

**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.
Act 1234 of the Regular Session**

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 2534

5 By: Representatives Overbey, Bolin, Lamoureux
6
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE AUTHORITY OF THE OFFICE OF
10 DRIVER SERVICES OF THE REVENUE DIVISION OF THE
11 DEPARTMENT OF FINANCE AND ADMINISTRATION TO ISSUE
12 INTERLOCK RESTRICTED DRIVER'S LICENSES; AND FOR
13 OTHER PURPOSES.
14

Subtitle

16 TO CLARIFY THE AUTHORITY OF THE OFFICE
17 OF DRIVER SERVICES TO ISSUE INTERLOCK
18 RESTRICTED DRIVER'S LICENSES.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 5-65-205(b), regarding the refusal to
24 submit to a chemical test for driving while intoxicated, is amended to read
25 as follows:

26 (b) The Office of Driver Services of the Revenue Division of the
27 Department of Finance and Administration shall then proceed to suspend or
28 revoke the driving privilege of the arrested person, as provided in § 5-65-
29 402. The suspension shall be as follows:

30 (1)(A) Suspension for one hundred eighty (180) days for the
31 first offense of refusing to submit to a chemical test of blood, breath, or
32 urine for the purpose of determining the alcohol or controlled substance
33 contents of the person's blood or breath. However, if the ~~court orders~~ Office
34 of Driver Services allows the issuance of an ignition interlock restricted
35 license under § 5-65-118, the interlock restricted license shall be available



1 immediately. The restricted driving permit provision of § 5-65-120 does not
 2 apply to this suspension.

3 (B) The office, in addition to any other penalties, shall
 4 deny to that person the issuance of an operator's license until that person
 5 has been issued an ignition interlock restricted license for a period of six
 6 (6) months;

7 (2) Suspension for two (2) years, during which no restricted
 8 permits may be issued, for a second offense of refusing to submit to a
 9 chemical test of blood, breath, or urine for the purposes of determining the
 10 alcohol or controlled substance contents of the person's blood or breath
 11 within five (5) years of the first offense;

12 (3) Revocation for three (3) years, during which no restricted
 13 permits may be issued, for the third offense of refusing to submit to a
 14 chemical test of blood, breath, or urine for the purpose of determining the
 15 alcohol or controlled substance contents of the person's blood within five
 16 (5) years of the first offense; and

17 (4) Lifetime revocation, during which no restricted permit may
 18 be issued, for the fourth or subsequent offense of refusing to submit to a
 19 chemical test of blood, breath, or urine for the purpose of determining the
 20 alcohol or controlled substance contents of the person's blood or breath
 21 within five (5) years of the first offense.

22

23 SECTION 2. Arkansas Code § 5-65-118 is amended to read as follows:

24 5-65-118. Additional penalties - Ignition interlock devices.

25 (a)(1)(A) In addition to the other penalties authorized for violations
 26 of this chapter, ~~a court~~ the Office of Driver Services of the Revenue
 27 Division of the Department of Finance and Administration, in its discretion,
 28 upon ~~a finding of guilt or a plea of guilty or nolo contendere~~ an arrest for
 29 violating § 5-65-103 for a first or second offense, may ~~order~~ restrict the
 30 person to operate only a motor vehicle which is equipped with a functioning
 31 ignition interlock device, and this restriction may continue for a period of
 32 up to one (1) year after the person's license is no longer suspended or
 33 restricted under the provisions of § 5-65-104.

34 (B) Upon a finding that a person is financially able to
 35 afford an ignition interlock device and upon ~~a plea of guilty or nolo~~
 36 ~~contendere to, or a finding of guilt of,~~ an arrest for a violation of § 5-65-

1 103 for a third or subsequent offense, the ~~court shall order~~ Office of Driver
2 Services may restrict the offender to operate only a motor vehicle which is
3 equipped with a functioning ignition interlock device for up to one (1) year
4 after the person's license is no longer suspended or restricted under § 5-65-
5 104.

6 (2) The ~~court, at the time of sentencing,~~ Office of Driver
7 Services may order the Office of Driver Services of the Department of Finance
8 and Administration to issue a restricted license in accordance with the
9 requirements under the provisions of § 5-65-104 to the person only after the
10 person has verified installation of a functioning ignition interlock device
11 to the office in any motor vehicle the person intends to operate, except for
12 exemptions allowed under subsection (g) of this section.

