

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 1535 of the Regular Session

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

As Engrossed: H3/8/05

A Bill

HOUSE BILL 1768

5 By: Representative Key
6 By: Senator Womack
7
8

For An Act To Be Entitled

10 AN ACT TO PROVIDE FOR AN ADMINISTRATIVE
11 SUSPENSION OF DRIVER'S LICENSE FOR THE OFFENSE OF
12 POSSESSION OF ALCOHOL BY A MINOR; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 AN ACT TO PROVIDE FOR AN ADMINISTRATIVE
16 SUSPENSION OF DRIVER'S LICENSE FOR THE
17 OFFENSE OF POSSESSION OF ALCOHOL BY A
18 MINOR.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 3-3-203 is amended to read as follows:

25 3-3-203. Purchase or possession by minor.

26 (a)(1) It shall be unlawful for any person under the age of twenty-one
27 (21) years to purchase or have in possession any intoxicating liquor, wine,
28 or beer.

29 (2) For the purposes of this section, intoxicating liquor, wine,
30 or beer in the body of a minor shall not be deemed to be in his possession.

31 (b) It shall also be unlawful for any adult to purchase on behalf of a
32 person under the age of twenty-one (21) years any intoxicating liquor, wine,
33 or beer.

34 (c)(1) Any person violating this section ~~shall be deemed~~ is guilty of
35 a misdemeanor and upon conviction shall be subject to a fine of not less than



1 one hundred dollars (\$100) nor more than five hundred dollars (\$500).

2 (2) In addition to the fine authorized by subdivision (c)(1) of
3 this section, at the time of arrest for violation of the provisions of
4 subsection (a) of this section, the arrested person shall immediately
5 surrender his or her license, permit, or other evidence of driving privilege
6 to the arresting law enforcement officer as provided in § 5-65-402.

7 (3) The Office of Driver Services of the Revenue Division of the
8 Department of Finance and Administration or its designated official shall
9 suspend or revoke the driving privilege of an arrested person or shall
10 suspend any nonresident driving privilege of an arrested person, as provided
11 in § 5-65-402. The period of suspension or revocation shall be based on the
12 offense that caused the surrender of the arrested person's license, permit,
13 or other evidence of driving privilege as described in subdivision (c)(2) of
14 this section and the number of any previous offenses as follows:

15 (A) Suspension for sixty (60) days for a first offense
16 under subsection (a) of this section;

17 (B) Suspension for one hundred twenty (120) days for a
18 second offense under subsection (a) of this section; and

19 (C) Suspension for one (1) year for a third or subsequent
20 offense under subsection (a) of this section.

21 (4) In order to determine the number of previous offenses to
22 consider when suspending or revoking the arrested person's driving
23 privileges, the office shall consider as a previous offense any convictions
24 under subsection (a) of this section which occurred both prior to or after
25 the effective date of this subsection (c).

26 (d) In addition to the ~~penalty~~ penalties herein provided, the trial
27 judge or magistrate may impose the following penalty or penalties or any
28 combination thereof:

29 (1) Requiring persons under the age of twenty-one (21) years to
30 write themes or essays on intoxicating liquors, wine, or beer; or

31 (2) Placement of a person under the age of twenty-one (21) years
32 under probationary conditions as determined by the court in its reasonable
33 discretion designed as a reasonable and suitable preventive and educational
34 safeguard to prevent future violations of this section by the person.

35
36 SECTION 2. Arkansas Code § 5-65-402 is amended to read as follows:

1 5-65-402. Surrender of license or permit to arresting officer.

2 (a)(1)(A) At the time of arrest for violating § 3-3-203(a), § 5-65-
3 103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1), § 27-23-
4 114(a)(2), or § 27-23-114(a)(5), the arrested person shall immediately
5 surrender his license, permit, or other evidence of driving privilege to the
6 arresting law enforcement officer.

7 (B) The officer shall seize the license, permit, or other
8 evidence of driving privilege surrendered by the arrested person or found on
9 the arrested person during a search.

10 (2)(A)(i) If the license, permit, or other evidence of driving
11 privilege seized by the officer has not expired and otherwise appears valid
12 to the officer, the officer shall issue to the arrested person a dated
13 receipt for that license, permit, or other evidence of driving privilege on a
14 form prescribed by the Office of Driver Services of the Department of Finance
15 and Administration.

16 (ii) This receipt shall be recognized as a license
17 and shall authorize the arrested person to operate a motor vehicle for a
18 period not to exceed thirty (30) days.

19 (B)(i) The receipt form shall contain and shall constitute
20 a notice of suspension, disqualification, or revocation of driving privileges
21 by the Office of Driver Services of the Department of Finance and
22 Administration, effective in thirty (30) days, notice of the right to a
23 hearing within twenty (20) days and, if a hearing is to be requested, as
24 notice that the hearing request is required to be made within seven (7)
25 calendar days of the notice being given.

