

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

As Engrossed: S2/25/99 S3/18/99

A Bill

SENATE BILL 521

4
5 By: Senators Wooldridge, Fitch, Roebuck
6 By: Representatives Harris, Wood

For An Act To Be Entitled

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8
9
10 "AN ACT TO AMEND THE ARKANSAS CODE TO PROVIDE FOR
11 CHANGES TO PENALTIES FOR ALCOHOL-RELATED DRIVING
12 OFFENSES REQUIRED BY FEDERAL LAW; TO PROVIDE A PENALTY
13 FOR USING A FICTITIOUS DRIVER'S LICENSE; TO REQUIRE A
14 COURT ORDER FOR A DRIVER'S LICENSE NAME CHANGE; TO
15 CLARIFY THE PENALTIES FOR THE OFFENSE OF REFUSAL TO
16 SUBMIT TO A TEST TO DETERMINE BLOOD ALCOHOL CONTENT;
17 TO MAKE CHANGES AND CORRECTIONS TO ADMINISTRATIVE
18 DRIVER'S LICENSE SUSPENSION PROCEDURES AFFECTING
19 COMMERCIAL AND NON-COMMERCIAL DRIVER'S LICENSES AND
20 RESTRICTED PERMITS; AND FOR OTHER PURPOSES."

Subtitle

21
22
23 "TECHNICAL CORRECTIONS TO COMMERCIAL AND
24 NON-COMMERCIAL DRIVER'S LICENSES AND
25 RESTRICTED PERMIT PROVISIONS."

26
27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29
30 SECTION 1. Arkansas Code 27-16-903(a) is amended to read as follows:

31 "(a) The office is authorized to cancel any driver's license or
32 identification card upon determining that the licensee was not entitled to the
33 issuance of it under this chapter or that the ~~licensee~~ applicant failed to
34 give the required or correct information in his application or committed any
35 fraud in making the application, or upon determining that the licensee
36 possessed, used, or created a forged, altered or fraudulent drivers license.

1 Upon cancellation of any such license the office may additionally suspend or
2 revoke any validly issued license of any licensee found in possession of an
3 invalid license or who has caused or assisted in the issuance of an invalid
4 license. The decision to suspend or revoke the original license of the
5 licensee shall be made in accordance with the provisions of §§ 27-16-907 and
6 27-16-912."

7

8 SECTION 2. Arkansas Code 27-16-506 is amended to read as follows:

9 "(a) Whenever any person after applying for or receiving a driver's
10 license shall move from the address named in such application or in the
11 license issued to him, or when the name of a licensee is changed by marriage
12 or otherwise, such person shall, within ten (10) days thereafter, notify the
13 office in writing of his old and new addresses or of his former and new names
14 and of the number of any license then held by him.

15 (b) No change of name shall be on a driver's license unless the
16 application for the change is accompanied by a recorded marriage license, a
17 court order or a divorce decree changing the driver's name."

18

19 SECTION 3. Arkansas Code 27-23-112(a) is amended to read as follows:

20 "(a)(1) Disqualification of Offenses. Any person shall be disqualified
21 from driving a commercial motor vehicle for the periods of time set out within
22 and in accordance with the provisions of § 27-16-915 regarding a holder of a
23 commercial driver's license issued such a license under this chapter, or for a
24 period of not less than one (1) year if convicted or disqualified by the
25 Office of Driver Services of the Department of Finance and Administration
26 administratively as provided by § 5-65-402 of a first violation of:

27 (A) Driving a commercial motor vehicle while intoxicated;

28 (B) Driving a commercial motor vehicle while the person's
29 blood alcohol concentration is four one-hundredths of one percent (0.04%) or
30 more;

31 (C) Leaving the scene of an accident involving a commercial
32 motor vehicle driven by the person;

33 (D) Using a commercial motor vehicle in the commission of
34 any felony as defined in this chapter; or

35 (E) Refusal to submit to a test to determine the driver's
36 blood alcohol concentration while driving a commercial motor vehicle.

1 (2) If any of the above violations occurred while transporting a
2 hazardous material required to be placarded, the person shall be disqualified
3 from driving a commercial motor vehicle for a period of not less than three
4 (3) years."

5
6 SECTION 4. Arkansas Code 27-23-112(b) is amended to read as follows:

7 "(b) A person shall be disqualified from driving a commercial motor
8 vehicle for life if convicted or disqualified by the Office of Driver Services
9 of the Department of Finance and Administration administratively as provided
10 by § 5-65-402 of two (2) or more violations of any of the offenses specified
11 in subsection (a) of this section, or any combination of those offenses,
12 arising from two (2) or more separate incidents. Only offenses committed
13 after January 1, 1990, can be considered in connection with such
14 disqualification for life."

15
16 SECTION 5. Arkansas Code 27-23-114(c) is amended to read as follows:

17 "(c) (1) A law enforcement officer having reasonable cause to believe the
18 person to have been driving a commercial motor vehicle while intoxicated or
19 driving a commercial motor vehicle while the person's blood alcohol
20 concentration was four hundredths of one percent (0.04%) or more shall have
21 the authority to administer or have administered a chemical test to determine
22 the person's blood alcohol concentration. The chemical test authorized shall
23 be identical to and under the same standards of the test given to persons
24 under the Omnibus DWI Act, § 5-65-101 et seq.

25 (2) At the time of arrest for subsection (a)(1), (a)(2), or (a)(5)
26 of this section the law enforcement officer shall seize the driver's license
27 of the arrested person as provided by § 5-65-402 and the Office of Driver
28 Services of the Department of Finance and Administration shall disqualify the
29 driving privileges of the arrested person as provided by § 27-23-112, under
30 the procedure in § 5-65-402 and the arrested person shall have the same right
31 to administrative and judicial review provided in § 5-65-402."

32
33 SECTION 6. Arkansas Code 27-23-114 is amended to add a new subsection to
34 read as follows:

35 "(f) The court upon determining that the driver has violated (a)(1) or
36 (a)(2) of this section previously or has been previously convicted of

1 violating § 5-65-103 or § 5-65-303 shall order an assessment of the driver's
2 degree of repeated alcohol abuse and shall order treatment for alcohol abuse
3 as a condition of sentencing if appropriate."
4

5 SECTION 7. Arkansas Code 27-23-114 is amended to add a new subsection to
6 read as follows:

7 "(g) The court upon determining that the driver has violated (a)(1) or
8 (a)(2) of this section previously or has been previously convicted of
9 violating § 5-65-103 or § 5-65-303 may order the driver to perform no less
10 than thirty (30) days of community service in lieu of imprisonment for a
11 second offense or no less than sixty (60) days of community service in lieu of
12 imprisonment for a third or subsequent offense."
13

14 SECTION 8. Arkansas Code 27-23-115 is amended to read as follows:

15 "27-23-115. Implied consent requirements for commercial motor vehicle
16 drivers.

17 (a) A person who drives a commercial motor vehicle within this state
18 shall be deemed to have given consent, subject to the provisions of § 5-65-
19 202, to take a test or tests of that person's blood, breath, or urine for the
20 purpose of determining that person's blood alcohol concentration or the
21 presence of other drugs.

22 (b) A test or tests may be administered at the direction of a law
23 enforcement officer who, after stopping or detaining the commercial motor
24 vehicle driver, has probable cause to believe that driver was driving a
25 commercial motor vehicle while having alcohol in his or her system. It shall
26 be unlawful and punishable as provided in this chapter for any person so
27 stopped or detained to refuse to submit to such test or tests to determine
28 that person's blood alcohol concentration or the presence of other drugs.

29 (c) A person requested to submit to a test as provided in subsection
30 (a) of this section must be warned by the law enforcement officer requesting
31 the test that a refusal to submit to the test will result in that person being
32 disqualified from operating a commercial motor vehicle under § 27-23-112 and §
33 5-65-402.

34 (d) If the person is under arrest and refuses testing, none shall be
35 given, and the person's commercial driver license shall be seized by the law
36 enforcement officer, and the officer shall immediately deliver to the person

1 whose license was seized a temporary commercial driving permit ~~which shall~~
 2 ~~expire on the person's date of arraignment~~ as provided by § 5-65-402 and
 3 shall cite the person for their refusal to submit to the test.

4 (e) The arresting officer shall remit the seized commercial driver
 5 license to the court, ~~and upon arraignment, the judge shall issue that person~~
 6 ~~a temporary commercial driving permit to expire on the date of trial.~~ Office of
 7 Driver Services of the Department of Finance and Administration as provided by
 8 § 5-65-402.

