

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 1183

By: Representative Lamoureux

For An Act To Be Entitled

AN ACT TO INCREASE THE REVIEW PERIOD FOR
ENHANCEMENT OF PENALTIES FOR VIOLATIONS OF THE
OMNIBUS DWI ACT; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO INCREASE THE REVIEW PERIOD FOR
ENHANCEMENT OF PENALTIES FOR VIOLATIONS
OF THE OMNIBUS DWI ACT.

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

SECTION 1. Arkansas Code § 5-65-104 is amended to read as follows:

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

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

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

(A)(i) Suspension for one hundred twenty (120) days for



1 the first offense of operating or being in actual physical control of a motor
 2 vehicle while intoxicated or while there was an alcohol concentration of at
 3 least eight hundredths (0.08) but less than fifteen hundredths (0.15) by
 4 weight of alcohol in the person's blood or breath, § 5-65-103;

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

9 (iii) Suspension for one hundred eighty (180) days
 10 for the first offense of operating or being in actual physical control of a
 11 motor vehicle while intoxicated and while there was an alcohol concentration
 12 of fifteen hundredths (0.15) or more by weight of alcohol in the person's
 13 blood or breath. Provided, however, that if the court orders issuance of an
 14 ignition interlock restricted license under § 5-65-118, the interlock
 15 restricted license shall be available immediately. The restricted driving
 16 permit provision of § 5-65-120 does not apply to this suspension;

17 (B) Suspension for twenty-four (24) months for a second
 18 offense of operating or being in actual physical control of a motor vehicle
 19 while intoxicated or while there was an alcohol concentration of eight
 20 hundredths (0.08) or more by weight of alcohol in the person's blood or
 21 breath, § 5-65-103, within ~~five (5)~~ ten (10) years of the first offense.
 22 Provided, however, that if the court orders issuance of an ignition interlock
 23 restricted license under § 5-65-118, the suspension period for which no
 24 restricted license shall be available shall be a minimum of one (1) year;

25 (C) Suspension for thirty (30) months for the third
 26 offense of operating or being in actual physical control of a motor vehicle
 27 while intoxicated or while there was an alcohol concentration of eight
 28 hundredths (0.08) or more by weight of alcohol in the person's blood or
 29 breath, § 5-65-103, within ~~five (5)~~ ten (10) years of the first offense.
 30 Provided, however, that if the court orders issuance of an ignition interlock
 31 restricted license under § 5-65-118, the suspension period for which no
 32 restricted license shall be available shall be a minimum of one (1) year; and

33 (D) Revocation for four (4) years, during which no
 34 restricted permits may be issued, for the fourth or subsequent offense of
 35 operating or being in actual physical control of a motor vehicle while
 36 intoxicated or while there was an alcohol concentration of eight hundredths

(0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-103, within ~~five (5)~~ ten (10) years of the first offense.

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

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

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

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

(C) For all arrests or offenses occurring before July 1, 2005, that have not reached a final disposition as to judgment in court, the offenses shall be decided under the law in effect at the time the offense occurred, and any defendant is subject to the penalty provisions in effect at that time and not under the provisions of this section.

(b)(1) Any person whose license is suspended or revoked pursuant to this section shall be required to complete an alcohol education program as prescribed and approved by the Highway Safety Program or an alcohol treatment program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health, unless the charges are dismissed or the person is

1 acquitted of the charges upon which the suspension or revocation is based.

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

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

12
13 SECTION 2. Arkansas Code §§ 5-65-111 and 5-65-112 are amended to read
14 as follows:

15 5-65-111. Prison terms - Exception.

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

22 (2) However, if a passenger under sixteen (16) years of age was
23 in the vehicle at the time of the offense, a person who pleads guilty or nolo
24 contendere to, or is found guilty of, violating § 5-65-103, for a first
25 offense, may be imprisoned for no fewer than seven (7) days and no more than
26 one (1) year, except that the court may order public service in lieu of jail,
27 and in that instance, the court shall include the reasons therefor in its
28 written order or judgment.

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

33 (1)(A) For no fewer than seven (7) days but no more than one (1)
34 year for the second offense occurring within ~~five (5)~~ ten (10) years of the
35 first offense or no fewer than thirty (30) days of community service.

