

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

A Bill

HOUSE BILL 2534

4
5 By: Representatives Overbey, Bolin, Lamoureux

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE AUTHORITY OF THE OFFICE OF
10 DRIVER SERVICES OF THE REVENUE DIVISION OF THE
11 DEPARTMENT OF FINANCE AND ADMINISTRATION TO ISSUE
12 INTERLOCK RESTRICTED DRIVER'S LICENSES; AND FOR
13 OTHER PURPOSES.

Subtitle

16 TO CLARIFY THE AUTHORITY OF THE OFFICE
17 OF DRIVER SERVICES TO ISSUE INTERLOCK
18 RESTRICTED DRIVER'S LICENSES.

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

23 SECTION 1. Arkansas Code § 5-65-205(b), regarding the refusal to
24 submit to a chemical test for driving while intoxicated, is amended to read
25 as follows:

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

30 (1)(A) Suspension for one hundred eighty (180) days for the
31 first offense of refusing to submit to a chemical test of blood, breath, or
32 urine for the purpose of determining the alcohol or controlled substance
33 contents of the person's blood or breath. However, if the ~~court orders~~ Office
34 of Driver Services allows the issuance of an ignition interlock restricted
35 license under § 5-65-118, the interlock restricted license shall be available
36 immediately. The restricted driving permit provision of § 5-65-120 does not



1 apply to this suspension.

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

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

11 (3) Revocation for three (3) years, during which no restricted
12 permits may be issued, for the third offense of refusing to submit to a
13 chemical test of blood, breath, or urine for the purpose of determining the
14 alcohol or controlled substance contents of the person's blood within five
15 (5) years of the first offense; and

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

21

22 SECTION 2. Arkansas Code § 5-65-118 is amended to read as follows:

23 5-65-118. Additional penalties - Ignition interlock devices.

24 (a)(1)(A) In addition to the other penalties authorized for violations
25 of this chapter, ~~a court~~ the Office of Driver Services of the Revenue
26 Division of the Department of Finance and Administration, in its discretion,
27 upon ~~a finding of guilt or a plea of guilty or nolo contendere~~ an arrest for
28 violating § 5-65-103 for a first or second offense, may ~~order~~ restrict
29 person to operate only a motor vehicle which is equipped with a functioning
30 ignition interlock device, and this restriction may continue for a period of
31 up to one (1) year after the person's license is no longer suspended or
32 restricted under the provisions of § 5-65-104.

33 (B) Upon a finding that a person is financially able to
34 afford an ignition interlock device and upon ~~a plea of guilty or nolo~~
35 ~~contendere to, or a finding of guilt of,~~ an arrest for a violation of § 5-65-
36 103 for a third or subsequent offense, the ~~court shall order~~ Office of Driver

1 Services may restrict the offender to operate only a motor vehicle which is
 2 equipped with a functioning ignition interlock device for up to one (1) year
 3 after the person's license is no longer suspended or restricted under § 5-65-
 4 104.

5 (2) ~~The court, at the time of sentencing,~~ Office of Driver
 6 Services may ~~order the Office of Driver Services of the Department of Finance~~
 7 ~~and Administration to~~ issue a restricted license in accordance with the
 8 requirements under the provisions of § 5-65-104 to the person only after the
 9 person has verified installation of a functioning ignition interlock device
 10 to the office in any motor vehicle the person intends to operate, except for
 11 exemptions allowed under subsection (g) of this section.

12 (3) ~~The court~~ Office of Driver Services shall establish:

13 (A) A specific calibration setting no lower than two
 14 hundredths of one percent (.02%) nor more than five hundredths of one percent
 15 (.05%) of alcohol in the person's blood at which the ignition interlock
 16 device will prevent the motor vehicle's being started; and

17 (B) The period of time that the person shall be subject to
 18 the restriction.

19 (4) For the purpose of this section, "ignition interlock device"
 20 means a device which connects a motor vehicle ignition system to a breath-
 21 alcohol analyzer and prevents a motor vehicle ignition from starting if a
 22 driver's blood alcohol level exceeds the calibration setting on the device.