9 (f) ~~If the judge determines at trial that the officer had reasonable~~
 10 ~~cause to believe the arrested person had been driving while intoxicated or~~
 11 ~~while there was four hundredths of one percent (0.04%) or more of alcohol in~~
 12 ~~the person's blood and the person refused to submit to the chemical test, the~~
 13 ~~judge shall order the Office of Driver Services to~~ The Office of Driver
 14 Services shall disqualify the person from operating a commercial motor vehicle
 15 for a period specified in § 27-23-112 under the procedure set forth in § 5-65-
 16 402 and the disqualified person shall have the same right to administrative
 17 and judicial review provided by that section."

18
 19 SECTION 9. Arkansas Code 5-65-104 is amended to read as follows:

20 "5-65-104. Seizure, suspension, and revocation of license - Temporary
 21 permits.

22 ~~— (a)(1) At the time of arrest for operating or being in actual physical~~
 23 ~~control of a motor vehicle while intoxicated or while there was one-tenth of~~
 24 ~~one percent (0.1%) or more by weight of alcohol in the person's blood, § 5-65-~~
 25 ~~103, or refusing to submit to a chemical test of blood, breath, or urine for~~
 26 ~~the purpose of determining the alcohol or controlled substance contents of the~~
 27 ~~person's blood, § 5-65-202, the arrested person shall immediately surrender~~
 28 ~~his license, permit, or other evidence of driving privilege to the arresting~~
 29 ~~law enforcement officer. The officer shall seize the license, permit, or other~~
 30 ~~evidence of driving privilege surrendered by the arrested person or found on~~
 31 ~~the arrested person during a search.~~

32 ~~— (2) If the license, permit, or other evidence of driving privilege~~
 33 ~~seized by the officer has not expired and otherwise appears valid to the~~
 34 ~~officer, the officer shall issue to the arrested person a dated receipt for~~
 35 ~~that license, permit, or other evidence of driving privilege on a form~~
 36 ~~prescribed by the Department of Finance and Administration or its designee.~~

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

21 ~~(3) Any notices from the Office of Driver Services required under this~~
22 ~~act which are not personally delivered shall be sent by certified mail and~~
23 ~~shall be deemed to have been delivered on the date when postmarked and shall~~
24 ~~be sent to the last known address on file with the Office of Driver Services.~~
25 ~~Refusal of the addressee to accept delivery or attempted delivery of the~~
26 ~~notice at the address obtained by the arresting law enforcement officer or on~~
27 ~~file with the Office of Driver Services shall not constitute nonreceipt of~~
28 ~~notice. For all notices which are personally delivered, the person shall be~~
29 ~~asked to sign a receipt acknowledging he received the required notice.~~

30 ~~(4)(a) The Office of Driver Services of the Revenue Division of the~~
31 ~~Department of Finance and Administration or its designated official shall~~
32 ~~suspend or revoke the driving privilege of an arrested person or shall suspend~~
33 ~~any nonresident driving privilege of an arrested person in the manner provided~~
34 ~~in § 5-65-402 when it receives a sworn report from the law enforcement~~
35 ~~officer that he had reasonable grounds to believe the arrested person had been~~
36 ~~operating or was in actual physical control of a motor vehicle while~~

1 ~~intoxicated or while there was one-tenth of one percent (0.1%) or more by~~
2 ~~weight of alcohol in the person's blood, § 5-65-103, which is accompanied by a~~
3 ~~written chemical test report reflecting that the arrested person was~~
4 ~~intoxicated or had an alcohol concentration of one-tenth of one percent (0.1%)~~
5 ~~or more, or is accompanied by a sworn report that the arrested person refused~~
6 ~~to submit to a chemical test of blood, breath, or urine for the purpose of~~
7 ~~determining the alcohol or controlled substance contents of the person's~~
8 ~~blood, as provided in § 5-65-202. The suspension or revocation shall be based~~
9 ~~on the number of previous offenses as follows:~~

10 ~~(1)(A) (i)~~ Suspension for one hundred twenty (120) days for the
11 first offense of ~~a~~ operating or being in actual physical control of a motor
12 ~~vehicle while intoxicated or while there was one-tenth of one percent (0.1%)~~
13 ~~or more by weight of alcohol in the person's blood, violation of § 5-65-103;~~

14 ~~(ii) (B)~~ Suspension for six (6) months for the first offense of
15 operating or being in actual physical control of a motor vehicle while
16 intoxicated by the ingestion of or by the use of a controlled substance;

17 ~~(iii)~~ Suspension for one hundred eighty (180) days for the first
18 offense of ~~refusing to submit to a chemical test of blood, breath, or urine~~
19 ~~for the purpose of determining the alcohol or controlled substance contents of~~
20 ~~the person's blood, § 5-65-202;~~

21 ~~(B) (i)(2)~~ Suspension for sixteen (16) months, during which no
22 restricted permits may be issued, for a second offense of ~~operating or being~~
23 ~~in actual physical control of a motor vehicle while intoxicated or while there~~
24 ~~was one-tenth of one percent (0.1%) or more by weight of alcohol in the~~
25 ~~person's blood, a violation of § 5-65-103, within three (3) five (5) years of~~
26 the first offense;

27 ~~(ii)~~ Suspension for two (2) years, during which no restricted permits
28 may be issued, for a second offense of ~~refusing to submit to a chemical test~~
29 ~~of blood, breath, or urine for the purposes of determining the alcohol or~~
30 ~~controlled substance contents of the person's blood, § 5-65-202, within three~~
31 ~~(3) years of the first offense;~~

32 ~~(C)(i)(3)~~ Suspension for thirty (30) months, during which no
33 restricted permits may be issued, for the third offense of ~~operating or being~~
34 ~~in actual physical control of a motor vehicle while intoxicated or while there~~
35 ~~was one-tenth of one percent (0.1%) or more by weight of alcohol in the~~
36 ~~person's blood, a violation of § 5-65-103, within three (3) five (5) years of~~

1 the first offense;

2 ~~(ii) Revocation for three (3) years, during which no restricted permits~~
3 ~~may be issued, for the third offense of refusing to submit to a chemical test~~
4 ~~of blood, breath, or urine for the purpose of determining the alcohol or~~
5 ~~controlled substance contents of the person's blood, § 5-65-202, within three~~
6 ~~(3) years of the first offense;~~

7 ~~(D)(i)(4) Revocation for four (4) years, during which no~~
8 ~~restricted permits may be issued, for the fourth or subsequent offense of~~
9 ~~operating or being in actual physical control of a motor vehicle while~~
10 ~~intoxicated or while there was one-tenth of one percent (0.1%) or more by~~
11 ~~weight of alcohol in the person's blood, a violation of § 5-65-103, within a~~
12 ~~three five-year period of the first offense.~~

13 ~~(ii) Lifetime revocation, during which no restricted permit may be~~
14 ~~issued, for the fourth or subsequent offense of refusing to submit to a~~
15 ~~chemical test of blood, breath, or urine for the purpose of determining the~~
16 ~~alcohol or controlled substance contents of the person's blood, § 5-65-202,~~
17 ~~within three (3) years of the first offense; and~~

18 (5) If the person is a resident without a license or permit to
19 operate a motor vehicle in this state, the Office of Driver Services shall, in
20 addition to any other penalties provided for in this act, deny to that person
21 the issuance of a license or permit for a period of six (6) months for a first
22 offense. For a second or subsequent offense by a resident without a license or
23 permit to operate a motor vehicle, the Office of Driver Services shall, in
24 addition to any other penalties provided for in this act, deny to that person
25 the issuance of a license or permit for a period of one (1) year.

26 (6)(A) If the person is a nonresident, such person's privilege to
27 operate a motor vehicle in Arkansas shall be suspended in the same manner as
28 that of a resident. The Office of Driver Services shall notify the office that
29 issued the nonresident's motor vehicle license of the action taken by the
30 Office of Driver Services.

31 (B) When the person is a nonresident without a license or
32 permit to operate a motor vehicle, the Office of Driver Services shall notify
33 the office of issuance for that person's state of residence of action taken by
34 the Office of Driver Services.

