

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

SENATE BILL 546

4 By: Senators Snyder, Webb, Walker, Hopkins, Keet, Russ, Hunter, Jeffries,
5 Boozman, Cassidy and Brown

6
7
8

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."

18
19

Subtitle

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-
32 65-103) or refusing to submit to a chemical test of blood, breath or urine
33 for the purpose of determining the alcohol or controlled substance contents
34 of the person_s blood (§5-65-202), the arrested person shall immediately
35 surrender his license, permit or other evidence of driving privilege to the

1 arresting law enforcement officer. The officer shall seize the license,
2 permit or other evidence of driving privilege surrendered by the arrested
3 person or found on the arrested person during a search.

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

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

1 non-receipt of notice. For all notices which are personally delivered, the
2 person shall be asked to sign a receipt acknowledging they received the
3 required notice.

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

20 (A)(i) Suspension for one hundred twenty (120) days for
21 the first offense of operating or being in actual physical control of a motor
22 vehicle while intoxicated or while there was one-tenth (0.10%) of one percent
23 (1%) or more by weight of alcohol in the person's blood (§5-65-103);

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

28 (iii) Suspension for one hundred eighty (180) days
29 for the first offense of refusing to submit to a chemical test of blood,
30 breath or urine for the purpose of determining the alcohol or controlled
31 substance contents of the person_s blood (§5-65-202);

32 (B)(i) Suspension for sixteen (16) months (during which no
33 restricted permits may be issued) for a second offense of operating or being
34 in actual physical control of a motor vehicle while intoxicated or while
35 there was one-tenth of one percent (0.10%) or more by weight of alcohol in

1 the person_s blood (§5-65-103) within three (3) years of the first offense;
2 (ii) Suspension for two (2) years (during which no
3 restricted permits may be issued) for second offense of refusing to submit to
4 a chemical test of blood, breath or urine for the purposes of determining the
5 alcohol or controlled substance contents of the person_s blood (§5-65-202)
6 within three (3) years of the first offense;

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

12 (ii) Revocation for three (3) years (during which no
13 restricted permits may be issued) for the third offense of refusing to submit
14 to a chemical test of blood, breath or urine for the purpose of determining
15 the alcohol or controlled substance contents of the person_s blood (§5-65-
16 202) within three (3) years of the first offense;

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

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

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

1 (6)(A) If the person is a nonresident, such person_s privilege
2 to operate a motor vehicle in Arkansas shall be suspended in the same manner
3 as that of a resident. The Office of Driver Services shall notify the office
4 that issued the nonresident_s motor vehicle license of the action taken by
5 the Arkansas Office of Driver Services.

6 (B) When the person is a nonresident without a license or
7 permit to operate a motor vehicle, the Office of Driver Services shall notify
8 the office of issuance for that person_s state of residence of action taken
9 by the Arkansas Office of Driver Services.

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

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

1 the evidence.

2 (B) If the revocation, suspension or denial is based upon a
3 chemical test result indicating that the person was intoxicated or there was
4 one-tenth of one percent (0.10%) or more by weight of alcohol in the person_s
5 blood as provided in §5-65-103, and a sworn report from a law enforcement
6 officer, the scope of the hearing shall also cover the issues as to whether:

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

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

15 (iii) the testing procedures used were in accordance
16 with existing rules; and

17 (iv) the test result in fact reflects an alcohol
18 concentration, presence of other intoxicating substances or a combination
19 thereof.

20 (C) If the revocation, suspension or denial is based upon
21 the refusal of the person to submit to a chemical test as provided in §5-65-
22 202, reflected in a sworn report by a law enforcement officer, the scope of
23 the hearing shall also include whether:

24 (i) the person refused to submit to the test or
25 tests; and

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

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

33 (A) any convictions for offenses of operating or being in
34 actual physical control of a motor vehicle while intoxicated or while there
35 is one-tenth of one percent (0.10%) or more by weight of alcohol in the

1 person's blood under § 5-65-103 or refusing to submit to a chemical test
2 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 one-tenth of one percent (0.10%) or more
6 by weight of alcohol in the person's blood under § 5-65-103 or refusing to
7 submit to a chemical test under §5-65-202 occurring on or after July 1, 1996
8 where the person was not subsequently acquitted of the criminal charges.

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

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

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

29 (2) Any decision rendered by a court of law for a criminal case
30 arising from any violation of Arkansas Code § 5-65-103 or § 5-65-202 shall
31 affect the administrative suspensions or revocation of the driver's license
32 as follows:

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

1 (B) an acquittal on the charges or a dismissal of charges
2 will serve to reverse the suspension or revocation of the driver_s license
3 suspended or revoked under this section.

