

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

As Engrossed: H3/8/05
A Bill

HOUSE BILL 1768

5 By: Representative Key
6 By: Senator Womack
7
8

9 **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.
14

15 **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.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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 suspended, revoked, or disqualified as provided by § 3-
18 3-203(c).

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

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

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

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

35 (B) When the person is a nonresident without a license or
36 permit to operate a motor vehicle, the Office of Driver Services shall notify

1 the office of issuance for that person's state of residence of action taken
2 by the Office of Driver Services.

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4 drive has been revoked, denied, disqualified, or suspended, or who has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

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

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

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

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

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

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

1 alcohol concentration prohibited by § 27-23-114; ~~or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d)(1) Any decision rendered at an administrative hearing held under
2 this section shall have no effect on any criminal case arising from any
3 violation of § 3-3-203(a), § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, §
4 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5).

5 (2) Any decision rendered by a court of law for a criminal case
6 arising from any violation of § 3-3-203(a), § 5-65-103, § 5-65-205, § 5-65-
7 303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5)
8 shall affect the administrative suspension, disqualification, or revocation
9 of the driver's license as follows:

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

13 (B)(i) An acquittal on the charges or a dismissal of
14 charges will serve to reverse the suspension, disqualification, or revocation
15 of the driver's license suspended or revoked under this section.

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

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

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

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

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

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

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

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

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

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

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

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

27
28 *SECTION 3. Arkansas Code §27-50-801 is amended to read as follows:*

29 *27-50-801. Convictions and forfeitures to be reported.*

30 (a) *Every magistrate or judge of a court not of record shall keep a*
31 *full record of every case in which a person is charged with any violation of*
32 *this act, ~~or~~ of any other law regulating the operation of vehicles on*
33 *highways, or § 3-3-203(a).*

34 (b) *Within ten (10) days after the conviction or forfeiture of bail of*
35 *a person upon a charge of violating any provision of this act, ~~or~~ other law*
36 *regulating the operation of vehicles on highways, or § 3-3-203(a) every*

1 magistrate of the court or clerk of the court of record in which the
2 conviction was had or bail was forfeited shall prepare and immediately
3 forward to the Office of Driver Services of the Revenue Division of the
4 Department of Finance and Administration an abstract of the record of the
5 court covering the case in which the person was so convicted or forfeited
6 bail, which abstract must be certified by the person so required to prepare
7 it to be true and correct.

8 (c) The abstract must be made upon a form furnished by the office and
9 shall include the name and address of the party charged, the registration
10 number of the vehicle involved, the nature of the offense, the date of
11 hearing, the plea, the judgment, or whether bail was forfeited, and the
12 amount of the fine or forfeiture, as the case may be.

13 (d) Every court of record shall also forward a like report to the
14 office upon the conviction of any person of manslaughter or other felony in
15 the commission of which a vehicle was used.

16 (e) The failure, refusal, or neglect of any such judicial officer to
17 comply with any of the requirements of this section shall constitute
18 misconduct in office and shall be grounds for removal therefrom.

19 (f) The Department of Arkansas State Police shall keep all abstracts
20 received under this section at its main office, and they shall be open to
21 public inspection during reasonable business hours.

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/s/ Key