

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H2/20/09 S4/7/09

A Bill

HOUSE BILL 1459

5 By: Representative Nix
6
7

For An Act To Be Entitled

9 AN ACT TO INCREASE THE "LOOK BACK" PERIOD FOR
10 REPEAT DWI OFFENDERS FROM FIVE YEARS TO *SEVEN*
11 YEARS; AND FOR OTHER PURPOSES.
12

Subtitle

14 AN ACT TO INCREASE THE LOOK BACK PERIOD
15 FOR REPEAT DWI OFFENDERS FROM FIVE YEARS
16 TO *SEVEN* YEARS.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 *SECTION 1. Arkansas Code 5-65-104(a), concerning the lookback period*
22 *for seizure, suspension, and revocation of a driver's license, is amended to*
23 *read as follows:*

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

30 *(2) The Office of Driver Services or its designated official*
31 *shall suspend or revoke the driving privilege of an arrested person or shall*
32 *suspend any nonresident driving privilege of an arrested person, as provided*
33 *in § 5-65-402. The suspension or revocation shall be based on the number of*
34 *previous offenses as follows:*

35 *(A) Suspension for:*

36 *(i) One hundred twenty (120) days for the first*



1 offense of operating or being in actual physical control of a motor vehicle
2 while intoxicated or while there was an alcohol concentration of at least
3 eight hundredths (0.08) but less than fifteen hundredths (0.15) by weight of
4 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)(a) Suspension for one hundred eighty (180)
10 days for the first offense of operating or being in actual physical control
11 of a motor vehicle while intoxicated and while there was an alcohol
12 concentration of fifteen hundredths (0.15) or more by weight of alcohol in
13 the person's blood or breath.

14 (b) However, if the office allows the issuance
15 of an ignition interlock restricted license under § 5-65-118, the ignition
16 interlock restricted license shall be available immediately.

17 (c) The restricted driving permit provision of
18 § 5-65-120 does not apply to this suspension;

19 (B)(i) Suspension for twenty-four (24) months for a second
20 offense of operating or being in actual physical control of a motor vehicle
21 while intoxicated or while there was an alcohol concentration of eight
22 hundredths (0.08) or more by weight of alcohol in the person's blood or
23 breath, § 5-65-103, within ~~five (5)~~ seven (7) years of the first offense.

24 (ii) However, if the office allows the issuance of
25 an ignition interlock restricted license under § 5-65-118, the suspension
26 period for which no restricted license is available is a minimum of one (1)
27 year;

28 (C)(i) Suspension for thirty (30) months for the third
29 offense of operating or being in actual physical control of a motor vehicle
30 while intoxicated or while there was an alcohol concentration of eight
31 hundredths (0.08) or more by weight of alcohol in the person's blood or
32 breath, § 5-65-103, within ~~five (5)~~ seven (7) years of the first offense.

33 (ii) However, if the office allows the issuance of
34 an ignition interlock restricted license under § 5-65-118, the suspension
35 period for which no restricted license is available is a minimum of one (1)
36 year; and

1 (D) Revocation for four (4) years, during which no
2 restricted permits may be issued, for the fourth or subsequent offense of
3 operating or being in actual physical control of a motor vehicle while
4 intoxicated or while there was an alcohol concentration of eight hundredths
5 (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-
6 103, within ~~five (5)~~ seven (7) years of the first offense.

7 (3) If a person is a resident who is convicted of driving
8 without a license or permit to operate a motor vehicle and the underlying
9 basis for the suspension, revocation, or restriction of the license was for a
10 violation of § 5-65-103, in addition to any other penalties provided for
11 under law, the office may restrict the offender to only an ignition interlock
12 restricted license for a period of one (1) year prior to the reinstatement or
13 reissuance of a license or permit after the person would otherwise be
14 eligible for reinstatement or reissuance of the person's license.

