

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 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/27/07

A Bill

HOUSE BILL 1660

5 By: Representative Hyde
6
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR AN ADMINISTRATIVE
10 SUSPENSION OF DRIVER'S LICENSE FOR THE OFFENSE OF
11 POSSESSION OF FRAUDULENT OR ALTERED PERSONAL
12 IDENTIFICATION UNDER CERTAIN CIRCUMSTANCES; AND
13 FOR OTHER PURPOSES.
14

Subtitle

15 TO PROVIDE FOR AN ADMINISTRATIVE
16 SUSPENSION OF DRIVER'S LICENSE FOR THE
17 OFFENSE OF POSSESSION OF FRAUDULENT OR
18 ALTERED PERSONAL IDENTIFICATION UNDER
19 CERTAIN CIRCUMSTANCES.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 5-27-503 concerning the offense of
26 possession of fraudulent or altered personal identification document is
27 amended to add a new subsection to read as follows:

28 (d)(1) Except for a minor subject to the penalty authorized by § 5-27-
29 504, in addition to any penalty authorized by subdivision (c)(1) or (2) of
30 this section, at the time of arrest for a violation of subdivision (a)(3) of
31 this section, the arrested person shall immediately surrender his or her
32 license, permit, or other evidence of driving privilege to the arresting law
33 enforcement officer as provided in § 5-65-402.

34 (2) The Office of Driver Services or its designated official
35 shall suspend or revoke the driving privilege of the arrested person or shall
36 suspend any nonresident driving privilege of the arrested person, as provided



1 in § 5-65-402.

2 (3) The period of suspension or revocation of driving privilege
3 of the arrested person shall be based on the number of previous offenses of
4 the arrested person as follows:

5 (A) Suspension for sixty (60) days for a first offense
6 under subdivision (a)(3) of this section;

7 (B) Suspension for one hundred twenty (120) days for a
8 second offense under subdivision (a)(3) of this section; and

9 (C) Suspension for one (1) year for a third or subsequent
10 offense under subdivision (a)(3) of this section.

11 (4) In order to determine the number of previous offenses under
12 subdivision (d)(3) of this section to consider when suspending or revoking
13 the arrested person's driving privileges, the office shall consider as a
14 previous offense any conviction under subdivision (a)(3) of this section
15 regardless of when the offense occurred.

16
17 SECTION 2. Arkansas Code § 5-65-402 is amended to read as follows:

18 5-65-402. Surrender of license or permit to arresting officer.

19 (a)(1)(A) At the time of arrest for violating § 3-3-203(a), § 5-27-
20 503(a)(3), § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1),
21 § 27-23-114(a)(2), or § 27-23-114(a)(5), the arrested person shall
22 immediately surrender his or her license, permit, or other evidence of
23 driving privilege to the arresting law enforcement officer.

24 (B) The arresting law enforcement officer shall seize the
25 license, permit, or other evidence of driving privilege surrendered by the
26 arrested person or found on the arrested person during a search.

27 (2)(A)(i) If the license, permit, or other evidence of driving
28 privilege seized by the arresting law enforcement officer has not expired and
29 otherwise appears valid to the arresting law enforcement officer, the
30 arresting law enforcement officer shall issue to the arrested person a dated
31 receipt for that license, permit, or other evidence of driving privilege on a
32 form prescribed by the Office of Driver Services.

33 (ii) This receipt shall be recognized as a license
34 and authorizes the arrested person to operate a motor vehicle for a period
35 not to exceed thirty (30) days.

36 (B)(i) The receipt form shall contain and shall constitute

1 a notice of suspension, disqualification, or revocation of driving privileges
2 by the office, effective in thirty (30) days, notice of the right to a
3 hearing within twenty (20) days, and if a hearing is to be requested, as
4 notice that the hearing request is required to be made within seven (7)
5 calendar days of the notice being given.

6 (ii) The receipt shall also contain phone numbers
7 and the address of the office and inform the driver of the procedure for
8 requesting a hearing.

9 (C) If the office is unable to conduct a hearing within
10 the twenty-day period, a temporary permit shall be issued and is valid until
11 the date of the hearing.

12 (D)(i) The seized license, permit, or other evidence of
13 driving privilege and a copy of the receipt form issued to the arrested
14 person shall be attached to the sworn report of the arresting law enforcement
15 officer and shall be submitted by mail or in person to the office or its
16 designated representative within seven (7) days of the issuance of the
17 receipt.

18 (ii) The failure of the arresting law enforcement
19 officer to timely file the sworn report does not affect the authority of the
20 office to suspend, disqualify, or revoke the driving privilege of the
21 arrested person.

22 (3)(A) Any notice from the office required under this subchapter
23 that is not personally delivered shall be sent by certified mail and is
24 deemed to have been delivered on the date when postmarked and shall be sent
25 to the last known address on file with the office.