4 (3) If a person is acquitted of the charges of violating
5 Arkansas Code § 5-65-103 or § 5-65-202 or if the charges are dismissed, the
6 Office of Driver Services shall reinstate the person_s driver license at no
7 cost to the person and the charges shall not be used to determine the number
8 of previous offenses when administratively suspending or revoking the driving
9 privilege of any arrested person in the future.

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

15 (f) The administrative suspension or revocation of a driver's license
16 as provided for by this section shall be supplementary to and in addition to
17 the suspensions or revocations of driver licenses which are ordered by a
18 court of competent jurisdiction for offenses under Arkansas Code § 5-64-710,
19 § 5-65-116, and § 27-16-914 or any other traffic or criminal offense wherein
20 a suspension or revocation of the driver's license is a penalty for the
21 violation."

22

23 SECTION 2. Title 5, Chapter 65, Subchapter 1 of the Arkansas Code of
24 1987 Annotated is amended by adding a new section to read as follows:

25 "5-65-119. Distribution of fee.

26 The Office of Driver Services shall charge a fee of *seventy-five*
27 dollars (\$75.00) for reinstating a driving privilege suspended or revoked
28 because of an arrest for operating or being in actual physical control of a
29 motor vehicle while intoxicated or while there was one-tenth of one percent
30 (0.10%) or more by weight of alcohol in the person_s blood (§5-65-103) or
31 refusing to submit to a chemical test of blood, breath or urine for the
32 purpose of determining the alcohol or controlled substance contents of the
33 person_s blood (§5-65-202) which shall be distributed as follows:

34 (1) *Fourteen percent (14%)* of the revenues derived from this fee shall
35 be deposited in the State Treasury as special revenues and credited to the

1 Public Health Fund to be used exclusively for the Department of Health-Blood
2 Alcohol Program;

3 (2) *Sixty-six percent (66%) of the revenues derived from this fee*
4 *shall be deposited as special revenues to the State Treasury into the*
5 *Constitutional Officers Fund and the State Central Services Fund as a direct*
6 *revenue to be used by the Department of Finance and Administration, Revenue*
7 *Division, Office of Driver Services for use in supporting the administrative*
8 *driver_s licensing revocation and sanctions programs provided for in this*
9 *section; and*

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

15

16 SECTION 3. Title 5, Chapter 65, Subchapter 1 of the Arkansas Code of
17 1987 Annotated is amended by adding a new section to read as follows:

18 "5-65-120. Restricted driving permit.

19 (a) Upon the effective date of this act, the Office of Driver Services
20 or its designated agent, following the administrative hearing for suspension
21 or revocation of a driver_s license as provided for in Arkansas Code §5-65-
22 104 or upon the request of the person whose privilege to drive has been
23 denied or suspended, may modify the denial or suspension in cases of extreme
24 and unusual hardship by the issuance of a Restricted Driving Permit when it
25 is determined by the Office of Driver Services or its agent that no other
26 adequate means of transportation exists for that person to allow driving in
27 any or all of the following situations:

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

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

30 (3) To and from an educational institution for the purpose of
31 attending classes if the person is enrolled and regularly attending classes
32 at the institution; or

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

35 (b) The restricted driving permit shall state the specific times and

1 circumstances under which driving is permitted but shall not be granted where
2 prohibited under §5-65-104."

3

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

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

6 (a) If a person under arrest refuses upon the request of a law
7 enforcement officer to submit to a chemical test designated by the law
8 enforcement agency, as provided in § 5-65-202, none shall be given, and the
9 person's motor vehicle operator's license shall be seized by the law
10 enforcement officer, and the officer shall immediately deliver to the person
11 from whom the license was seized a temporary driving permit.

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

16

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

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

27

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

31

32 SECTION 7. If any provisions of this act or the application thereof to
33 any person or circumstance is held invalid, the invalidity shall not affect
34 other provisions or applications of the act which can be given effect without
35 the invalid provisions or application, and to this end the provisions of this

1 act are declared to be severable.

2

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

5

6 SECTION 9. EMERGENCY. It is hereby found and determined by the
7 General Assembly that this act provides for administrative revocation and
8 suspension of drivers_ licenses for persons charged with the offense of
9 driving while intoxicated; that based on Arkansas Crime Information Center
10 statistics on DEI arrests, the Office of Driver Services could anticipate up
11 to sixteen thousand (16,000) hearings if everyone arrested requested a
12 hearing; that funds will be necessary for additional staff to handle this
13 program along with significant costs to prepare for and implement this
14 program; and that this act is necessary immediately in order to insure that
15 sufficient funds are available for the financial stability of this program.
16 Therefore, an emergency is hereby declared to exist and this act being
17 necessary for the immediate preservation of the public peace, health and
18 safety shall be in full force and effect from and after its passage and
19 approval.

20

/s/Snyder et al

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18