35 ~~(7) Upon the written request of a person whose privilege to drive has~~
36 ~~been revoked, denied, or suspended, or who has received a notice of~~

1 ~~revocation, suspension, or denial by the arresting officer, the Office of~~
2 ~~Driver Services shall grant the person an opportunity to be heard provided the~~
3 ~~request is received by the Office of Driver Services within seven (7) calendar~~
4 ~~days after the notice of the revocation, suspension, or denial is given in~~
5 ~~accordance with this section or as otherwise provided in this act. Such a~~
6 ~~request shall not operate to stay the revocation, suspension, or denial by the~~
7 ~~Office of Driver Services until the disposition of said hearing.~~

8 ~~— (8)(A) The hearing shall be before the Office of Driver Services or its~~
9 ~~authorized agent, in the office of the Revenue Division of the Department of~~
10 ~~Finance and Administration nearest the county wherein the alleged events~~
11 ~~occurred for which the person was arrested, unless the Office of Driver~~
12 ~~Services or its authorized agent and the arrested person agree otherwise to~~
13 ~~the hearing being held in some other county or the Office of Driver Services~~
14 ~~or its authorized agent may schedule the hearing or any part thereof by~~
15 ~~telephone and conduct the hearing by telephone conference call. The hearing~~
16 ~~shall not be recorded. The scope of the hearing shall cover the issues of~~
17 ~~whether the officer had reasonable grounds to believe the person had been~~
18 ~~operating or was in actual physical control of a vehicle while intoxicated or~~
19 ~~while there was one-tenth of one percent (0.1%) or more by weight of alcohol~~
20 ~~in the person's blood or refused to submit to a chemical test of the blood,~~
21 ~~breath, or urine for the purpose of determining the alcohol or controlled~~
22 ~~substance contents of the person's blood and whether the person was placed~~
23 ~~under arrest. At the hearing, the burden of proof shall be on the state, and~~
24 ~~the decision shall be based on a preponderance of the evidence.~~

25 ~~— (B) If the revocation, suspension, or denial is based upon a chemical~~
26 ~~test result indicating that the person was intoxicated or there was one-tenth~~
27 ~~of one percent (0.1%) or more by weight of alcohol in the person's blood, as~~
28 ~~provided in § 5-65-103, and a sworn report from a law enforcement officer, the~~
29 ~~scope of the hearing shall also cover the issues as to whether:~~

30 ~~— (i) The person was advised that his privilege to drive would be~~
31 ~~revoked, suspended, or denied if the test result reflected an alcohol~~
32 ~~concentration of one-tenth of one percent (0.1%) or more or the presence of~~
33 ~~other intoxicating substances or combination of intoxicating substances;~~

34 ~~— (ii) The breath, blood, or urine specimen was obtained from the person~~
35 ~~within the established and certified criteria of the Department of Health;~~

36 ~~— (iii) The testing procedures used were in accordance with existing~~

1 ~~rules; and~~

2 ~~—— (iv) The test result in fact reflects an alcohol concentration,~~
3 ~~presence of other intoxicating substances, or a combination thereof.~~

4 ~~—— (c) If the revocation, suspension, or denial is based upon the refusal~~
5 ~~of the person to submit to a chemical test as provided in § 5-65-202,~~
6 ~~reflected in a sworn report by a law enforcement officer, the scope of the~~
7 ~~hearing shall also include whether:~~

8 ~~—— (i) The person refused to submit to the test or tests; and~~

9 ~~—— (ii) The person was informed that his privilege to drive would be~~
10 ~~revoked, suspended, or denied if the person refused to submit to the test or~~
11 ~~tests.~~

12 ~~(9)(b)~~ In order to determine the number of previous offenses to consider
13 when suspending or revoking the arrested person's driving privileges, the
14 Office of Driver Services shall consider as a previous offense:

15 ~~(A)(1)~~ Any convictions for offenses of operating or being in
16 actual physical control of a motor vehicle while intoxicated or while there is
17 one-tenth of one percent (0.1%) or more by weight of alcohol in the person's
18 blood under § 5-65-103 or refusing to submit to a chemical test under § 5-65-
19 202 which occurred prior to July 1, 1996; and

20 ~~(B)(2)~~ Any suspension or revocation of driving privileges for
21 arrests for operating or being in actual physical control of a motor vehicle
22 while intoxicated or while there is one-tenth of one percent (0.1%) or more by
23 weight of alcohol in the person's blood under § 5-65-103 or refusing to submit
24 to a chemical test under § 5-65-202 occurring on or after July 1, 1996, where
25 the person was *subsequently convicted of the criminal charges*.

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

31 ~~—— (c) A person adversely affected by the hearing disposition order of the~~
32 ~~Office of Driver Services of the Revenue Division of the Department of Finance~~
33 ~~and Administration or its authorized agent may file a de novo petition for~~
34 ~~review within thirty (30) days in the circuit court in the county in which the~~
35 ~~offense took place. The filing of a petition for review will not stay or place~~
36 ~~in abeyance the decision of the Office of Driver Services or its authorized~~

1 agent. The administrative hearings held pursuant to this section shall be
2 exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq. On
3 review, the circuit court shall hear the case de novo in order to determine
4 whether, based on a preponderance of the evidence, grounds exist for
5 revocation, suspension, or denial of the person's privilege to drive.

6 ~~— (d)(1) Any decision rendered at an administrative hearing held under this
7 section shall have no effect on any criminal case arising from any violation
8 of § 5-65-103 or § 5-65-202.~~

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

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

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

18 ~~— (3) If a person is acquitted of the charges of violating § 5-65-103 or §
19 5-65-202, or if the charges are dismissed, the Office of Driver Services shall
20 reinstate the person's driver license at no cost to the person, and the
21 charges shall not be used to determine the number of previous offenses when
22 administratively suspending or revoking the driving privilege of any arrested
23 person in the future.~~

24 ~~— (e) Any person whose privilege to drive has been denied, suspended, or
25 revoked shall remain under such denial, suspension or revocation, until such
26 time that person applies to and is granted by the Office of Driver Services
27 for reinstatement of such privilege to drive, and remains subject to penalties
28 as provided in § 5-65-105 or until he is acquitted of violating § 5-65-103.~~

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

35 ~~— (g) For all arrests or offenses occurring before July 1, 1996, but
36 which have not reached a final disposition as to judgment in court, the~~

1 ~~offenses shall be decided under the law in effect at the time the offense~~
2 ~~occurred, and any defendant shall be subject to the penalty provisions in~~
3 ~~effect at that time and not under the provisions of this section.~~

4 ~~— (h) [As enacted by Acts 1997, No. 830.] Any person whose license is~~
5 ~~suspended or revoked pursuant to this section shall be required to complete an~~
6 ~~alcohol education program as prescribed and approved by the Arkansas Highway~~
7 ~~Safety Program or an alcohol treatment program as approved by the Bureau of~~
8 ~~Alcohol and Drug Abuse Prevention of the Department of Health. Such alcohol~~
9 ~~education program may collect a program fee of up to fifty dollars (\$50.00)~~
10 ~~per enrollee to offset program costs. A person completing an alcohol education~~
11 ~~program under this subsection may be required to pay, in addition to the costs~~
12 ~~collected for education, a fee of up to twenty-five dollars (\$25.00) to offset~~
13 ~~the additional costs associated with reporting requirements under this~~
14 ~~subchapter. The alcohol education program shall report semi-annually to the~~
15 ~~Arkansas Highway Safety Program all revenue derived from this fee.~~

16 ~~— (h)(1) [As enacted by Acts 1997, No. 1325.] Any person whose license is~~
17 ~~suspended or revoked pursuant to this section shall, unless the charges are~~
18 ~~dismissed or the person is acquitted of the charges upon which the suspension~~
19 ~~or revocation is based, be required to complete an alcohol education program~~
20 ~~as prescribed and approved by the Arkansas Highway Safety Program or an~~
21 ~~alcohol treatment program as approved by the Bureau of Alcohol and Drug Abuse~~
22 ~~Prevention of the Department of Health. The alcohol education program may~~
23 ~~collect a program fee of up to fifty dollars (\$50.00) per enrollee to offset~~
24 ~~program costs. A person required to complete an alcohol education program~~
25 ~~under this section may be required to pay, in addition to the costs collected~~
26 ~~for education, a fee of up to twenty-five dollars (\$25.00) to the alcohol~~
27 ~~education program, to offset the additional costs associated with reporting~~
28 ~~requirements under this subchapter. The alcohol education program shall report~~
29 ~~semi-annually to the Arkansas Highway Safety Program all revenue derived from~~
30 ~~this fee.~~

31 ~~— (2) A person whose license is suspended or revoked pursuant to this~~
32 ~~section shall furnish proof of attendance at, and completion of, the~~
33 ~~alcoholism treatment or education program before reinstatement of his or her~~
34 ~~suspended or revoked driver's license, or shall furnish proof of dismissal or~~
35 ~~acquittal of the charge on which the suspension or revocation is based.~~

36 ~~— (3) Even if a person has filed a de novo petition for review pursuant to~~

1 ~~subsection (c) of this section, the person shall be entitled to reinstatement~~
 2 ~~of driving privileges upon complying with this subsection and shall not be~~
 3 ~~required to postpone reinstatement until the disposition of the de novo review~~
 4 ~~in circuit court has occurred.~~

5 ~~—— (i) A person whose license is suspended or revoked pursuant to this~~
 6 ~~section shall furnish proof of attendance at and completion of the alcohol~~
 7 ~~education or treatment program before reinstatement of his or her suspended or~~
 8 ~~revoked driver's license. Application for reinstatement shall be made to the~~
 9 ~~Office of Driver Services.~~

10 (c) For all arrests or offenses occurring before the effective date of
 11 this act, but which have not reached a final disposition as to judgment in
 12 court, the offenses shall be decided under the law in effect at the time the
 13 offense occurred, and any defendant shall be subject to the penalty provisions
 14 in effect at that time and not under the provisions of this section."

