

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

HOUSE BILL 2279

4  
5 By: Representative Wooldridge  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE § 5-65-104 TO CLARIFY THE  
10 NUMBER OF PREVIOUS DWI OFFENSES OR REFUSING TO SUBMIT OF-  
11 FENSES TO CONSIDER WHEN SUSPENDING OR REVOKING A PERSON'S  
12 DRIVING LICENSE FOR BEING ARRESTED FOR DWI; AND FOR OTHER  
13 PURPOSES."

## Subtitle

14  
15  
16 "TO CLARIFY THE NUMBER OF PREVIOUS DWI  
17 OFFENSES OR REFUSING TO SUBMIT OFFENSES  
18 TO CONSIDER WHEN SUSPENDING OR REVOKING  
19 A PERSON'S DRIVING LICENSE FOR DWI"  
20

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

23 SECTION 1. Subdivision (a)(4) of Arkansas Code § 5-65-104 is amended to  
24 add a new subdivision (a)(4)(E) to read as follows:

25 "(E) For purposes of this section, first, second, third, and fourth  
26 offense of operating or being in actual physical control of a motor vehicle  
27 while intoxicated or while there was one-tenth of one percent (0.10%) or more  
28 by weight of alcohol in the person's blood, § 5-65-103, or refusing to submit  
29 to a chemical test of blood, breath, or urine for the purpose of determining  
30 the alcohol or controlled substance contents of the person's blood,  
31 § 5-65-202, shall be defined as follows:

32 (i) 'first offense' means any offense for which there is not a  
33 previous offense as provided for in subdivision (a)(9) and subsection (d) of  
34 this section which has occurred within three (3) years of the current offense.

35 (ii) 'second offense' means any offense for which there is a  
36 previous offense as provided for in subdivision (a)(9) and subsection (d) of

1 this section which has occurred within three (3) years of the current offense.

2 (iii) 'third offense' means any offense for which there are two  
 3 (2) previous offenses as provided for in subdivision (a)(9) and subsection (d)  
 4 of this section which has occurred within three (3) years of the current  
 5 offense.

6 (iv) 'fourth offense' means any offense for which there are three  
 7 (3) previous offenses as provided for in subdivision (a)(9) and subsection (d)  
 8 of this section which has occurred within three (3) years of the current  
 9 offense."

10

11 SECTION 2. Subdivision (a)(9) of Arkansas Code § 5-65-104 is amended to  
 12 add a new subdivision (a)(9)(C) to read as follows:

13 "(C) For purposes of determining number of previous offenses any  
 14 conviction of a lesser included offense of being in actual physical control of  
 15 a motor vehicle while intoxicated or while there was one-tenth of one percent  
 16 (0.10%) or more by weight of alcohol in the person's blood, § 5-65-103, or  
 17 refusing to submit to a chemical test of blood, breath, urine for the purpose  
 18 of determining the alcohol or controlled substance contents of the person's  
 19 blood, § 5-65-202, shall not be considered an acquittal of the charge of,  
 20 § 5-65-103, or refusing to submit to a chemical test, § 5-65-202, and shall be  
 21 considered in determining the number of previous offenses."

22

23 SECTION 3. Subsection (c) of Arkansas Code § 5-65-104 is amended to  
 24 read as follows:

25 "(c) A person adversely affected by the hearing disposition order of  
 26 the Office of Driver Services of the Revenue Division of the Department of  
 27 Finance and Administration or its authorized agent may file a de novo petition  
 28 for review within thirty (30) days in the circuit court in the county in which  
 29 the offense took place. The petition shall be filed and the de novo review  
 30 shall be conducted under the Arkansas Rules of Civil Procedure. The agent,  
 31 officer, or referee conducting any administrative hearing under this section  
 32 shall not be deemed an agent for the purposes of accepting service of process  
 33 or any motions or pleadings under the Arkansas Rules of Civil Procedure. The  
 34 filing of a petition for review will not stay or place in abeyance the  
 35 decision of the Office of Driver Services or its authorized agent. The  
 36 administrative hearings held pursuant to this section shall be exempt from the

1 Arkansas Administrative Procedure Act, § 25-15-201 et seq. On review, the  
2 circuit court shall hear the case de novo in order to determine whether, based  
3 on a preponderance of the evidence, grounds exist for revocation, suspension,  
4 or denial of the person's privilege to drive."

5

6 SECTION 4. Subdivision (d)(2) of Arkansas Code § 5-65-104 is amended to  
7 read as follows:

8 "(2) Any decision rendered by a court of law for a criminal case  
9 arising from any violation of § 5-65-103 or § 5-65-202 shall affect the  
10 administrative suspensions or revocation of the driver's license as follows:

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

14 (B) An acquittal on the charges or a dismissal of charges will  
15 serve to reverse the suspension or revocation of the driver's license  
16 suspended or revoked under this section. However, any conviction of a lesser  
17 included offense of being in actual physical control of a motor vehicle while  
18 intoxicated or while there was one-tenth of one percent (0.10%) or more by  
19 weight of alcohol in the person's blood, §5-65-103, or refusing to submit to a  
20 chemical test of blood, breath, or urine for the purpose of determining the  
21 alcohol or controlled substance contents of the person's blood, § 5-65-202,  
22 shall not be considered an acquittal of the charge of, § 5-65-103, or refusing  
23 to submit to a chemical test, § 5-65-202, and shall not serve to reverse the  
24 suspension or revocation of the driver's license suspended or revoked under  
25 this section."

26

27 SECTION 5. All provisions of this act of general and permanent nature  
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
29 Revision Commission shall incorporate the same in the Code.

30

31 SECTION 6. If any provisions of this act or the application thereof to  
32 any person or circumstance is held invalid, the invalidity shall not affect  
33 other provisions or applications of the act which can be given effect without  
34 the invalid provisions or application, and to this end the provisions of this  
35 act are declared to be severable.

36

1       SECTION 7. All laws and parts of laws in conflict with this act are  
2 hereby repealed.

3

4       SECTION 8. Emergency. It is hereby found and determined by the  
5 Eighty-First General Assembly of the State of Arkansas that members of the  
6 Arkansas judiciary have decided that current law is confused as to whether any  
7 prior conviction for the DWI offenses, Ark. Code § 5-65-103, or refusal to  
8 submit to chemical testing, Ark. Code § 5-65-202, occurring within three (3)  
9 years shall be counted in determining the number of previous offenses  
10 considered when administratively suspending or revoking a person's driving  
11 privileges; that the enforcement of the administrative suspension of a  
12 person's driving privileges are critical to the deterring drivers from  
13 operating motor vehicle while intoxicated; and this enforcement is immediately  
14 necessary for the safety of the driving public and its health and welfare on  
15 the public street and highways of Arkansas. Therefore, in order to remedy  
16 these concerns of judicial officials, an emergency is hereby declared to  
17 exist, and this act being necessary for the immediate preservation of the  
18 public peace, health, and safety, shall become effective on the date of its  
19 approval by the Governor. If the bill is neither approved or vetoed by the  
20 Governor, it shall become effective on the expiration of the period of time  
21 during which the Governor may veto the bill. If the bill is vetoed by the  
22 Governor and the veto is overridden, it shall become effective on the date the  
23 last house overrides the veto.

24

25

26

27

28

29

30

31

32

33

34

35