23 (b) Upon ~~ordering~~ restricting the offender to the use of an ignition
 24 interlock device, the ~~court~~ Office of Driver Services shall:

25 (1) State on the record the requirement for and the period of
 26 use of the device, provided however, that if the ~~court orders~~ Office of
 27 Driver Services restricts the offender to the use of an ignition interlock
 28 device in conjunction with the issuance of a restricted license under the
 29 provisions of § 5-65-104, the period of requirement of use of the device
 30 shall be at least the remaining time period of the original suspension
 31 imposed under § 5-65-104, and so notify the Office of Driver Services of the
 32 Department of Finance and Administration;

33 (2) Direct that the records of the Office of Driver Services
 34 reflect that the person may not operate a motor vehicle which is not equipped
 35 with an ignition interlock device+

36 ~~(A) That the person may not operate a motor vehicle that~~

1 ~~is not equipped with an ignition interlock device; and~~

2 ~~(B) Whether the court has expressly permitted the person~~
 3 ~~to operate a motor vehicle without an ignition interlock device under~~
 4 ~~subdivision (g)(2) of this section;~~

5 (3) Direct the Office of Driver Services to attach or imprint a
 6 notation on the driver's license of any person restricted under this section
 7 stating that the person may operate only a motor vehicle equipped with an
 8 ignition interlock device and, prior to the issuance of a restricted license
 9 under the provisions of § 5-65-104 by the Office of Driver Services, require
 10 the person to show proof of installation of a certified ignition interlock
 11 device;

12 (4) Require proof of the installation of the device and periodic
 13 reporting by the person for verification of the proper operation of the
 14 device;

15 (5) Require the person to have the device serviced and monitored
 16 at least every sixty-seven (67) days for proper use and accuracy by an entity
 17 approved by the Department of Health; and

18 (6) Require the person to pay the reasonable cost of leasing or
 19 buying, monitoring, and maintaining the device and may establish a payment
 20 schedule therefor.

21 (c)(1) A person ~~sentenced~~ restricted under this section to operate
 22 only a motor vehicle that is equipped with an ignition interlock device may
 23 not solicit or have another person start or attempt to start a motor vehicle
 24 equipped with such a device.

25 (2) Except as provided in subsection (g) of this section, a
 26 violation of this subsection is a Class A misdemeanor.

27 (d)(1) A person may not start or attempt to start a motor vehicle
 28 equipped with an ignition interlock device for the purpose of providing an
 29 operable motor vehicle to a person who is ~~sentenced~~ restricted under this
 30 section to operate only a motor vehicle that is equipped with an ignition
 31 interlock device.

32 (2) Except as provided in subsection (g) of this section, a
 33 violation of this subsection is a Class A misdemeanor.

34 (e)(1) A person may not tamper with or in any way attempt to
 35 circumvent the operation of an ignition interlock device that has been
 36 installed in a motor vehicle.

1 (2) Except as provided in subsection (g) of this section, a
 2 violation of this subsection is a Class A misdemeanor.

3 (f)(1) A person may not knowingly provide a motor vehicle not equipped
 4 with a functioning ignition interlock device to another person whom the
 5 provider of the vehicle knows or should know was ~~sentenced~~ restricted to
 6 operate only a motor vehicle equipped with an ignition interlock device.

7 (2) Except as provided in subsection (g) of this section, a
 8 violation of this subsection is a Class A misdemeanor.

9 (g) Any person found to have violated subsections (c)-(f) of this
 10 section is guilty of a Class A misdemeanor; provided, however, that penalty
 11 shall not apply if:

12 (1) The starting of a motor vehicle, or the request to start a
 13 motor vehicle, equipped with an ignition interlock device is done for the
 14 purpose of safety or mechanical repair of the device or the vehicle and the
 15 person subject to the ~~court order~~ restriction does not operate the vehicle;

16 (2)(A) The court finds that a person is required to operate a
 17 motor vehicle in the course and scope of the person's employment and, if the
 18 vehicle is owned by the employer, that the person may operate that vehicle
 19 during regular working hours for the purposes of his employment without
 20 installation of an ignition interlock device if the employer has been
 21 notified of such driving privilege restriction and if proof of that
 22 notification is with the vehicle.

23 (B) This employment exemption shall not apply, however, if
 24 the business entity that owns the vehicle is owned or controlled by the
 25 person who is prohibited from operating a motor vehicle not equipped with an
 26 ignition interlock device; or

27 (3) If the person cannot provide proof of installation of a
 28 functioning ignition interlock device to the Office of Driver Services under
 29 § 5-65-118(a), the Office of Driver Services shall not issue a restricted
 30 license as authorized under § 5-65-118.