26 (B) Refusal of the addressee to accept delivery or
27 attempted delivery of the notice at the address obtained by the arresting law
28 enforcement officer or on file with the office does not constitute nonreceipt
29 of notice.

30 (C) For any notice that is personally delivered, the
31 person shall be asked to sign a receipt acknowledging he or she received the
32 required notice.

33 (4)(A) The office or its designated official shall suspend,
34 revoke, or disqualify the driving privilege of an arrested person or any
35 nonresident driving privilege of an arrested person when it receives a sworn
36 report from the arresting law enforcement officer that he or she had

1 reasonable grounds to believe the arrested person:

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

5 (ii) Was under twenty-one (21) years of age and
6 attempted to purchase an alcoholic beverage or use a fraudulent or altered
7 personal identification document for the purpose of purchasing an alcoholic
8 beverage illegally or other material or substance restricted to adult
9 purchase or possession under existing law in violation of § 5-27-503(a)(3);
10 or

11 (iii) Had been operating or was in actual physical
12 control of a motor vehicle in violation of § 5-65-103, § 5-65-303, § 27-23-
13 114(a)(1), or § 27-23-114(a)(2) and the sworn report is accompanied by:

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

17 (b) A sworn report that the arrested person
18 refused to submit to a chemical test of blood, breath, or urine for the
19 purpose of determining the alcohol or controlled substance content of the
20 arrested person's blood in violation of § 5-65-205, § 5-65-310, or § 27-23-
21 114(a)(5).

22 (B) The suspension, disqualification, or revocation shall
23 be based as follows:

24 (i) The driving privileges of any person violating §
25 5-65-103 shall be suspended or revoked as provided by § 5-65-104;

26 (ii) The driving privileges of any person violating
27 § 5-65-205(a) shall be suspended or revoked as provided by § 5-65-205(b);

28 (iii) The driving privileges of any person violating
29 § 5-65-303 shall be suspended or revoked as provided by § 5-65-304(b);

30 (iv) The driving privileges of any person violating
31 § 5-65-310(a) shall be suspended or revoked as provided by § 5-65-310(b);

32 (v) The driving privileges of any person violating §
33 27-23-114(a)(1) or § 27-23-114(a)(2) shall be disqualified as provided by §
34 27-23-112;

35 (vi) The driving privileges of any person violating
36 § 27-23-114(a)(5) shall be disqualified as provided by § 27-23-112; ~~and~~

1 (vii) The driving privileges of any person violating
2 § 3-3-203(a) shall be suspended, revoked, or disqualified as provided by § 3-
3 3-203(c); and

4 (viii) The driving privileges of any person
5 violating § 5-27-503(a)(3) shall be suspended, revoked, or disqualified as
6 provided by § 5-27-503(d).

7 (5) In addition to any other penalty provided for in this
8 section, if the arrested person is a resident without a license or permit to
9 operate a motor vehicle in this state:

10 (A) The office shall deny to that arrested person the
11 issuance of a license or permit for a period of six (6) months for a first
12 offense; and

13 (B) For a second or subsequent offense by a resident
14 without a license or permit to operate a motor vehicle, the office shall deny
15 to that arrested person the issuance of a license or permit for a period of
16 one (1) year.

17 (6)(A)(i) If the arrested person is a nonresident, the arrested
18 person's privilege to operate a motor vehicle in Arkansas shall be suspended
19 in the same manner as that of a resident.

20 (ii) The office shall notify the office that issued
21 the nonresident's motor vehicle license of the action taken by the office.

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

26 (7)(A) Upon the written request of a person whose privilege to
27 drive has been revoked, denied, disqualified, or suspended, or who has
28 received a notice of revocation, suspension, disqualification, or denial by
29 the arresting law enforcement officer, the office shall grant the person an
30 opportunity to be heard if the request is received by the office within seven
31 (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 chapter.

34 (B) A request described in subdivision (a)(7)(A) of this
35 section does not operate to stay the revocation, suspension,
36 disqualification, or denial by the office until the disposition of the

1 hearing.

2 (8)(A) The hearing shall be before the office or its authorized
3 agent, in the office of the Revenue Division of the Department of Finance and
4 Administration nearest the county where the alleged event occurred for which
5 the person was arrested, unless the office or its authorized agent and the
6 arrested person agree otherwise to the hearing's being held in some other
7 county or that the office or its authorized agent may schedule the hearing or
8 any part of the hearing by telephone and conduct the hearing by telephone
9 conference call.

10 (B) The hearing shall not be recorded.

11 (C) At the hearing, the burden of proof is on the state
12 and the decision shall be based on a preponderance of the evidence.