13 (3) The ~~court~~ Office of Driver Services shall establish:

14 (A) A specific calibration setting no lower than two
15 hundredths of one percent (.02%) nor more than five hundredths of one percent
16 (.05%) of alcohol in the person's blood at which the ignition interlock
17 device will prevent the motor vehicle's being started; and

18 (B) The period of time that the person shall be subject to
19 the restriction.

20 (4) For the purpose of this section, "ignition interlock device"
21 means a device which connects a motor vehicle ignition system to a breath-
22 alcohol analyzer and prevents a motor vehicle ignition from starting if a
23 driver's blood alcohol level exceeds the calibration setting on the device.

24 (b) Upon ~~ordering restricting the offender to~~ the use of an ignition
25 interlock device, the ~~court~~ Office of Driver Services shall:

26 (1) State on the record the requirement for and the period of
27 use of the device, provided however, that if the ~~court orders~~ Office of
28 Driver Services restricts the offender to the use of an ignition interlock
29 device in conjunction with the issuance of a restricted license under the
30 provisions of § 5-65-104, the period of requirement of use of the device
31 shall be at least the remaining time period of the original suspension
32 imposed under § 5-65-104, and so notify the Office of Driver Services of the
33 Department of Finance and Administration;

34 (2) Direct that the records of the Office of Driver Services
35 reflect that the person may not operate a motor vehicle which is not equipped
36 with an ignition interlock device+

1 ~~(A) That the person may not operate a motor vehicle that~~
2 ~~is not equipped with an ignition interlock device; and~~

3 ~~(B) Whether the court has expressly permitted the person~~
4 ~~to operate a motor vehicle without an ignition interlock device under~~
5 ~~subdivision (g)(2) of this section;~~

6 (3) Direct the Office of Driver Services to attach or imprint a
7 notation on the driver’s license of any person restricted under this section
8 stating that the person may operate only a motor vehicle equipped with an
9 ignition interlock device and, prior to the issuance of a restricted license
10 under the provisions of § 5-65-104 by the Office of Driver Services, require
11 the person to show proof of installation of a certified ignition interlock
12 device;

13 (4) Require proof of the installation of the device and periodic
14 reporting by the person for verification of the proper operation of the
15 device;

16 (5) Require the person to have the device serviced and monitored
17 at least every sixty-seven (67) days for proper use and accuracy by an entity
18 approved by the Department of Health; and

19 (6) Require the person to pay the reasonable cost of leasing or
20 buying, monitoring, and maintaining the device and may establish a payment
21 schedule therefor.

22 (c)(1) A person ~~sentenced~~ restricted under this section to operate
23 only a motor vehicle that is equipped with an ignition interlock device may
24 not solicit or have another person start or attempt to start a motor vehicle
25 equipped with such a device.

26 (2) Except as provided in subsection (g) of this section, a
27 violation of this subsection is a Class A misdemeanor.

28 (d)(1) A person may not start or attempt to start a motor vehicle
29 equipped with an ignition interlock device for the purpose of providing an
30 operable motor vehicle to a person who is ~~sentenced~~ restricted under this
31 section to operate only a motor vehicle that is equipped with an ignition
32 interlock device.

33 (2) Except as provided in subsection (g) of this section, a
34 violation of this subsection is a Class A misdemeanor.

35 (e)(1) A person may not tamper with or in any way attempt to
36 circumvent the operation of an ignition interlock device that has been

1 installed in a motor vehicle.

2 (2) Except as provided in subsection (g) of this section, a
 3 violation of this subsection is a Class A misdemeanor.

4 (f)(1) A person may not knowingly provide a motor vehicle not equipped
 5 with a functioning ignition interlock device to another person whom the
 6 provider of the vehicle knows or should know was ~~sentenced~~ restricted to
 7 operate only a motor vehicle equipped with an ignition interlock device.

8 (2) Except as provided in subsection (g) of this section, a
 9 violation of this subsection is a Class A misdemeanor.

10 (g) Any person found to have violated subsections (c)-(f) of this
 11 section is guilty of a Class A misdemeanor; provided, however, that penalty
 12 shall not apply if:

13 (1) The starting of a motor vehicle, or the request to start a
 14 motor vehicle, equipped with an ignition interlock device is done for the
 15 purpose of safety or mechanical repair of the device or the vehicle and the
 16 person subject to the ~~court order~~ restriction does not operate the vehicle;

17 (2)(A) The court finds that a person is required to operate a
 18 motor vehicle in the course and scope of the person's employment and, if the
 19 vehicle is owned by the employer, that the person may operate that vehicle
 20 during regular working hours for the purposes of his employment without
 21 installation of an ignition interlock device if the employer has been
 22 notified of such driving privilege restriction and if proof of that
 23 notification is with the vehicle.