15
 16 SECTION 10. Arkansas Code 5-65-109(a) is amended to read as follows:

17 *"(a) Upon a finding of guilt or a plea of guilty or nolo contendere for*
 18 *violating §5-65-103, the court shall immediately request and the Arkansas*
 19 *Highway Safety Program or its designee shall provide a presentence screening*
 20 *and assessment report of the defendant. However, in cases where the jury*
 21 *fixes and agrees on punishment pursuant to § 5-4-103(a), the decision whether*
 22 *to request a presentence screening and assessment report is discretionary with*
 23 *the court."*

24
 25 SECTION 11. Arkansas Code 5-65-111 is amended to read as follows:

26 "5-65-111. Prison terms - Exception.

27 (a) Any person who pleads guilty, nolo contendere, or is found guilty
 28 of violating § 5-65-103 may, for a first offense, be imprisoned for no less
 29 than twenty-four (24) hours and no more than one (1) year, except that the
 30 court may order public service in lieu of jail, and, in such instance, the
 31 court shall include the reasons therefor in its written order or judgment.

32 (b) Any person who pleads guilty, nolo contendere, or is found guilty
 33 of violating § 5-65-103 or any other equivalent penal law of another state or
 34 foreign jurisdiction shall be imprisoned or shall be ordered to perform public
 35 service in lieu of jail as follows:

36 (1) For no less than seven (7) days and no more than one (1) year

1 for the second offense occurring within ~~three (3)~~ five (5) years of the first
2 offense or not less than thirty (30) days of community service;

3 (2) For no less than ninety (90) days nor more than one (1) year
4 for the third offense occurring within ~~three (3)~~ five (5) years of the first
5 offense or not less than ninety (90) days of community service;

6 (3) For at least one (1) year but no more than six (6) years for
7 the fourth or subsequent offense occurring within ~~three (3)~~ five (5) years of
8 the first offense or not less than one (1) year of community service and shall
9 be guilty of a felony.

10 (c) For all arrests or offenses occurring before the effective date of
11 this act, but which have not reached a final disposition as to judgment in
12 court, the offenses shall be decided under the law in effect at the time the
13 offense occurred, and any defendant shall be subject to the penalty provisions
14 in effect at that time and not under the provisions of this section."

15
16 SECTION 12. Arkansas Code 5-65-112 is amended to read as follows:

17 "5-65-112. Fines.

18 Any person who pleads guilty, nolo contendere, or is found guilty of
19 violating § 5-65-103 shall be fined:

20 (1) No less than one hundred fifty dollars (\$150) nor more than
21 one thousand dollars (\$1,000) for the first offense;

22 (2) No less than four hundred dollars (\$400) nor more than three
23 thousand dollars (\$3,000) for the second offense occurring within ~~three (3)~~
24 five (5) years of the first offense;

25 (3) No less than nine hundred dollars (\$900) nor more than five
26 thousand dollars (\$5,000) for the third or subsequent offense occurring within
27 ~~three (3)~~ five (5) years of the first offense."

28
29 SECTION 13. Arkansas Code 5-65-115 is amended to read as follows:

30 "5-65-115. Alcohol treatment or education program - Fee.

31 (a) Any person ~~who pleads guilty or nolo contendere, or is found guilty~~
32 of violating whose driving privileges are suspended or revoked for violating §
33 5-65-103, shall, in addition to other penalties provided herein, be required
34 to complete an alcohol education program as prescribed and approved by the
35 Arkansas Highway Safety Program or an alcoholism treatment program as approved
36 by the Bureau of Alcohol and Drug Abuse Prevention of the Department of

1 Health. Such alcoholism education program may collect a program fee of up to
2 fifty dollars (\$50.00) per enrollee to offset program costs. A person ordered
3 to complete an alcoholism treatment program under this section may be required
4 to pay, in addition to the costs collected for treatment, a fee of up to
5 twenty-five dollars (\$25.00) to offset the additional costs associated with
6 reporting requirements under this subchapter. The alcoholism education program
7 shall report semiannually to the Arkansas Highway Safety Program all revenue
8 derived from this fee.

9 (b) ~~A person who pleads guilty or nolo contendere to, or who is found~~
10 ~~guilty of violating, § 5-65-103, shall furnish proof of attendance at and~~
11 ~~completion of the alcoholism treatment or education program before~~
12 ~~reinstatement of his or her driver's license suspended or revoked under this~~
13 ~~act. whose license is suspended or revoked for violating § 5-65-103 shall~~
14 ~~furnish proof of attendance at, and completion of, the alcoholism treatment or~~
15 ~~education program before reinstatement of his or her suspended or revoked~~
16 ~~driver's license and shall pay any fee for reinstatement required under § 5-~~
17 ~~65-119 or § 5-65-304, or shall furnish proof of dismissal or acquittal of the~~
18 ~~charge on which the suspension or revocation is based. Application for~~
19 ~~reinstatement shall be made to the Office of Driver Services.~~

20 (c) Even if a person has filed a de novo petition for review pursuant
21 to § 5-65-402, the person shall be entitled to reinstatement of driving
22 privileges upon complying with this subsection and shall not be required to
23 postpone reinstatement until the disposition of the de novo review in circuit
24 court has occurred.

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

29
30 SECTION 14. Arkansas Code 5-65-120 is amended to read as follows:

31 "5-65-120. Restricted driving permit.

32 (a) On July 1, 1996, and thereafter, the Office of Driver Services or
33 its designated agent, following the administrative hearing for suspension or
34 revocation of a driver's license as provided for in ~~§ 5-65-104~~ § 5-65-402, or
35 upon the request of the person whose privilege to drive has been denied or
36 suspended, may modify the denial or suspension in cases of extreme and unusual

1 hardship by the issuance of a restricted driving permit when upon review of
 2 the person's driving record for a time period of ~~three (3)~~ five (5) years
 3 prior to the current suspension or denial of driving privilege it is
 4 determined, at the discretion of the Office of Driver Services or its
 5 designated agent, that the person is not a multiple traffic law offender or
 6 that the person does not present a threat to the general public and that no
 7 other adequate means of transportation exists for that person except to allow
 8 driving in any or all of the following situations:

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

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

11 (3) To and from an educational institution for the purpose of
 12 attending classes if the person is enrolled and regularly attending classes at
 13 the institution; or

14 (4) To and from the alcohol safety education and treatment course
 15 for drunk drivers.

16 (5) To and from a hospital or clinic for medical treatment or care
 17 for an illness, disease or other medical condition of the driver or a family
 18 member.

19 (b) The restricted driving permit shall state the specific times and
 20 circumstances under which driving is permitted, but shall not be granted ~~where~~
 21 ~~prohibited under § 5-65-104~~ to any person suspended for a second or subsequent
 22 offense of violating § 5-65-103, § 5-65-205, § 5-65-303, or § 5-65-310.

23 (c) For all arrests or offenses occurring before ~~July 1, 1996~~ the
 24 effective date of this act, but which have not reached a final disposition as
 25 to judgment in court, the offenses shall be decided under the law in effect at
 26 the time the offense occurred, and any defendant shall be subject to the
 27 penalty provisions in effect at that time and not under the provisions of this
 28 section."

29
 30 SECTION 15. Arkansas Code 5-65-205 is amended to read as follows:

31 "5-65-205. Refusal to submit.