13 (D) The scope of the hearing shall cover the issues of
14 whether the arresting law enforcement officer had reasonable grounds to
15 believe that the person:

16 (i) Had been operating or was in actual physical
17 control of a motor vehicle or commercial motor vehicle while:

18 (a) Intoxicated or impaired;

19 (b) The person's blood alcohol concentration
20 measured by weight of alcohol in the person's blood was equal to or greater
21 than the blood alcohol concentration prohibited by § 5-65-103(b);

22 (c) The blood alcohol concentration of a
23 person under twenty-one (21) years of age was equal to or greater than the
24 blood alcohol concentration prohibited by § 5-65-303; or

25 (d) The person's blood alcohol concentration
26 measured by weight of alcohol in the person's blood was equal to or greater
27 than the blood alcohol concentration prohibited by § 27-23-114;

28 (ii) Refused to submit to a chemical test of the
29 blood, breath, or urine for the purpose of determining the alcohol or
30 controlled substance contents of the person's blood and whether the person
31 was placed under arrest; ~~or~~

32 (iii) Was under twenty-one (21) years of age and
33 purchased or was in possession of any intoxicating liquor, wine, or beer; or

34 (iv) Was under twenty-one (21) years of age and
35 attempted to purchase an alcoholic beverage or use a fraudulent or altered
36 personal identification document for the purpose of purchasing an alcoholic

1 beverage illegally or other material or substance restricted to adult
2 purchase or possession under existing law.

3 (E)(i) The office or its agent at the hearing shall
4 consider any document submitted to the office by the arresting law
5 enforcement agency, document submitted by the arrested person, and the
6 statement of the arrested person.

7 (ii) The office shall not have the power to compel
8 the production of documents or the attendance of witnesses.

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

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

19 (b) The breath, blood, or urine specimen was
20 obtained from the arrested person within the established and certified
21 criteria of the Division of Health of the Department of Health and Human
22 Services;

23 (c) The chemical testing procedure used was in
24 accordance with existing rules; and

25 (d) The chemical test result in fact reflects
26 an alcohol concentration, the presence of other intoxicating substances, or a
27 combination of alcohol concentration or other intoxicating substance.

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

33 (a) The arrested person refused to submit to
34 the chemical test; and

35 (b) The arrested person was informed that his
36 or her privilege to drive would be revoked, disqualified, suspended, or

1 denied if the arrested person refused to submit to the chemical test.

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

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

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

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

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

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

22 (ii) The circuit court may conduct the final hearing
23 by telephone conference with the consent of the parties.

24 (3) An administrative hearing held pursuant to this section is
25 exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

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

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

34 (d)(1) Any decision rendered at an administrative hearing held under
35 this section shall have no effect on any criminal case arising from any
36 violation of § 3-3-203(a), § 5-27-503(a)(3), § 5-65-103, § 5-65-205, § 5-65-

1 303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5).

2 (2) Any decision rendered by a court of law for a criminal case
3 arising from any violation of § 3-3-203(a), § 5-27-503(a)(3), § 5-65-103, §
4 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or §
5 27-23-114(a)(5) shall affect the administrative suspension, disqualification,
6 or revocation of the driver's license as follows:

7 (A) A plea of guilty or nolo contendere or a finding of
8 guilt by the court has no effect on any administrative hearing held under
9 this section;

10 (B)(i) An acquittal on the charges or a dismissal of
11 charges serves to reverse the suspension, disqualification, or revocation of
12 the driver's license suspended or revoked under this section.

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

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

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

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

34 (g) For any arrest or offense occurring before July 30, 1999, but that
35 has not reached a final disposition as to judgment in court, the offense
36 shall be decided under the law in effect at the time the offense occurred,

1 and any defendant is subject to the penalty provisions in effect at that time
2 and not under the provisions of this section.

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

5 (i) Both:

6 (a) Furnish proof of attendance at and
7 completion of the alcoholism treatment program, alcohol education program, or
8 alcohol and driving education program required by § 5-65-104(b)(1) or § 5-65-
9 307(a)(1) before reinstatement of his or her suspended or revoked driver's
10 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.

17 (2) Even if a person has filed a de novo petition for review
18 pursuant to subsection (c) of this section, the person is entitled to
19 reinstatement of driving privileges upon complying with this subsection and
20 is not required to postpone reinstatement until the disposition of the de
21 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 circuit
24 court, district court, or city court, but is not entitled to any refund of a
25 fee paid if the charge is dismissed or if the person is acquitted of the
26 charge.

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, any other law regulating the operation of vehicles on highways, ~~or~~
33 § 3-3-203(a), or § 5-27-503(a)(3).

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, other law
36 regulating the operation of vehicles on highways, ~~or~~ § 3-3-203(a), or § 5-27-

1 503(a)(3), every magistrate of the court or clerk of the court of record in
2 which the conviction was had or bail was forfeited shall prepare and
3 immediately forward to the Office of Driver Services an abstract of the
4 record of the court covering the case in which the person was so convicted or
5 forfeited bail. The abstract must be certified by the person so required to
6 prepare it to be true and correct.

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

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

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

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

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/s/ Hyde