24 (B) This employment exemption shall not apply, however, if
 25 the business entity that owns the vehicle is owned or controlled by the
 26 person who is prohibited from operating a motor vehicle not equipped with an
 27 ignition interlock device; or

28 (3) If the person cannot provide proof of installation of a
 29 functioning ignition interlock device to the Office of Driver Services under
 30 § 5-65-118(a), the Office of Driver Services shall not issue a restricted
 31 license as authorized under § 5-65-118.

32 (h) In addition to any other penalties authorized under this section,
 33 if the ~~court~~ Office of Driver Services finds that the person has violated the
 34 conditions under this section related to the proper use, circumvention, or
 35 maintenance of an ignition interlock device, the ~~court~~ Office of Driver
 36 Services shall ~~remove~~ revoke the ignition interlock restricted license ~~from~~

1 ~~the person and order the Office of Driver Services to~~ reinstate a license
 2 suspension for the term of the original license suspension. ~~Provided,~~
 3 ~~however, that the term of the reinstated suspension shall begin on the date~~
 4 ~~of the court-ordered suspension under this subsection.~~

5 (i) Any person whose license was suspended under § 5-65-104 who would
 6 otherwise be eligible to obtain an ignition interlock restricted license may
 7 petition the ~~court~~ Office of Driver Services of the Revenue Division of the
 8 Department of Finance and Administration for a hearing, and ~~the court may~~
 9 ~~order~~ the Office of Driver Services ~~of the Revenue Division of the Department~~
 10 ~~of Finance and Administration~~ or its designated official ~~to~~ may issue an
 11 ignition interlock restricted license as authorized under the applicable
 12 section of §§ 5-65-104 and 5-65-205.

13 (j)(1) The Department of Health shall certify the ignition interlock
 14 systems for use in this state, shall approve the entities which install and
 15 monitor the systems, and shall adopt rules and regulations for the
 16 certification of the ignition interlock systems and system installation.

17 (2) The regulations shall require the ignition interlock
 18 systems, as a minimum, to:

- 19 (A) Not impede the safe operation of the vehicle;
- 20 (B) Minimize the opportunities to be bypassed;
- 21 (C) Work accurately and reliably in unsupervised
 22 environments;
- 23 (D) Measure, properly and accurately, the person's blood
 24 alcohol levels;
- 25 (E) Minimize the inconvenience to a sober user; and
- 26 (F) Be manufactured by an entity that is responsible for
 27 installation, user training, and servicing and maintenance of the systems,
 28 and that is capable of providing monitoring reports to the ~~courts~~ Office of
 29 Driver Services.

30 (3) The Department of Health shall develop a warning label to be
 31 affixed to all ignition interlock systems used in the state to warn any
 32 person of the possible penalties for tampering with or attempting to
 33 circumvent the interlock system.

34 (4) The Department of Health shall publish and update a list of
 35 certified ignition interlock manufacturers and approved ignition interlock
 36 system installers, and it shall be provided periodically to ~~each municipal~~

1 ~~and circuit court in the state~~ the Office of Driver Services.

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3 SECTION 3. Arkansas Code § 5-65-104 is amended to read as follows:

4 5-65-104. Seizure, suspension, and revocation of license - Temporary
5 permits - Ignition interlock restricted license.

6 (a)(1) At the time of arrest for operating or being in actual physical
7 control of a motor vehicle while intoxicated or while there was an alcohol
8 concentration of eight-hundredths (0.08) or more in the person's breath or
9 blood, § 5-65-103, the arrested person shall immediately surrender his or her
10 license, permit, or other evidence of driving privilege to the arresting law
11 enforcement officer as provided in § 5-65-402.