32 (a) If a person under arrest refuses upon the request of a law
 33 enforcement officer to submit to a chemical test designated by the law
 34 enforcement agency, as provided in § 5-65-202, none shall be given, and the
 35 person's motor vehicle operator's license shall be seized by the law
 36 enforcement officer, and the officer shall immediately deliver to the person

1 from whom the license was seized a temporary driving permit as provided by §
2 5-65-402.

3 ~~(b) The Office of Driver Services shall then proceed to suspend or~~
4 ~~revoke the driving privilege of the arrested person, or any nonresident's~~
5 ~~driving privilege, on the basis of the number of previous offenses in~~
6 ~~accordance with the provisions of § 5-65-104. The Office of Driver Services of~~
7 ~~the Department of Finance and Administration shall then proceed to suspend or~~
8 ~~revoke the driving privilege of the arrested person as provided in § 5-65-402.~~
9 The suspension shall be as follows:

10 (1) Suspension for one hundred eighty (180) days for the first
11 offense of refusing to submit to a chemical test of blood, breath, or urine
12 for the purpose of determining the alcohol or controlled substance contents of
13 the person's blood.

14 (2) Suspension for two (2) years, during which no restricted
15 permits may be issued, for a second offense of refusing to submit to a
16 chemical test of blood, breath, or urine for the purposes of determining the
17 alcohol or controlled substance contents of the person's blood within five (5)
18 years of the first offense.

19 (3) Revocation for three (3) years, during which no restricted
20 permits may be issued, for the third offense of refusing to submit to a
21 chemical test of blood, breath, or urine for the purpose of determining the
22 alcohol or controlled substance contents of the person's blood within five (5)
23 years of the first offense.

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

29 (c) For all arrests or offenses occurring before ~~July 1, 1996~~ the
30 effective date of this act, but which have not reached a final disposition as
31 to judgment in court, the offenses shall be decided under the law in effect at
32 the time the offense occurred, and any defendant shall be subject to the
33 penalty provisions in effect at that time and not under the provisions of this
34 section.

35 (d) In order to determine the number of previous offenses to consider
36 when suspending or revoking the arrested person's driving privileges, the

1 Office of Driver Services shall consider as a previous offense:

2 (1) Any convictions for offenses of operating or being in actual
 3 physical control of a motor vehicle while intoxicated or in violation of § 5-
 4 65-103 or refusing to submit to a chemical test which occurred prior to July
 5 1, 1996; and

6 (2) Any suspension or revocation of driving privileges for
 7 arrests for a violation of § 5-65-103 or violation of § 5-65-205(a) occurring
 8 on or after July 1, 1996, where the person was subsequently convicted of the
 9 criminal charges.

10 (e) If the person is a resident without a license or permit to operate a
 11 motor vehicle in this state, the Office of Driver Services shall, in addition
 12 to any other penalties provided for in this act, deny to that person the
 13 issuance of a license or permit for a period of six (6) months for a first
 14 offense. For a second or subsequent offense by a resident without a license or
 15 permit to operate a motor vehicle, the Office of Driver Services shall, in
 16 addition to any other penalties provided for in this act, deny to that person
 17 the issuance of a license or permit for a period of one (1) year."

18
 19 SECTION 16. Arkansas Code 5-65-304 is amended to read as follows:

20 "5-65-304. Seizure, suspension, and revocation of license - Temporary
 21 permits.

22 ~~"(a)(1) At the time of arrest for violating § 5-65-303, the arresting~~
 23 ~~officer shall seize the motor vehicle operator's license of the underage~~
 24 ~~person arrested and issue to such person a temporary driving permit to expire~~
 25 ~~on the date of arraignment.~~

26 ~~_____ (2) The arresting officer shall remit the seized driver's license to~~
 27 ~~the court.~~

28 ~~_____ (3) Upon arraignment, the judge shall issue such person a temporary~~
 29 ~~permit to expire on the date of the trial.~~

30 ~~_____ (4) If the person is convicted of violating § 5-65-303, the court shall~~
 31 ~~transmit the driver's license to the Office of Driver Services and shall~~
 32 ~~instruct the Office of Driver Services to suspend or revoke the person's~~
 33 ~~driver's license as follows:~~

34 ~~_____ (A) Suspension for not less than ninety (90) days nor more than one~~
 35 ~~hundred twenty (120) days for the first offense;~~

36 ~~_____ (B) Suspension for not less than one (1) year nor more than eighteen~~

1 ~~(18) months for a second offense while underage;~~

2 ~~—— (C) Revocation for the third or subsequent offense occurring while the~~
3 ~~person is underage. Revocation shall be until the underage person reaches the~~
4 ~~age of twenty-one (21) or for a period of three (3) years, whichever is~~
5 ~~longer.~~

6 ~~—— (5) For suspension or revocation purposes under this subchapter, an~~
7 ~~underage person who has one (1) or more previous convictions for a violation~~
8 ~~of the Omnibus DWI Act, § 5-65-101 et seq., shall be deemed to have a~~
9 ~~conviction for a violation of this subchapter for each conviction for driving~~
10 ~~while intoxicated.~~

11 ~~—— (b)(1) Any underage person who is found guilty or enters a plea of~~
12 ~~guilty to a first offense under this subchapter may petition the Office of~~
13 ~~Driver Services that he or she be issued a restricted driver's permit for~~
14 ~~employment-related purposes or to attend a state-required alcohol and driving~~
15 ~~education program.~~

16 ~~—— (2)(A) The Office of Driver Services shall notify each underage person~~
17 ~~that he or she may request a restricted permit and shall advise the person of~~
18 ~~the time and place for making such request and for the hearing thereon, which~~
19 ~~shall be conducted within ten (10) days from the guilty plea or conviction.~~

20 ~~—— (B) The notice shall be given by mailing the notice to the last known~~
21 ~~address of the person whose driver's license is suspended.~~

22 ~~—— (3) Any previously issued temporary permit shall remain in effect until~~
23 ~~the hearing date.~~

24 ~~—— (4) Furthermore, the sentencing court may postpone acceptance of a~~
25 ~~guilty plea or sentencing following a conviction until a determination of the~~
26 ~~request for a restricted driver's permit has been made.~~

27 ~~—— (5) If at the hearing it is determined that the underage person has no~~
28 ~~reasonable alternative mode of transportation to and from his or her place of~~
29 ~~employment, or to a state-required alcohol and driving education program, or~~
30 ~~that driving a motor vehicle is an essential part of the person's work, and he~~
31 ~~or she has no previous convictions for a violation of this subchapter or the~~
32 ~~Omnibus DWI Act, § 5-65-101 et seq., a restricted driver's permit may be~~
33 ~~issued.~~

34 ~~—— (6) If the court has required an alcohol and driving education program~~
35 ~~that exceeds the length of the suspension under this section, a restricted~~
36 ~~driver's permit may be issued for the purpose of completing the required~~

1 ~~program.~~

2 ~~_____ (7) Any person to whom a restricted permit has been issued who shall~~
3 ~~operate a motor vehicle other than for the purposes and under the conditions~~
4 ~~prescribed in the permit shall, upon conviction therefor, be imprisoned for~~
5 ~~two (2) days.~~

6 (a) At the time of arrest for violating § 5-65-303, the arresting
7 officer shall seize the motor vehicle operator's license of the underage
8 person arrested and issue to such person a temporary driving permit as
9 provided by § 5-65-402.

10 (b) The Office of Driver Services of the Department of Finance and
11 Administration shall suspend or revoke the driving privileges of the arrested
12 person under the provisions of § 5-65-402 and the arrested person shall have
13 the same right to hearing and judicial review as provided under § 5-65-402.
14 The suspension or revocation shall be as follows:

15 (1) Suspension for ninety days for the first offense of violating
16 § 5-65-303.

17 (2) Suspension for one (1) year for the second offense of
18 violating § 5-65-303.

19 (3) Revocation for the third or subsequent offense occurring while
20 the person is underage. Revocation shall be until the underage person reaches
21 the age of twenty-one (21) or for a period of three (3) years, whichever is
22 longer.

23 (c) In order to determine the number of previous offenses to consider
24 when suspending or revoking the arrested person's driving privileges, the
25 Office of Driver Services shall consider as a previous offense:

26 (1) Any convictions for offenses of operating or being in actual
27 physical control of a motor vehicle while intoxicated or in violation of § 5-
28 65-103 or refusing to submit to a chemical test which occurred prior to July
29 1, 1996; and

30 (2) Any suspension or revocation of driving privileges for
31 arrests for a violation of § 5-65-103 or violation of § 5-65-205(a) occurring
32 on or after July 1, 1996, where the person was subsequently convicted of the
33 criminal charges.