36 (B)(i) However, if a person under sixteen (16) years of

age was in the vehicle at the time of the offense, for no fewer than thirty (30) days but no more than one (1) year for the second offense occurring within ~~five (5)~~ ten (10) years of the first offense or no fewer than sixty (60) days of community service.

(ii) If the court orders community service, the court shall clearly set forth in written findings the reasons for the order of community service;

(2)(A) For no fewer than ninety (90) days but no more than one (1) year for the third offense occurring within ~~five (5)~~ ten (10) years of the first offense or no fewer than ninety (90) days of community service.

(B)(i) However, if a person under sixteen (16) years of age was in the vehicle at the time of the offense, for no fewer than one hundred twenty ~~days~~ (120) days but no more than one (1) year for the third offense occurring within ~~five (5)~~ ten (10) years of the first offense or no fewer than one hundred twenty (120) days of community service.

(ii) If the court orders community service, the court shall clearly set forth in written findings the reasons for the order of community service;

(3)(A) For at least one (1) year but no more than six (6) years for the fourth offense occurring within ~~five (5)~~ ten (10) years of the first offense or not less than one (1) year of community service and shall be guilty of a felony.

(B)(i) However, if a person under sixteen (16) years of age was in the vehicle at the time of the offense, for at least two (2) years but no more than six (6) years for the fourth offense occurring within ~~five (5)~~ ten (10) years of the first offense or not less than two (2) years of community service and shall be guilty of a felony.

(ii) If the court orders community service, the court shall clearly set forth in written findings the reasons for the order of community service; and

(4)(A)(i) For at least two (2) years but no more than ten (10) years for the fifth or subsequent offense occurring within ~~five (5)~~ ten (10) years of the first offense or not less than two (2) years of community service and shall be guilty of a felony.

(ii) If the court orders community service, the court shall clearly set forth in written findings the reasons for the order

1 of community service.

2 (B)(i) However, if a person under sixteen (16) years of
3 age was in the vehicle at the time of the offense, for at least three (3)
4 years but no more than ten (10) years for the fifth offense occurring within
5 ~~five (5)~~ ten (10) years of the first offense or not less than three (3) years
6 of community service and shall be guilty of a felony.

7 (ii) If the court orders community service, the
8 court shall clearly set forth in written findings the reasons for the order
9 of community service.

10 (c) For all arrests or offenses occurring before ~~July 30, 1999~~ July 1,
11 2005, but which have not reached a final disposition as to judgment in court,
12 the offenses shall be decided under the law in effect at the time the offense
13 occurred, and any defendant shall be subject to the penalty provisions in
14 effect at that time and not under the provisions of this section.

15 (d) It is an affirmative defense to prosecution under subdivisions
16 (a)(2), (b)(1)(B), (b)(2)(B), (b)(3)(B), and (b)(4)(B) of this section that
17 the person operating or in actual physical control of the motor vehicle was
18 not more than two (2) years older than the passenger.

19
20 5-65-112. Fines.

21 (a) Any person who pleads guilty or nolo contendere to or is found
22 guilty of violating § 5-65-103 shall be fined:

23 (1) No less than one hundred fifty dollars (\$150) and no more
24 than one thousand dollars (\$1,000) for the first offense;

25 (2) No less than four hundred dollars (\$400) and no more than
26 three thousand dollars (\$3,000) for the second offense occurring within ~~five~~
27 ~~(5)~~ ten (10) years of the first offense;

28 (3) No less than nine hundred dollars (\$900) and no more than
29 five thousand dollars (\$5,000) for the third or subsequent offense occurring
30 within ~~five (5)~~ ten (10) years of the first offense.

31 (b) For all arrests or offenses occurring before July 1, 2005, that
32 have not reached a final disposition as to judgment in court, the offenses
33 shall be decided under the law in effect at the time the offense occurred,
34 and any defendant is subject to the provisions concerning fines in effect at
35 that time and not under the provisions of this section.

1 SECTION 3. Arkansas Code § 5-65-120 is amended to read as follows:

2 5-65-120. Restricted driving permit.

