

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4  
5 By: Representative Key  
6 By: Senator Womack  
7

# A Bill

HOUSE BILL 1768

## For An Act To Be Entitled

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

## Subtitle

16 AN ACT TO PROVIDE FOR AN ADMINISTRATIVE  
17 SUSPENSION OF DRIVER'S LICENSE FOR THE  
18 OFFENSE OF POSSESSION OF ALCOHOL BY A  
19 MINOR.

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

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

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

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

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

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

34 (c)(1) Any person violating this section ~~shall be deemed~~ is guilty of  
35 a misdemeanor and upon conviction shall be subject to a fine of not less than  
36 one hundred dollars (\$100) nor more than five hundred dollars (\$500).



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

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

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

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

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

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

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

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

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

35           SECTION 2. Arkansas Code § 5-65-402 is amended to read as follows:  
36           5-65-402. Surrender of license or permit to arresting officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (b) ~~is accompanied by a~~ A sworn report that  
 33 the arrested person refused to submit to a chemical test of blood, breath, or  
 34 urine for the purpose of determining the alcohol or controlled substance  
 35 contents of the person's blood in violation of § 5-65-205, § 5-65-310, or §  
 36 27-23-114(a)(5).

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

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

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

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

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

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

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

16 (vii) The driving privileges of any person violating  
 17 § 3-3-203(a) shall be disqualified as provided by § 3-3-203(c).

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

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

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

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

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

1 by the Office of Driver Services.

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

10 (B) Such a request shall not operate to stay the  
 11 revocation, suspension, disqualification, or denial by the Office of Driver  
 12 Services until the disposition of said hearing.

13 (8)(A) The hearing shall be before the Office of Driver Services  
 14 or its authorized agent, in the office of the Revenue Division of the  
 15 Department of Finance and Administration nearest the county wherein the  
 16 alleged events occurred for which the person was arrested, unless the Office  
 17 of Driver Services or its authorized agent and the arrested person agree  
 18 otherwise to the hearing being held in some other county or that the Office  
 19 of Driver Services or its authorized agent may schedule the hearing or any  
 20 part thereof by telephone and conduct the hearing by telephone conference  
 21 call.

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

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

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

27 (a) Had been operating or was in actual  
 28 physical control of a motor vehicle or commercial motor vehicle while  
 29 intoxicated or impaired, while the person's blood alcohol concentration  
 30 measured by weight of alcohol in the person's blood was equal to or greater  
 31 than the blood alcohol concentration prohibited by § 5-65-103(b), while the  
 32 blood alcohol concentration of a person under the age of twenty-one (21) was  
 33 equal to or greater than the blood alcohol concentration prohibited by § 5-  
 34 65-303, or while the person's blood alcohol concentration measured by weight  
 35 of alcohol in the person's blood was equal to or greater than the blood  
 36 alcohol concentration prohibited by § 27-23-114; ~~or~~

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

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

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

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

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

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

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

24 (iii) The testing procedures used were in accordance  
25 with existing rules; and

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

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

34 (i) The person refused to submit to the test or  
35 tests; and

36 (ii) The person was informed that his privilege to

1 drive would be revoked, disqualified, suspended, or denied if the person  
 2 refused to submit to the test or tests.

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

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

12 (B) A copy of the decision of the office shall be attached  
 13 to the petition.

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

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

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

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

25 (3) The administrative hearings held pursuant to this section  
 26 shall be exempt from the Arkansas Administrative Procedure Act, § 25-15-201  
 27 et seq.

28 (4)(A) On review, the circuit court shall hear the case de novo  
 29 in order to determine whether, based on a preponderance of the evidence,  
 30 grounds exist for revocation, suspension, disqualification, or denial of the  
 31 person's privilege to drive.

32 (B) If the results of a chemical test of blood, breath, or  
 33 urine are used as evidence in the suspension, revocation, or disqualification  
 34 of the person's privilege to drive, then the provisions of § 5-65-206 shall  
 35 apply in the circuit court proceeding.

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 § 3-3-203(a), § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, §  
 3 27-23-114(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 § 3-3-203(a), § 5-65-103, § 5-65-205, § 5-65-  
 6 303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5)  
 7 shall affect the administrative suspension, disqualification, or revocation  
 8 of the driver's 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)(i) An acquittal on the charges or a dismissal of  
 13 charges will serve to reverse the suspension, disqualification, or revocation  
 14 of the driver's license suspended or revoked under this section.

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

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

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

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

36 (g) For all arrests or offenses occurring before July 30, 1999, but

1 which have not reached a final disposition as to judgment in court, the  
2 offenses shall be decided under the law in effect at the time the offense  
3 occurred, and any defendant shall be subject to the penalty provisions in  
4 effect at that time and not under the provisions of this section.

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

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

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

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

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

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

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

26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36