34 (3) Any convictions for violating § 5-65-303 or § 5-65-310 prior
35 to the effective date of this act; and

36 (4) Any suspension or revocation of driving privileges for

1 arrests for a violation of § 5-65-303 or § 5-65-310 occurring on or after the
 2 effective date of this act, where the person was subsequently convicted of the
 3 criminal charges.

4 ~~—(c)~~(d)(1) The Office of Driver Services shall charge a fee of twenty-
 5 five dollars (\$25.00) for reinstating a driver's license suspended because of
 6 a ~~conviction for a violation of § 5-65-303 or § 5-65-310.~~

7 (2) Forty percent (40%) of the revenues derived from this fee
 8 shall be deposited in the State Treasury as special revenues and credited to
 9 the Public Health Fund to be used exclusively for the Department of Health's
 10 Blood Alcohol Program."

11
 12 SECTION 17. Arkansas Code 5-65-305 is amended to read as follows:

13 "5-65-305. Fines.

14 (a) Any person who pleads guilty, nolo contendere, or is found guilty
 15 of violating § 5-65-303 or § 5-65-310 shall be fined:

16 (1) No less than one hundred dollars (\$100) nor more than five
 17 hundred dollars (\$500) for the first offense;

18 (2) No less than two hundred dollars (\$200) nor more than one
 19 thousand dollars (\$1,000) for the second offense occurring underage;

20 (3) No less than five hundred dollars (\$500) nor more than two
 21 thousand dollars (\$2,000) for the third or subsequent offense occurring
 22 underage.

23 (b) For the purpose of determining an underage person's fines under
 24 this subchapter, an underage person who has one (1) or more previous
 25 convictions or suspensions for a violation of ~~the Omnibus DWI Act, § 5-65-101~~
 26 ~~et seq., § 5-65-103 or § 5-65-205~~ shall be deemed to have a conviction for a
 27 violation of this subchapter for each conviction for driving while
 28 intoxicated."

29
 30 SECTION 18. Arkansas Code 5-65-306 is amended to read as follows:

31 "5-65-306. Public service work.

32 (a) Any underage person who pleads guilty or nolo contendere or is found
 33 guilty of violating § 5-65-303 or § 5-65-310 shall be ordered by the court to
 34 perform public service work of the type and for the duration as deemed
 35 appropriate by the court.

36 (b) The period of community service shall be for no less than thirty

1 (30) days for a second offense of violating § 5-65-303 and no less than sixty
2 (60) days for a third or subsequent offense of violating § 5-65-303."

3
4 SECTION 19. Arkansas Code 5-65-307 is amended to read as follows:

5 "5-65-307. Alcohol and driving education program.

6 (a)(1) Any underage person who ~~pleads guilty or nolo contendere or is~~
7 ~~found guilty of violating~~ has their driving privileges suspended, revoked or
8 denied for violating § 5-65-303, shall, in addition to other penalties
9 provided herein, be required to complete an alcohol and driving education
10 program for underage drivers as prescribed and approved by the Arkansas
11 Highway Safety Program.

12 (2) The Arkansas Highway Safety Program shall approve only those
13 programs in alcohol and driving education which are targeted at the underage
14 driving group and are intended to intervene and prevent repeat occurrences of
15 driving under the influence or driving while intoxicated.

16 (3) The alcohol and driving education program may collect a
17 program fee of up to fifty dollars (\$50.00) per enrollee to offset program
18 costs.

19 (4) A person ordered to complete an alcohol and driving education
20 program under this section may be required to pay, in addition to the costs
21 collected for the program, a fee of up to twenty-five dollars (\$25.00) to
22 offset the additional costs associated with reporting requirements under this
23 subchapter.

24 (5) An approved alcohol and driving education program shall
25 report semiannually to the Arkansas Highway Safety Program all revenue derived
26 from these fees.

27 (b) Prior to reinstatement of a driver's license suspended or revoked
28 under this subchapter, the driver shall furnish proof of attendance at and
29 completion of the alcohol and driving education program.

30 (c) [Repealed].

31 (d) The Arkansas Highway Safety Program is authorized to promulgate
32 rules and regulations reasonably necessary to carry out the purposes of this
33 section regarding the approval and monitoring of the alcohol and driving
34 education programs.

35 (e)(1) A person whose license is suspended or revoked for violating §
36 5-65-303 or § 5-65-310 shall furnish proof of attendance at, and completion

1 of, the alcoholism treatment or education program before reinstatement of his
 2 or her suspended or revoked driver's license and shall pay any fee for
 3 reinstatement required under § 5-65-119 or § 5-65-304, or shall furnish proof
 4 of dismissal or acquittal of the charge on which the suspension, or revocation
 5 is based. Application for reinstatement shall be made to the Office of Driver
 6 Services.

7 (2) Even if a person has filed a de novo petition for review
 8 pursuant to § 5-65-402, the person shall be entitled to reinstatement of
 9 driving privileges upon complying with this subsection and shall not be
 10 required to postpone reinstatement until the disposition of the de novo review
 11 in circuit court has occurred.

12 (3) A person suspended under this act may enroll in an alcohol
 13 education program prior to disposition of the offense by the municipal or
 14 circuit court but shall not be entitled to any refund of fees paid if the
 15 charges are dismissed or if the person is acquitted of the charges. A person
 16 who enrolls in an alcohol education program shall not be entitled to any
 17 refund of fees paid if the person is subsequently acquitted."

18
 19 SECTION 20. Arkansas Code 5-65-310 is amended to read as follows:

20 "5-65-310. Refusal to submit.

21 (a) If an underage person under arrest refuses upon the request of a
 22 law enforcement officer to submit to a chemical test designated by the law
 23 enforcement agency, as provided in § 5-65-309, none shall be given, and the
 24 person's driver's license shall be seized by the law enforcement officer, and
 25 the officer shall immediately deliver to the person from whom the license was
 26 seized a temporary driving permit ~~which shall expire on the date of~~
 27 ~~arraignment as provided by § 5-65-402.~~

28 ~~(b) The arresting officer shall remit the seized driver's license to~~
 29 ~~the court, and, upon an arraignment, the judge shall issue that person a~~
 30 ~~temporary permit to expire on the date of trial. The Office of Driver~~
 31 Services of the Department of Finance and Administration shall suspend or
 32 revoke the driving privileges of the arrested person under § 5-65-402. The
 33 Director shall suspend the person's driving privileges as follows:

34 (1) Suspension for ninety (90) days for a first offense under this
 35 section.

36 (2) Suspension for one (1) year for a second offense under this

1 section.

2 (3) Revocation for the third or subsequent offense occurring while
3 the person is underage. Revocation shall be until the underage person reaches
4 the age of twenty-one (21) or for a period of three (3) years, whichever is
5 longer.

6 ~~_____ (c) If the judge determines that the law enforcement officer had~~
7 ~~reasonable cause to believe the arrested underage person had been driving~~
8 ~~under the influence or while there was one-fiftieth of one percent (0.02%) but~~
9 ~~less than one-tenth of one percent (0.10%) of alcohol in the person's blood,~~
10 ~~and the underage person refused to submit to the test upon the request of the~~
11 ~~law enforcement officer, the judge shall order the Office of Driver Services~~
12 ~~to suspend the person's driver's license as follows:~~

13 ~~_____ (1) Suspension for not less than ninety (90) days nor more than one~~
14 ~~hundred eighty (180) days if the underage person had not previously refused~~
15 ~~the test while underage and if the underage person had not been convicted of~~
16 ~~driving while under the influence or driving while there was one-fiftieth of~~
17 ~~one percent (0.02%) but less than one-tenth of one percent (0.10%) of alcohol~~
18 ~~in the person's blood while underage;~~

19 ~~(2) Suspension for not less than one (1) year nor more than eighteen~~
20 ~~(18) months if the underage person had previously refused the test while~~
21 ~~underage or if the underage person had been convicted of driving while under~~
22 ~~the influence or driving while there was one-fiftieth of one percent (0.02%)~~
23 ~~but less one-tenth of one percent (0.10%) of alcohol in the person's blood~~
24 ~~while underage.~~

25 (c) In order to determine the number of previous offenses to consider
26 when suspending or revoking the arrested person's driving privileges, the
27 Office of Driver Services shall consider as a previous offense:

28 (1) Any convictions for offenses of operating or being in actual
29 physical control of a motor vehicle while intoxicated or in violation of § 5-
30 65-103 or refusing to submit to a chemical test which occurred prior to July
31 1, 1996; and

32 (2) Any suspension or revocation of driving privileges for
33 arrests for a violation of § 5-65-103 or violation of § 5-65-205 occurring on
34 or after July 1, 1996, where the person was subsequently convicted of the
35 criminal charges.