31 (h) In addition to any other penalties authorized under this section,
 32 if the ~~court~~ Office of Driver Services finds that the person has violated the
 33 conditions under this section related to the proper use, circumvention, or
 34 maintenance of an ignition interlock device, the ~~court~~ Office of Driver
 35 Services shall ~~remove~~ revoke the ignition interlock restricted license ~~from~~
 36 ~~the person and order the Office of Driver Services to~~ reinstate a license

1 suspension for the term of the original license suspension. ~~Provided,~~
 2 ~~however, that the term of the reinstated suspension shall begin on the date~~
 3 ~~of the court ordered suspension under this subsection.~~

4 (i) Any person whose license was suspended under § 5-65-104 who would
 5 otherwise be eligible to obtain an ignition interlock restricted license may
 6 petition the ~~court~~ Office of Driver Services of the Revenue Division of the
 7 Department of Finance and Administration for a hearing, and ~~the court may~~
 8 ~~order~~ the Office of Driver Services ~~of the Revenue Division of the Department~~
 9 ~~of Finance and Administration~~ or its designated official ~~to~~ may issue an
 10 ignition interlock restricted license as authorized under the applicable
 11 section of §§ 5-65-104 and 5-65-205.

12 (j)(1) The Department of Health shall certify the ignition interlock
 13 systems for use in this state, shall approve the entities which install and
 14 monitor the systems, and shall adopt rules and regulations for the
 15 certification of the ignition interlock systems and system installation.

16 (2) The regulations shall require the ignition interlock
 17 systems, as a minimum, to:

- 18 (A) Not impede the safe operation of the vehicle;
- 19 (B) Minimize the opportunities to be bypassed;
- 20 (C) Work accurately and reliably in unsupervised
 21 environments;
- 22 (D) Measure, properly and accurately, the person's blood
 23 alcohol levels;
- 24 (E) Minimize the inconvenience to a sober user; and
- 25 (F) Be manufactured by an entity that is responsible for
 26 installation, user training, and servicing and maintenance of the systems,
 27 and that is capable of providing monitoring reports to the ~~courts~~ Office of
 28 Driver Services.

29 (3) The Department of Health shall develop a warning label to be
 30 affixed to all ignition interlock systems used in the state to warn any
 31 person of the possible penalties for tampering with or attempting to
 32 circumvent the interlock system.

33 (4) The Department of Health shall publish and update a list of
 34 certified ignition interlock manufacturers and approved ignition interlock
 35 system installers, and it shall be provided periodically to ~~each municipal~~
 36 ~~and circuit court in the state~~ the Office of Driver Services.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

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

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

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

(B) Suspension for twenty-four (24) months for a second offense of operating or being in actual physical control of a motor vehicle

1 while intoxicated or while there was an alcohol concentration of eight
 2 hundredths (0.08) or more by weight of alcohol in the person's blood or
 3 breath, § 5-65-103, within five (5) years of the first offense. Provided,
 4 however, that if the ~~court orders~~ Office of Driver Services allows the
 5 issuance of an ignition interlock restricted license under § 5-65-118, the
 6 suspension period for which no restricted license shall be available shall be
 7 a minimum of one (1) year;

8 (C) Suspension for thirty (30) months for the third
 9 offense of operating or being in actual physical control of a motor vehicle
 10 while intoxicated or while there was an alcohol concentration of eight
 11 hundredths (0.08) or more by weight of alcohol in the person's blood or
 12 breath, § 5-65-103, within five (5) years of the first offense. Provided,
 13 however, that if the ~~court orders~~ Office of Driver Services allows the
 14 issuance of an ignition interlock restricted license under § 5-65-118, the
 15 suspension period for which no restricted license shall be available shall be
 16 a minimum of one (1) year; and

17 (D) Revocation for four (4) years, during which no
 18 restricted permits may be issued, for the fourth or subsequent offense of
 19 operating or being in actual physical control of a motor vehicle while
 20 intoxicated or while there was an alcohol concentration of eight hundredths
 21 (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-
 22 103, within five (5) years of the first offense.

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

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

35 (A) Any convictions for offenses of operating or being in
 36 actual physical control of a motor vehicle while intoxicated or while there

1 was an alcohol concentration of eight-hundredths (0.08) or more in the
2 person's breath or blood under § 5-65-103 or refusing to submit to a chemical
3 test under § 5-65-202 which occurred prior to July 1, 1996;

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

11 (b)(1) Any person whose license is suspended or revoked pursuant to
12 this section shall be required to complete an alcohol education program as
13 prescribed and approved by the Highway Safety Program or an alcohol treatment
14 program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the
15 Department of Health, unless the charges are dismissed or the person is
16 acquitted of the charges upon which the suspension or revocation is based.

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

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

27
28
29
30
31
32
33
34
35
36