Services shall convert any  
27 initial administrative suspension or revocation of a driver’s license for  
28 violating § 5-65-103 to a suspension or revocation for violating § 5-65-303,  
29 if the driver is convicted of violating § 5-65-303 instead of § 5-65-103.

30

31 Section 4. Arkansas Code § 5-65-402(a)(8)(B), concerning the conduct  
32 of administrative hearings, is amended to read as follows:

33 (B)(i) The hearing shall not be recorded.

34 (ii) At the hearing, the burden of proof shall be on  
35 the state and the decision shall be based on a preponderance of the evidence.

36 (iii) The scope of the hearing shall cover the

1 issues of whether the officer had reasonable grounds to believe the person  
2 had been operating or was in actual physical control of a motor vehicle or  
3 commercial motor vehicle:

- 4 (a) While intoxicated or impaired;
- 5 (b) While the person's blood alcohol  
6 concentration measured by weight of alcohol in the person's blood was equal  
7 to or greater than the blood alcohol concentration prohibited by § 5-65-  
8 103(b);

- 9 (c) While the blood alcohol concentration of a  
10 person under the age of twenty-one (21) was equal to or greater than the  
11 blood alcohol concentration prohibited by § 5-65-303;

- 12 (d) While the person's blood alcohol  
13 concentration measured by weight of alcohol in the person's blood was equal  
14 to or greater than the blood alcohol concentration prohibited by § 27-23-114;  
15 or

- 16 (e) Refused to submit to a chemical test of  
17 the blood, breath, or urine for the purpose of determining the alcohol or  
18 controlled substance contents of the person's blood and whether the person  
19 was placed under arrest.

20 (iv)(a) The Office of Driver Services or its agent  
21 at the hearing shall consider all documents submitted to the office by the  
22 arresting agency, documents submitted by the driver, and the statement of the  
23 driver.

24 (b) The Office of Driver Services shall not  
25 have the power to compel the production of documents or the attendance of  
26 witnesses.

27  
28 Section 5. Arkansas Code § 5-65-402(c)(2), concerning the judicial  
29 review of an administrative suspension of a driver's license, is amended to  
30 read as follows:

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

34 (B) If the circuit court issues an order staying the  
35 decision or placing the decision in abeyance, the court shall transmit a copy  
36 of the order to the office in the same manner that convictions and orders

1 relating to driving records are sent to that office.

2 (C)(i) The court shall hold a final hearing on the de novo  
3 review within one hundred twenty (120) days after the date that the order  
4 staying the decision or placing the decision in abeyance is entered.

5 (ii) The court may conduct such a hearing by  
6 telephone conference with the consent of the parties.

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9 APPROVED: 3/18/2003  
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