36 (3) Any convictions for violating § 5-65-303 or § 5-65-310 prior

1 to the effective date of this act; and

2 (4) Any suspension or revocation of driving privileges for
 3 arrests for a violation of § 5-65-303 or § 5-65-310 occurring on or after the
 4 effective date of this act, where the person was subsequently convicted of the
 5 criminal charges.

6 ~~(d) If the underage person is a resident without a license or permit to~~
 7 ~~operate a motor vehicle in this state, the Office of Driver Services shall~~
 8 ~~deny to the person the issuance of a license or permit for a period of two (2)~~
 9 ~~years after the date of the arrest.~~

10 (d) If the person is a resident without a license or permit to operate
 11 a motor vehicle in this state, the Office of Driver Services shall, in
 12 addition to any other penalties provided for in this act, deny to that person
 13 the issuance of a license or permit for a period of six (6) months for a first
 14 offense. For a second or subsequent offense by a resident without a license or
 15 permit to operate a motor vehicle, the Office of Driver Services shall, in
 16 addition to any other penalties provided for in this act, deny to that person
 17 the issuance of a license or permit for a period of one (1) year.

18 ~~(e) (1) If the person is a nonresident, that person's privilege of~~
 19 ~~operating a motor vehicle in Arkansas shall be suspended for not less than six~~
 20 ~~(6) months.~~

21 ~~(2)(e)~~ When a nonresident's privilege to operate a motor vehicle in this
 22 state has been suspended, the Office of Driver Services shall notify the
 23 office of issuance of that person's nonresident motor vehicle license of
 24 action taken by the Office of Driver Services.

25 (f) The Office of Driver Services shall charge a fee of twenty-five
 26 dollars (\$25.00) for reinstating a driver's license suspended or revoked for a
 27 violation of this section. Forty percent (40%) of the revenues derived from
 28 this fee shall be deposited in the State Treasury as special revenues and
 29 credited to the Public Health Fund to be used exclusively for the Department
 30 of Health's Blood Alcohol Program."

31
 32 SECTION 21. Title 5, Chapter 65 of the Arkansas Code is amended to add
 33 the following new subchapter:

34 "5-65-401. As used in this subchapter, unless the context otherwise
 35 requires:

36 (1) 'Sworn report' means a signed, written statement of a certified law

1 enforcement officer, under penalty of perjury, on a form provided by the
2 Director of the Department of Finance and Administration.

3 (2) 'Disqualification' means a prohibition against driving a commercial
4 motor vehicle.

5 (3) 'Immobilization' means revocation or suspension of the registration
6 or license plate of a motor vehicle.

7
8 5-65-402. (a)(1) At the time of arrest for violating § 5-65-103, § 5-
9 65-205, § 5-65-303, § 5-65-310, § 27-23-114 (a)(1), § 27-23-114 (a)(2) or §
10 27-23-114(a)(5), the arrested person shall immediately surrender his license,
11 permit, or other evidence of driving privilege to the arresting law
12 enforcement officer. The officer shall seize the license, permit, or other
13 evidence of driving privilege surrendered by the arrested person or found on
14 the arrested person during a search.

15 (2) If the license, permit, or other evidence of driving privilege
16 seized by the officer has not expired and otherwise appears valid to the
17 officer, the officer shall issue to the arrested person a dated receipt for
18 that license, permit, or other evidence of driving privilege on a form
19 prescribed by the Office of Driver Services of the Department of Finance and
20 Administration. This receipt shall be recognized as a license and shall
21 authorize the arrested person to operate a motor vehicle for a period not to
22 exceed thirty (30) days.

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

30 (B) The receipt shall also contain phone numbers and the
31 address of the Office of Driver Services and inform the driver of the
32 procedure for requesting a hearing. If the Office of Driver Services is unable
33 to conduct a hearing within the twenty-day period, a temporary permit shall be
34 issued and shall be valid until the date of the hearing. The seized license,
35 permit, or other evidence of driving privilege and a copy of the receipt form
36 issued to the arrested person shall be attached to the sworn report of the

1 arresting officer and shall be submitted by mail or in person to the Office of
2 Driver Services of the Department of Finance and Administration or his
3 designated representative within seven (7) days of the issuance of the
4 receipt. The failure of the arresting officer to timely file this report shall
5 not affect the authority of the Office of Driver Services to suspend,
6 disqualify, or revoke the driving privilege of the arrested person.

7 (3) Any notices from the Office of Driver Services required under
8 this act which are not personally delivered shall be sent by certified mail
9 and shall be deemed to have been delivered on the date when postmarked and
10 shall be sent to the last known address on file with the Office of Driver
11 Services. Refusal of the addressee to accept delivery or attempted delivery of
12 the notice at the address obtained by the arresting law enforcement officer or
13 on file with the Office of Driver Services shall not constitute nonreceipt of
14 notice. For all notices which are personally delivered, the person shall be
15 asked to sign a receipt acknowledging he received the required notice.

16 (4) The Office of Driver Services of the Revenue Division of the
17 Department of Finance and Administration or its designated official shall
18 suspend, revoke, or disqualify the driving privilege of an arrested person or
19 shall suspend, revoke or disqualify any nonresident driving privilege of an
20 arrested person when it receives a sworn report from the law enforcement
21 officer that he had reasonable grounds to believe the arrested person had been
22 operating or was in actual physical control of a motor vehicle in violation of
23 § 5-65-103, § 5-65-303 or § 27-23-114 (a)(1), § 27-23-114 (a)(2) which is
24 accompanied by a written chemical test report or a sworn report that the
25 person was operating or in actual physical control of a motor vehicle in
26 violation of § 5-65-103, § 5-65-303 or § 27-23-114, or is accompanied by a
27 sworn report that the arrested person refused to submit to a chemical test of
28 blood, breath, or urine for the purpose of determining the alcohol or
29 controlled substance contents of the person's blood in violation of § 5-65-
30 205, § 5-65-310 or § 27-23-114(a)(5). The suspension, disqualification or
31 revocation shall be based as follows:

32 (A) The driving privileges of any person violating § 5-65-
33 103 shall be suspended or revoked as provided by § 5-65-104.

34 (B) The driving privileges of any person violating § 5-65-
35 205(a) shall be suspended or revoked as provided by § 5-65-205(b).

36 (C) The driving privileges of any person violating § 5-65-

1 303 shall be suspended or revoked as provided by § 5-65-304(b).

2 (D) The driving privileges of any person violating § 5-65-
3 310(a) shall be suspended or revoked as provided by § 5-65-310(b).

4 (E) The driving privileges of any person violating § 27-23-
5 114 (a)(1), § 27-23-114 (a)(2) shall be disqualified as provided by § 27-23-
6 112.

7 (F) The driving privileges of any person violating § 27-23-
8 114 (a)(5) shall be disqualified as provided by § 27-23-112.

9 (5) If the person is a resident without a license or permit to
10 operate a motor vehicle in this state, the Office of Driver Services shall, in
11 addition to any other penalties provided for in this act, deny to that person
12 the issuance of a license or permit for a period of six (6) months for a first
13 offense. For a second or subsequent offense by a resident without a license or
14 permit to operate a motor vehicle, the Office of Driver Services shall, in
15 addition to any other penalties provided for in this act, deny to that person
16 the issuance of a license or permit for a period of one (1) year.

17 (6)(A) If the person is a nonresident, such person's privilege to
18 operate a motor vehicle in Arkansas shall be suspended in the same manner as
19 that of a resident. The Office of Driver Services shall notify the office that
20 issued the nonresident's motor vehicle license of the action taken by the
21 Office of Driver Services.

22 (B) When the person is a nonresident without a license or
23 permit to operate a motor vehicle, the Office of Driver Services shall notify
24 the office of issuance for that person's state of residence of action taken by
25 the Office of Driver Services.

26 (7) Upon the written request of a person whose privilege to drive
27 has been revoked, denied, disqualified or suspended, or who has received a
28 notice of revocation, suspension, disqualification or denial by the arresting
29 officer, the Office of Driver Services shall grant the person an opportunity
30 to be heard provided the request is received by the Office of Driver Services
31 within seven (7) calendar days after the notice of the revocation, suspension,
32 disqualification, or denial is given in accordance with this section or as
33 otherwise provided in this act. Such a request shall not operate to stay the
34 revocation, suspension, disqualification, or denial by the Office of Driver
35 Services until the disposition of said hearing.