26 (ii) The receipt shall also contain phone numbers
27 and the address of the Office of Driver Services and inform the driver of the
28 procedure for requesting a hearing.

29 (C) If the Office of Driver Services is unable to conduct
30 a hearing within the twenty-day period, a temporary permit shall be issued
31 and shall be valid until the date of the hearing.

32 (D)(i) The seized license, permit, or other evidence of
33 driving privilege and a copy of the receipt form issued to the arrested
34 person shall be attached to the sworn report of the arresting officer and
35 shall be submitted by mail or in person to the Office of Driver Services or
36 his designated representative within seven (7) days of the issuance of the

1 receipt.

2 (ii) The failure of the arresting officer to timely
3 file this report shall not affect the authority of the Office of Driver
4 Services to suspend, disqualify, or revoke the driving privilege of the
5 arrested person.

6 (3)(A) Any notices from the Office of Driver Services required
7 under this subchapter which are not personally delivered shall be sent by
8 certified mail and shall be deemed to have been delivered on the date when
9 postmarked and shall be sent to the last known address on file with the
10 Office of Driver Services.

11 (B) Refusal of the addressee to accept delivery or
12 attempted delivery of the notice at the address obtained by the arresting law
13 enforcement officer or on file with the Office of Driver Services shall not
14 constitute nonreceipt of notice.

15 (C) For all notices which are personally delivered, the
16 person shall be asked to sign a receipt acknowledging he received the
17 required notice.

18 (4)(A) The Office of Driver Services or its designated official
19 shall suspend, revoke, or disqualify the driving privilege of an arrested
20 person or shall suspend, revoke, or disqualify any nonresident driving
21 privilege of an arrested person when it receives a sworn report from the law
22 enforcement officer that he or she had reasonable grounds to believe the
23 arrested person:

24 (i) Was under twenty-one (21) years of age and
25 purchased or was in possession of intoxicating liquor, wine, or beer in
26 violation of § 3-3-203(a); or

27 (ii) had Had been operating or was in actual
28 physical control of a motor vehicle in violation of § 5-65-103, § 5-65-303, §
29 27-23-114(a)(1), or § 27-23-114(a)(2) ~~which~~ and the report is accompanied by:

30 (a) a A written chemical test report or a
31 sworn report that the person was operating or in actual physical control of a
32 motor vehicle in violation of § 5-65-103, § 5-65-303, or § 27-23-114, ; or

33 (b) is accompanied by a A sworn report that
34 the arrested person refused to submit to a chemical test of blood, breath, or
35 urine for the purpose of determining the alcohol or controlled substance
36 contents of the person's blood in violation of § 5-65-205, § 5-65-310, or §

1 27-23-114(a)(5).

2 (B) The suspension, disqualification, or revocation shall
3 be based as follows:

4 (i) The driving privileges of any person violating §
5 5-65-103 shall be suspended or revoked as provided by § 5-65-104;

6 (ii) The driving privileges of any person violating
7 § 5-65-205(a) shall be suspended or revoked as provided by § 5-65-205(b);

8 (iii) The driving privileges of any person violating
9 § 5-65-303 shall be suspended or revoked as provided by § 5-65-304(b);

10 (iv) The driving privileges of any person violating
11 § 5-65-310(a) shall be suspended or revoked as provided by § 5-65-310(b);

12 (v) The driving privileges of any person violating §
13 27-23-114(a)(1) or § 27-23-114(a)(2) shall be disqualified as provided by §
14 27-23-112; ~~and~~

15 (vi) The driving privileges of any person violating
16 § 27-23-114(a)(5) shall be disqualified as provided by § 27-23-112; and

17 (vii) The driving privileges of any person violating
18 § 3-3-203(a) shall be suspended, revoked, or disqualified as provided by § 3-
19 3-203(c).

20 (5)(A) If the person is a resident without a license or permit
21 to operate a motor vehicle in this state, the Office of Driver Services
22 shall, in addition to any other penalties provided for in this section, deny
23 to that person the issuance of a license or permit for a period of six (6)
24 months for a first offense.

25 (B) For a second or subsequent offense by a resident
26 without a license or permit to operate a motor vehicle, the Office of Driver
27 Services shall, in addition to any other penalties provided for in this
28 section, deny to that person the issuance of a license or permit for a period
29 of one (1) year.

30 (6)(A)(i) If the person is a nonresident, such person's
31 privilege to operate a motor vehicle in Arkansas shall be suspended in the
32 same manner as that of a resident.

33 (ii) The Office of Driver Services shall notify the
34 office that issued the nonresident's motor vehicle license of the action
35 taken by the Office of Driver Services.