12 (2) The Office of Driver Services of the Revenue Division of the
13 Department of Finance and Administration or its designated official shall
14 suspend or revoke the driving privilege of an arrested person or shall
15 suspend any nonresident driving privilege of an arrested person, as provided
16 in § 5-65-402. The suspension or revocation shall be based on the number of
17 previous offenses as follows:

18 (A)(i) Suspension for one hundred twenty (120) days for
19 the first offense of operating or being in actual physical control of a motor
20 vehicle while intoxicated or while there was an alcohol concentration of at
21 least eight hundredths (0.08) but less than fifteen hundredths (0.15) by
22 weight of alcohol in the person's blood or breath, § 5-65-103;

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

27 (iii) Suspension for one hundred eighty (180) days
28 for the first offense of operating or being in actual physical control of a
29 motor vehicle while intoxicated and while there was an alcohol concentration
30 of fifteen hundredths (0.15) or more by weight of alcohol in the person's
31 blood or breath. Provided, however, that if the ~~court orders~~ Office of Driver
32 Services allows the issuance of an ignition interlock restricted license
33 under § 5-65-118, the interlock restricted license shall be available
34 immediately. The restricted driving permit provision of § 5-65-120 does not
35 apply to this suspension;

36 (B) Suspension for twenty-four (24) months for a second

1 offense of operating or being in actual physical control of a motor vehicle
 2 while intoxicated or while there was an alcohol concentration of eight
 3 hundredths (0.08) or more by weight of alcohol in the person's blood or
 4 breath, § 5-65-103, within five (5) years of the first offense. Provided,
 5 however, that if the ~~court orders~~ Office of Driver Services allows the
 6 issuance of an ignition interlock restricted license under § 5-65-118, the
 7 suspension period for which no restricted license shall be available shall be
 8 a minimum of one (1) year;

9 (C) Suspension for thirty (30) months for the third
 10 offense of operating or being in actual physical control of a motor vehicle
 11 while intoxicated or while there was an alcohol concentration of eight
 12 hundredths (0.08) or more by weight of alcohol in the person's blood or
 13 breath, § 5-65-103, within five (5) years of the first offense. Provided,
 14 however, that if the ~~court orders~~ Office of Driver Services allows the
 15 issuance of an ignition interlock restricted license under § 5-65-118, the
 16 suspension period for which no restricted license shall be available shall be
 17 a minimum of one (1) year; and

18 (D) Revocation for four (4) years, during which no
 19 restricted permits may be issued, for the fourth or subsequent offense of
 20 operating or being in actual physical control of a motor vehicle while
 21 intoxicated or while there was an alcohol concentration of eight hundredths
 22 (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-
 23 103, within five (5) years of the first offense.

24 (3) If a person is a resident who is convicted of driving
 25 without a license or permit to operate a motor vehicle and the underlying
 26 basis for the suspension, revocation, or restriction of the license was for a
 27 violation of § 5-65-103, the ~~court may order~~ Office of Driver Services may,
 28 in addition to any other penalties provided for under law, ~~that the Office of~~
 29 ~~Driver Services issue~~ restrict the offender to only an ignition interlock
 30 restricted permit for a period of one (1) year prior to the reinstatement or
 31 reissuance of a license or permit after the person would otherwise be
 32 eligible for reinstatement or reissuance of the person's license.

33 (4) In order to determine the number of previous offenses to
 34 consider when suspending or revoking the arrested person's driving
 35 privileges, the office shall consider as a previous offense:

36 (A) Any convictions for offenses of operating or being in

1 actual physical control of a motor vehicle while intoxicated or while there
2 was an alcohol concentration of eight-hundredths (0.08) or more in the
3 person's breath or blood under § 5-65-103 or refusing to submit to a chemical
4 test under § 5-65-202 which occurred prior to July 1, 1996;

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

12 (b)(1) Any person whose license is suspended or revoked pursuant to
13 this section shall be required to complete an alcohol education program as
14 prescribed and approved by the Highway Safety Program or an alcohol treatment
15 program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the
16 Department of Health, unless the charges are dismissed or the person is
17 acquitted of the charges upon which the suspension or revocation is based.

18 (2) A person whose license is suspended or revoked pursuant to
19 this section shall furnish proof of attendance at, and completion of, the
20 alcoholism treatment or education program before reinstatement of his or her
21 suspended or revoked driver's license or shall furnish proof of dismissal or
22 acquittal of the charge on which the suspension or revocation is based.

23 (3) Even if a person has filed a de novo petition for review
24 pursuant to former subsection (c) of this section, the person shall be
25 entitled to reinstatement of driving privileges upon complying with this
26 subsection and shall not be required to postpone reinstatement until the
27 disposition of the de novo review in circuit court has occurred.

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30 APPROVED: 3/24/2005
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