36 (8)(A) The hearing shall be before the Office of Driver Services

1 or its authorized agent, in the office of the Revenue Division of the
2 Department of Finance and Administration nearest the county wherein the
3 alleged events occurred for which the person was arrested, unless the Office
4 of Driver Services or its authorized agent and the arrested person agree
5 otherwise to the hearing being held in some other county or the Office of
6 Driver Services or its authorized agent may schedule the hearing or any part
7 thereof by telephone and conduct the hearing by telephone conference call.
8 The hearing shall not be recorded. At the hearing, the burden of proof shall
9 be on the state, and the decision shall be based on a preponderance of the
10 evidence. The scope of the hearing shall cover the issues of whether the
11 officer had reasonable grounds to believe the person had been operating or
12 was in actual physical control of a motor vehicle or commercial motor
13 vehicle:

14 (i) while intoxicated or impaired or;

15 (ii) while the person's blood alcohol concentration
16 measured by weight of alcohol in the person's blood was equal to or greater
17 than the blood alcohol concentration prohibited by § 5-65-103(b) or;

18 (iii) while the blood alcohol concentration of a
19 person under the age of twenty-one (21) was equal to or greater than the blood
20 alcohol concentration prohibited by § 5-65-303 or;

21 (iv) while the person's blood alcohol concentration
22 measured by weight of alcohol in the person's blood was equal to or greater
23 than the blood alcohol concentration prohibited by § 27-23-114, or;

24 (v) refused to submit to a chemical test of the blood,
25 breath, or urine for the purpose of determining the alcohol or controlled
26 substance contents of the person's blood and whether the person was placed
27 under arrest.

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

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

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

4 (iii) The testing procedures used were in accordance
5 with existing rules; and

6 (iv) The test result in fact reflects an alcohol
7 concentration, presence of other intoxicating substances, or a combination
8 thereof.

9 (C) If the revocation, suspension, disqualification, or
10 denial is based upon the refusal of the person to submit to a chemical test as
11 provided in § 5-65-205, § 5-65-310, or § 27-23-114 (a)(5) reflected in a sworn
12 report by a law enforcement officer, the scope of the hearing shall also
13 include whether:

14 (i) The person refused to submit to the test or
15 tests; and

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

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

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

36 (d)(1) Any decision rendered at an administrative hearing held under

1 this section shall have no effect on any criminal case arising from any
2 violation of § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-
3 114(a)(1), § 27-23-114(a)(2) or § 27-23-114(a)(5).

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

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

12 (B) An acquittal on the charges or a dismissal of charges
13 will serve to reverse the suspension, disqualification, or revocation of the
14 driver's license suspended or revoked under this section. The Office of Driver
15 Services shall reinstate the person's driver license at no cost to the person,
16 and the charges shall not be used to determine the number of previous offenses
17 when administratively suspending, disqualifying, or revoking the driving
18 privilege of any arrested person in the future.

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

24 (f) The administrative suspension, disqualification, or revocation of a
25 driver's license as provided for by this section shall be supplementary to and
26 in addition to the suspensions, disqualifications, or revocations of driver
27 licenses which are ordered by a court of competent jurisdiction for offenses
28 under §§ 5-64-710, 5-65-116, and 27-16-914, or any other traffic or criminal
29 offense wherein a suspension, disqualification, or revocation of the driver's
30 license is a penalty for the violation.

31 (g) For all arrests or offenses occurring before the effective date of
32 this act, but which have not reached a final disposition as to judgment in
33 court, the offenses shall be decided under the law in effect at the time the
34 offense occurred, and any defendant shall be subject to the penalty provisions
35 in effect at that time and not under the provisions of this section.

36 (h)(1) A person whose license is suspended or revoked pursuant to this

1 section shall furnish proof of attendance at, and completion of, the
2 alcoholism treatment or education program before reinstatement of his or her
3 suspended or revoked driver's license and shall pay any fee for reinstatement
4 required under § 5-65-119 or § 5-65-304, or shall furnish proof of dismissal
5 or acquittal of the charge on which the suspension or revocation is based.
6 Application for reinstatement shall be made to the Office of Driver Services.

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

12 (3) A person suspended under this act may enroll in an alcohol
13 education program prior to disposition of the offense by the municipal or
14 circuit court but shall not be entitled to any refund of fees paid if the
15 charges are dismissed or if the person is acquitted of the charges.

16
17 5-65-403. (a) At the time of arrest for violating § 5-65-103, § 5-65-
18 303, § 27-23-114 (a)(1), or § 27-23-114 (a)(2), the arresting officer shall
19 provide written notice to the arrested person, if the person's driving
20 privileges have been suspended, disqualified or revoked for violating § 5-65-
21 103, § 5-65-303, § 27-23-114 (a)(1), or § 27-23-114 (a)(2) in the previous
22 five (5) years, that the registration of all motor vehicles owned by the
23 arrested person shall be suspended effective in thirty (30) days, notice of
24 the right to a hearing within twenty (20) days, and as notice that, if a
25 hearing is to be requested, the hearing request is required to be made within
26 seven (7) calendar days of the notice being given.

27 (b) The receipt shall also contain phone numbers and the address of the
28 Office of Driver Services and inform the driver of the procedure for
29 requesting a hearing. If the Office of Driver Services is unable to conduct a
30 hearing within the twenty-day period, a temporary permit shall be issued and
31 shall be valid until the date of the hearing. The seized license, permit, or
32 other evidence of driving privilege and a copy of the receipt form issued to
33 the arrested person shall be attached to the sworn report of the arresting
34 officer and shall be submitted by mail or in person to the Director of the
35 Department of Finance and Administration or his designated representative
36 within seven (7) days of the issuance of the receipt. The failure of the

1 arresting officer to timely file this report shall not affect the authority of
2 the Office of Driver Services to suspend the registration of all motor
3 vehicles owned by the arrested person.

4 (c) Any notices from the Office of Driver Services required under this
5 act which are not personally delivered shall be sent as provided by § 5-65-
6 402.

7 (d) If the person is a nonresident, such person's motor vehicle
8 registration in Arkansas shall be suspended in the same manner as that of a
9 resident. The Office of Driver Services shall notify the office that issued
10 the nonresident's motor vehicle registration of the action taken by the Office
11 of Driver Services.

12 (e) The hearing shall be held by the Office of Driver Services at the
13 conclusion of any hearing under § 5-65-402, and the scope of the hearing shall
14 be limited to:

15 (1) determining if the arrested person's driving privileges had
16 been suspended, revoked or disqualified for violation of § 5-65-103, § 5-65-
17 303, § 27-23-114 (a)(1), or § 27-23-114 (a)(2) in the five years prior to the
18 current offense; and

19 (2) determining if any motor vehicles are licensed or registered
20 in the arrested person's name as either owner or co-owner of the vehicle.

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

32 (g) The suspension ordered shall be equal to the suspension of driving
33 privileges ordered under § 5-65-402 or one (1) year whichever is longer but
34 shall not exceed five (5) years.

35 (h) The director may grant a restricted registration to a family member
36 or co-owner of any immobilized motor vehicle, upon determination that the

1 person is completely dependent on the motor vehicle for the necessities of
2 life. A restricted registration shall not be valid for use by the person whose
3 driving privileges have been suspended or revoked. Operation of a motor
4 vehicle in a manner inconsistent with the restricted registration or license
5 plate shall have the same effect as operating an unlicensed motor vehicle.

6 (i) If the Director orders immobilization of a motor vehicle, notice of
7 immobilization shall be sent by first class mail to all persons, other than
8 the arrested driver, listed as owners or co-owners of the immobilized motor
9 vehicle in the records of the Office of Motor Vehicles.

10 (j) The immobilization of motor vehicles shall apply to all offenses
11 occurring on or after January 1, 2000."

12
13 SECTION 22. If another act of the 1999 Regular Session of the General
14 Assembly adds a new subchapter to Chapter 65 of Title 5 of the Arkansas Code,
15 the Arkansas Code Revision Commission shall renumber the new subchapter 4, and
16 its sections, added by this act.

17
18 SECTION 23. All provisions of this act of a general and permanent
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
20 Code Revision Commission shall incorporate the same in the Code.

21
22 SECTION 24. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

27
28 SECTION 25. All laws and parts of laws in conflict with this act are
29 hereby repealed.

30 */s/ Woolridge*

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