15 (4) In order to determine the number of previous offenses to
16 consider when suspending or revoking the arrested person's driving
17 privileges, the office shall consider as a previous offense any of the
18 following that occurred within the ~~five (5)~~ seven (7) years immediately
19 before the current offense:

20 (A) Any conviction for an offense of operating or being in
21 actual physical control of a motor vehicle while intoxicated or while there
22 was an alcohol concentration of eight-hundredths (0.08) or more in the
23 person's breath or blood that occurred:

24 (i) In Arkansas; or

25 (ii) In another state;

26 (B) Any suspension or revocation of driving privileges for
27 an arrest for operating or being in actual physical control of a motor
28 vehicle while intoxicated or while there was an alcohol concentration of
29 eight-hundredths (0.08) or more in the person's breath or blood under § 5-65-
30 103 when the person was not subsequently acquitted of the criminal charges;
31 or

32 (C) Any conviction under § 5-76-102 for an offense of
33 operating a motorboat on the waters of this state while intoxicated or while
34 there was an alcohol concentration in the person's breath or blood of eight-
35 hundredths (0.08) or more based upon the definition of breath, blood, and
36 urine concentration in § 5-65-204 or refusing to submit to a chemical test

1 under § 5-76-104 occurring on or after July 31, 2007 when the person was not
2 subsequently acquitted of the criminal charges.

3
4 SECTION 2. Arkansas Code 5-65-111 and 5-65-112 are amended to read as
5 follows:

6 5-65-111. Prison terms – Exception.

7 (a)(1)(A) Any person who pleads guilty or nolo contendere to or is
8 found guilty of violating § 5-65-103, for a first offense, is guilty of an
9 unclassified misdemeanor and may be imprisoned for no less than twenty-four
10 (24) hours and no more than one (1) year.

11 (B) However, the court may order public service in lieu of
12 ~~jail imprisonment~~, and in that instance, the court shall include the reasons
13 for the order of public service in lieu of jail in the court's written order
14 or judgment.

15 (2)(A) However, if a passenger under sixteen (16) years of age
16 was in the motor vehicle at the time of the offense, a person who pleads
17 guilty or nolo contendere to or is found guilty of violating § 5-65-103, for
18 a first offense, is guilty of an unclassified misdemeanor and may be
19 imprisoned for no fewer than seven (7) days and no more than one (1) year.

20 (B) However, the court may order public service in lieu of
21 ~~jail imprisonment~~, and in that instance, the court shall include the reasons
22 for the order of public service in lieu of ~~jail imprisonment~~ in the court's
23 written order or judgment.

24 (b) Any person who pleads guilty or nolo contendere to or is found
25 guilty of violating § 5-65-103 or any other equivalent penal law of another
26 state or foreign jurisdiction shall be imprisoned or shall be ordered to
27 perform public service in lieu of ~~jail imprisonment~~ as follows:

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

31 (B)(i) However, if a person under sixteen (16) years of
32 age was in the motor vehicle at the time of the offense, for no fewer than
33 thirty (30) days but no more than one (1) year for the second offense
34 occurring within ~~five (5)~~ seven (7) years of the first offense or no fewer
35 than sixty (60) days of community service and the person is guilty of an
36 unclassified misdemeanor.

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

4 (2)(A) For no fewer than ninety (90) days but no more than one
5 (1) year for the third offense occurring within ~~five (5)~~ seven (7) years of
6 the first offense or no fewer than ninety (90) days of community service and
7 the person is guilty of an unclassified misdemeanor.

8 (B)(i) However, if a person under sixteen (16) years of
9 age was in the motor vehicle at the time of the offense, for no fewer than
10 one hundred twenty days (120) days but no more than one (1) year for the
11 third offense occurring within ~~five (5)~~ seven (7) years of the first offense
12 or no fewer than one hundred twenty (120) days of community service and the
13 person is guilty of an unclassified misdemeanor.

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

17 (3)(A) For at least one (1) year but no more than six (6) years
18 for the fourth offense occurring within ~~five (5)~~ seven (7) years of the first
19 offense or not less than one (1) year of community service and the person is
20 guilty of a an unclassified felony.