3 (a) On July 1, ~~1996~~ 2005, and thereafter, the Office of Driver
4 Services or its designated agent, following the administrative hearing for
5 suspension or revocation of a driver's license as provided for in § 5-65-402,
6 or upon the request of the person whose privilege to drive has been denied or
7 suspended, may modify the denial or suspension in cases of extreme and
8 unusual hardship by the issuance of a restricted driving permit when, upon
9 review of the person's driving record for a time period of ~~five (5)~~ ten (10)
10 years prior to the current suspension or denial of driving privilege, it is
11 determined, at the discretion of the Office of Driver Services or its
12 designated agent, that the person is not a multiple traffic law offender or
13 that the person does not present a threat to the general public and that no
14 other adequate means of transportation exists for that person except to allow
15 driving in any or all of the following situations:

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

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

18 (3) To and from an educational institution for the purpose of
19 attending classes if the person is enrolled and regularly attending classes
20 at the institution;

21 (4) To and from the alcohol safety education and treatment
22 course for drunk drivers; or

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

26 (b) The restricted driving permit shall state the specific times and
27 circumstances under which driving is permitted, but shall not be granted to
28 any person suspended for a second or subsequent offense of violating § 5-65-
29 103, § 5-65-205, § 5-65-303, or § 5-65-310.

30 (c) For all arrests or offenses occurring before ~~July 30, 1999~~ July 1,
31 2005, but which have not reached a final disposition as to judgment in court,
32 the offenses shall be decided under the law in effect at the time the offense
33 occurred, and any defendant shall be subject to the penalty provisions in
34 effect at that time and not under the provisions of this section.

35
36 SECTION 4. Arkansas Code § 5-65-205 is amended to read as follows:

1 5-65-205. Refusal to submit.

2 (a) If a person under arrest refuses upon the request of a law
3 enforcement officer to submit to a chemical test designated by the law
4 enforcement agency, as provided in § 5-65-202, none shall be given, and the
5 person's motor vehicle operator's license shall be seized by the law
6 enforcement officer, and the officer shall immediately deliver to the person
7 from whom the license was seized a temporary driving permit, as provided by §
8 5-65-402.

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

13 (1)(A) Suspension for one hundred eighty (180) days for the
14 first offense of refusing to submit to a chemical test of blood, breath, or
15 urine for the purpose of determining the alcohol or controlled substance
16 contents of the person's blood or breath. However, if the court orders
17 issuance of an ignition interlock restricted license under § 5-65-118, the
18 interlock restricted license shall be available immediately. The restricted
19 driving permit provision of § 5-65-120 does not apply to this suspension.

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

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

29 (3) Revocation for three (3) years, during which no restricted
30 permits may be issued, for the third offense of refusing to submit to a
31 chemical test of blood, breath, or urine for the purpose of determining the
32 alcohol or controlled substance contents of the person's blood within ~~five~~
33 ~~(5)~~ ten (10) years of the first offense; and

34 (4) Lifetime revocation, during which no restricted permit may
35 be issued, for the fourth or subsequent offense of refusing to submit to a
36 chemical test of blood, breath, or urine for the purpose of determining the

1 alcohol or controlled substance contents of the person's blood or breath
2 within ~~five (5)~~ ten (10) years of the first offense.

3 (c) For all arrests or offenses occurring before ~~July 30, 1999~~ July 1,
4 2005, but which have not reached a final disposition as to judgment in court,
5 the offenses shall be decided under the law in effect at the time the offense
6 occurred, and any defendant shall be subject to the penalty provisions in
7 effect at that time and not under the provisions of this section.

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

11 (1) Any conviction for offenses of operating or being in actual
12 physical control of a motor vehicle while intoxicated or in violation of § 5-
13 65-103 or refusing to submit to a chemical test which occurred prior to July
14 1, 1996; and

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

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

28
29 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly of the State of Arkansas that persons driving while
31 intoxicated pose a substantial risk to the citizens of the State of Arkansas;
32 that many of the persons driving while intoxicated are repeat offenders; and
33 that this act is immediately necessary to deter future acts of driving while
34 intoxicated. Therefore, an emergency is declared to exist and this act being
35 necessary for the preservation of the public peace, health, and safety shall
36 become effective on July 1, 2005.