36 (B) When the person is a nonresident without a license or

1 permit to operate a motor vehicle, the Office of Driver Services shall notify
2 the office of issuance for that person's state of residence of action taken
3 by the Office of Driver Services.

4 (7)(A) Upon the written request of a person whose privilege to
5 drive has been revoked, denied, disqualified, or suspended, or who has
6 received a notice of revocation, suspension, disqualification, or denial by
7 the arresting officer, the Office of Driver Services shall grant the person
8 an opportunity to be heard provided the request is received by the Office of
9 Driver Services within seven (7) calendar days after the notice of the
10 revocation, suspension, disqualification, or denial is given in accordance
11 with this section or as otherwise provided in this chapter.

12 (B) Such a request shall not operate to stay the
13 revocation, suspension, disqualification, or denial by the Office of Driver
14 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 the
17 Department of Finance and Administration nearest the county wherein the
18 alleged events occurred for which the person was arrested, unless the Office
19 of Driver Services or its authorized agent and the arrested person agree
20 otherwise to the hearing being held in some other county or that the Office
21 of Driver Services or its authorized agent may schedule the hearing or any
22 part thereof by telephone and conduct the hearing by telephone conference
23 call.

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

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

27 (iii) The scope of the hearing shall cover the
28 issues of whether the officer had reasonable grounds to believe the person:

29 (a) Had been operating or was in actual
30 physical control of a motor vehicle or commercial motor vehicle while
31 intoxicated or impaired, while the person's blood alcohol concentration
32 measured by weight of alcohol in the person's blood was equal to or greater
33 than the blood alcohol concentration prohibited by § 5-65-103(b), while the
34 blood alcohol concentration of a person under the age of twenty-one (21) was
35 equal to or greater than the blood alcohol concentration prohibited by § 5-
36 65-303, or while the person's blood alcohol concentration measured by weight

1 of alcohol in the person's blood was equal to or greater than the blood
2 alcohol concentration prohibited by § 27-23-114; ~~or~~

3 (b) Refused to submit to a chemical test of
4 the blood, breath, or urine for the purpose of determining the alcohol or
5 controlled substance contents of the person's blood and whether the person
6 was placed under arrest; or

7 (c) Was under twenty-one (21) years of age and
8 purchased or was in possession of any intoxicating liquor, wine, or beer.

9 (iv)(a) The office or its agent at the hearing shall
10 consider all documents submitted to the office by the arresting agency,
11 documents submitted by the driver, and the statement of the driver.

12 (b) The office shall not have the power to
13 compel the production of documents or the attendance of witnesses.

14 (C) If the revocation, suspension, disqualification, or
15 denial is based upon a chemical test result indicating that the person was
16 intoxicated or impaired and a sworn report from a law enforcement officer,
17 the scope of the hearing shall also cover the issues as to whether:

18 (i) The person was advised that his privilege to
19 drive would be revoked, disqualified, suspended, or denied if the test result
20 reflected an alcohol concentration equal to or in excess of the amount by
21 weight of blood provided by law or the presence of other intoxicating
22 substances;

23 (ii) The breath, blood, or urine specimen was
24 obtained from the person within the established and certified criteria of the
25 Department of Health;

26 (iii) The testing procedures used were in accordance
27 with existing rules; and

28 (iv) The test result in fact reflects an alcohol
29 concentration, presence of other intoxicating substances, or a combination
30 thereof.

31 (D) If the revocation, suspension, disqualification, or
32 denial is based upon the refusal of the person to submit to a chemical test
33 as provided in § 5-65-205, § 5-65-310, or § 27-23-114(a)(5), reflected in a
34 sworn report by a law enforcement officer, the scope of the hearing shall
35 also include whether:

36 (i) The person refused to submit to the test or

1 tests; and

2 (ii) The person was informed that his privilege to
3 drive would be revoked, disqualified, suspended, or denied if the person
4 refused to submit to the test or tests.

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

10 (c)(1)(A) A person adversely affected by the hearing disposition order
11 of the office or its authorized agent may file a de novo petition for review
12 within thirty (30) days in the circuit court in the county in which the
13 offense took place.

14 (B) A copy of the decision of the office shall be attached
15 to the petition.

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

18 (B) If the circuit court issues an order staying the
19 decision or placing the decision in abeyance, the court shall transmit a copy
20 of the order to the office in the same manner that convictions and orders
21 relating to driving records are sent to that office.

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

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

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 (d)(1) Any decision rendered at an administrative hearing held under
3 this section shall have no effect on any criminal case arising from any
4 violation of § 3-3-203(a), § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, §
5 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5).

6 (2) Any decision rendered by a court of law for a criminal case
7 arising from any violation of § 3-3-203(a), § 5-65-103, § 5-65-205, § 5-65-
8 303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5)
9 shall affect the administrative suspension, disqualification, or revocation
10 of the driver's license as follows:

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

14 (B)(i) An acquittal on the charges or a dismissal of
15 charges will serve to reverse the suspension, disqualification, or revocation
16 of the driver's license suspended or revoked under this section.