21 (B)(i) However, if a person under sixteen (16) years of
22 age was in the motor vehicle at the time of the offense, for at least two (2)
23 years but no more than six (6) years for the fourth offense occurring within
24 ~~five (5)~~ seven (7) years of the first offense or not less than two (2) years
25 of community service and the person is guilty of a an unclassified felony.

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

29 (4)(A)(i) For at least two (2) years but no more than ten (10)
30 years for the fifth or subsequent offense occurring within ~~five (5)~~ seven (7)
31 years of the first offense or not less than two (2) years of community
32 service and the person is guilty of a an unclassified felony.

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

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

1 age was in the motor vehicle at the time of the offense, for at least three
2 (3) years but no more than ten (10) years for the *fifth or subsequent* offense
3 occurring within ~~five (5)~~ seven (7) of the first offense or not less than
4 three (3) years of community service and is guilty of a an unclassified
5 felony.

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

9 (c) For any arrest or offense occurring before ~~July 30, 1999~~, the
10 effective date of this act, but that has not reached a final disposition as
11 to judgment in court, the offense shall be decided under the law in effect at
12 the time the offense occurred, and any defendant is subject to the penalty
13 provisions in effect at that time and not under the provisions of this
14 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)~~ seven (7) years of the first offense; and

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)~~ seven (7) years of the first offense.

31 (b) For any arrest or offense occurring before the effective date of
32 this act, but that has not reached a final disposition as to judgment in
33 court, the offense shall be decided under the law in effect at the time the
34 offense occurred, and any defendant is subject to the penalty provisions in
35 effect at that time and not under the provisions of this section.

36 *SECTION 3. Arkansas Code 5-65-205(b) through (d), concerning the*

1 *lookback period for refusal to submit, is amended to read as follows:*

2 *(b) The Office of Driver Services shall then proceed to suspend or*
3 *revoke the driving privilege of the arrested person, as provided in § 5-65-*
4 *402. The suspension shall be as follows:*

5 *(1)(A)(i) Suspension for one hundred eighty (180) days for the*
6 *first offense of refusing to submit to a chemical test of blood, breath, or*
7 *urine for the purpose of determining the alcohol or controlled substance*
8 *content of the person's blood or breath.*

9 *(ii) However, if the office allows the issuance of*
10 *an ignition interlock restricted license under § 5-65-118, the ignition*
11 *interlock restricted license shall be available immediately.*

12 *(iii) The restricted driving permit provision of §*
13 *5-65-120 does not apply to this suspension.*

14 *(B) The office, in addition to any other penalty, shall*
15 *deny to that person the issuance of an operator's license until that person*
16 *has been issued an ignition interlock restricted license for a period of six*
17 *(6) months;*

18 *(2) Suspension for two (2) years, during which no restricted*
19 *permit may be issued, for a second offense of refusing to submit to a*
20 *chemical test of blood, breath, or urine for the purposes of determining the*
21 *alcohol or controlled substance content of the person's blood or breath*
22 *within ~~five (5)~~ seven (7) years of the first offense;*

23 *(3) Revocation for three (3) years, during which no restricted*
24 *permit may be issued, for the third offense of refusing to submit to a*
25 *chemical test of blood, breath, or urine for the purpose of determining the*
26 *alcohol or controlled substance content of the person's blood within ~~five (5)~~*
27 *seven (7) years of the first offense; and*

28 *(4) Lifetime revocation, during which no restricted permit may*
29 *be issued, for the fourth or subsequent offense of refusing to submit to a*
30 *chemical test of blood, breath, or urine for the purpose of determining the*
31 *alcohol or controlled substance content of the person's blood or breath*
32 *within ~~five (5)~~ seven (7) years of the first offense.*

33 *(c) For any arrest or offense occurring before July 30, 1999, but that*
34 *has not reached a final disposition as to judgment in court:*

35 *(1) The offense shall be decided under the law in effect at the*
36 *time the offense occurred; and*