17 (ii) The office shall reinstate the person's
18 driver's license at no cost to the person, and the charges shall not be used
19 to determine the number of previous offenses when administratively
20 suspending, disqualifying, or revoking the driving privilege of any arrested
21 person in the future; and

22 (C) The office shall convert any initial administrative
23 suspension or revocation of a driver's license for violating § 5-65-103 to a
24 suspension or revocation for violating § 5-65-303, if the driver is convicted
25 of violating § 5-65-303 instead of § 5-65-103.

26 (e) Any person whose privilege to drive has been denied, suspended,
27 disqualified, or revoked shall remain under such denial, suspension,
28 disqualification, or revocation and remain subject to penalties as provided
29 in § 5-65-105 until such time as that person applies for, and is granted by
30 the Office of Driver Services, reinstatement of such privilege to drive.

31 (f) The administrative suspension, disqualification, or revocation of
32 a driver's license as provided for by this section shall be supplementary to
33 and in addition to the suspensions, disqualifications, or revocations of
34 driver's licenses which are ordered by a court of competent jurisdiction for
35 offenses under §§ 5-64-710, 5-65-116, and 27-16-914, or any other traffic or
36 criminal offense wherein a suspension, disqualification, or revocation of the

1 driver's license is a penalty for the violation.

2 (g) For all arrests or offenses occurring before July 30, 1999, but
3 which have not reached a final disposition as to judgment in court, the
4 offenses shall be decided under the law in effect at the time the offense
5 occurred, and any defendant shall be subject to the penalty provisions in
6 effect at that time and not under the provisions of this section.

7 (h)(1)(A) A person whose license is suspended or revoked pursuant to
8 this section shall:

9 (i)(a) Furnish proof of attendance at and completion
10 of the alcoholism treatment or education program before reinstatement of his
11 or her suspended or revoked driver's license; and

12 (b) Pay any fee for reinstatement required
13 under § 5-65-119 or § 5-65-304; or

14 (ii) Furnish proof of dismissal or acquittal of the
15 charge on which the suspension or revocation is based.

16 (B) An application for reinstatement shall be made to the
17 Office of Driver Services.

18 (2) Even if a person has filed a de novo petition for review
19 pursuant to subsection (c) of this section, the person shall be entitled to
20 reinstatement of driving privileges upon complying with this subsection and
21 shall not be required to postpone reinstatement until the disposition of the
22 de novo review in circuit court has occurred.

23 (3) A person suspended under this section may enroll in an
24 alcohol education program prior to disposition of the offense by the
25 municipal or circuit court but shall not be entitled to any refund of fees
26 paid if the charges are dismissed or if the person is acquitted of the
27 charges.

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29 *SECTION 3. Arkansas Code §27-50-801 is amended to read as follows:*

30 *27-50-801. Convictions and forfeitures to be reported.*

31 *(a) Every magistrate or judge of a court not of record shall keep a*
32 *full record of every case in which a person is charged with any violation of*
33 *this act, ~~or~~ of any other law regulating the operation of vehicles on*
34 *highways, or § 3-3-203(a).*

35 *(b) Within ten (10) days after the conviction or forfeiture of bail of*
36 *a person upon a charge of violating any provision of this act, ~~or~~ other law*

1 regulating the operation of vehicles on highways, or § 3-3-203(a) every
 2 magistrate of the court or clerk of the court of record in which the
 3 conviction was had or bail was forfeited shall prepare and immediately
 4 forward to the Office of Driver Services of the Revenue Division of the
 5 Department of Finance and Administration an abstract of the record of the
 6 court covering the case in which the person was so convicted or forfeited
 7 bail, which abstract must be certified by the person so required to prepare
 8 it to be true and correct.

9 (c) The abstract must be made upon a form furnished by the office and
 10 shall include the name and address of the party charged, the registration
 11 number of the vehicle involved, the nature of the offense, the date of
 12 hearing, the plea, the judgment, or whether bail was forfeited, and the
 13 amount of the fine or forfeiture, as the case may be.

14 (d) Every court of record shall also forward a like report to the
 15 office upon the conviction of any person of manslaughter or other felony in
 16 the commission of which a vehicle was used.

17 (e) The failure, refusal, or neglect of any such judicial officer to
 18 comply with any of the requirements of this section shall constitute
 19 misconduct in office and shall be grounds for removal therefrom.

20 (f) The Department of Arkansas State Police shall keep all abstracts
 21 received under this section at its main office, and they shall be open to
 22 public inspection during reasonable business hours.

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/s/ Key

APPROVED: 4/05/2005

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