

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

A Bill

HOUSE BILL 2048

4
5 By: Representative King
6
7

For An Act To Be Entitled

8
9 AN ACT TO INCREASE THE SENTENCES FOR REPEAT DWI
10 OFFENDERS; TO PROVIDE FOR THE FORFEITURE OF A
11 PERSON'S VEHICLE AFTER A SECOND OR SUBSEQUENT
12 CONVICTION FOR DRIVING WHILE INTOXICATED OR FOR
13 DRIVING A MOTOR VEHICLE ON A SUSPENDED LICENSE
14 DUE TO DRIVING WHILE INTOXICATED; AND FOR OTHER
15 PURPOSES.
16

Subtitle

17
18 TO INCREASE THE SENTENCES FOR REPEAT DWI
19 OFFENDERS AND TO PROVIDE FOR FORFEITURE
20 OF A PERSON'S VEHICLE AFTER A SECOND OR
21 SUBSEQUENT OFFENSE OR FOR DRIVING ON A
22 SUSPENDED LICENSE DUE TO DRIVING WHILE
23 INTOXICATED.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 5-65-105 is amended to read as follows:

29 5-65-105. Operation of motor vehicle during period of license
30 suspension or revocation.

31 ~~Any~~ A person whose privilege to operate a motor vehicle has been
32 suspended or revoked under a provision of this act who operates a motor
33 vehicle in this state during the period of the suspension or revocation upon
34 conviction is guilty of an unclassified misdemeanor and:

35 (1) ~~shall~~ Shall be imprisoned for ten (10) days; ~~and~~

36 (2) ~~may~~ May be assessed a fine of not more than one thousand



1 dollars (\$1,000)~~;~~ and

2 (3) May have his or her motor vehicle that he or she was
 3 operating during the period of the suspension or revocation seized and sold
 4 under § 5-65-117.

5
 6 SECTION 2. Arkansas Code § 5-65-111 is amended to read as follows:

7 5-65-111. Prison terms – Exception.

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

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

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

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

25 (b) Any person who pleads guilty or nolo contendere to or is found
 26 guilty of violating § 5-65-103 after one (1) or more prior violations of § 5-
 27 65-103 or any other equivalent penal law of another state or foreign
 28 jurisdiction shall be imprisoned or shall be ordered to perform public
 29 service in lieu of ~~jail imprisonment~~ as follows:

30 (1)(A) For no fewer than seven (7) days but no more than one (1)
 31 year for the second offense ~~occurring within five (5) years of the first~~
 32 ~~offense~~ or no fewer than thirty (30) days of community service and the person
 33 is guilty of an unclassified misdemeanor.

34 (B)(i) However, if a person under sixteen (16) years of
 35 age was in the motor vehicle at the time of the second offense, for no fewer
 36 than thirty (30) days but no more than one (1) year for the second offense

1 ~~occurring within five (5) years of the first offense~~ or no fewer than sixty
 2 (60) days of community service and the person is guilty of an unclassified
 3 misdemeanor.

4 (ii) If the court orders community service, the
 5 court shall clearly set forth in written findings the reasons for the order
 6 of community service;

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

11 (B) ~~(i)~~ However, if a person under sixteen (16) years of
 12 age was in the motor vehicle at the time of the third offense, ~~for no fewer~~
 13 ~~than one hundred twenty days (120) days but no more than one (1) year for the~~
 14 ~~third offense occurring within five (5) years of the first offense or no~~
 15 ~~fewer than one hundred twenty (120) days of community service~~ the court may
 16 add an additional six (6) months to the person's sentence.

17 ~~(ii)~~ ~~If the court orders community service, the~~
 18 ~~court shall clearly set forth in written findings the reasons for the order~~
 19 ~~of community service;~~

20 (3)(A) ~~For at least one (1) year but no more than six (6) years~~
 21 ~~for the fourth offense occurring within five (5) years of the first offense~~
 22 ~~or not less than one (1) year of community service and is guilty of a felony~~
 23 For the fourth offense, the person is guilty of a Class C felony.

24 (B) ~~(i)~~ However, if a person under sixteen (16) years of
 25 age was in the motor vehicle at the time of the fourth offense, ~~for at least~~
 26 ~~two (2) years but no more than six (6) years for the fourth offense occurring~~
 27 ~~within five (5) years of the first offense or not less than two (2) years of~~
 28 ~~community service and is guilty of a felony~~ the court may add an additional
 29 one (1) year to the person's sentence.

30 ~~(ii)~~ ~~If the court orders community service, the~~
 31 ~~court shall clearly set forth in written findings the reasons for the order~~
 32 ~~of community service; and~~

33 (4)(A)~~(i)~~ ~~For at least two (2) years but no more than ten (10)~~
 34 ~~years for the fifth or subsequent offense occurring within five (5) years of~~
 35 ~~the first offense or not less than two (2) years of community service and is~~
 36 ~~guilty of a felony~~ For the fifth or subsequent offense, the person is guilty

1 of a Class B felony.

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

5 (B)~~(i)~~ However, if a person under sixteen (16) years of
6 age was in the motor vehicle at the time of the fifth or subsequent offense,
7 ~~for at least three (3) years but no more than ten (10) years for the fifth~~
8 ~~offense occurring within five (5) of the first offense or not less than three~~
9 ~~(3) years of community service and is guilty of a felony the court may add an~~
10 ~~additional three (3) years to the person's sentence.~~

11 ~~(ii) If the court orders community service, the~~
12 ~~court shall clearly set forth in written findings the reasons for the order~~
13 ~~of community service.~~

14 (c) For any arrest or offense occurring before July 30, 1999, the
15 effective date of this act but that has not reached a final disposition as to
16 judgment in court, the offense shall be decided under the law in effect at
17 the time the offense occurred, and any defendant is subject to the penalty
18 provisions in effect at that time and not under the provisions of this
19 section.

20 (d) It is an affirmative defense to prosecution under subdivisions
21 (a)(2), (b)(1)(B), (b)(2)(B), (b)(3)(B), and (b)(4)(B) of this section that
22 the person operating or in actual physical control of the motor vehicle was
23 not more than two (2) years older than the passenger.

24
25 SECTION 3. Arkansas Code § and 5-65-112 is amended to read as follows:
26 5-65-112. Fines.

27 (a) Any person who pleads guilty or nolo contendere to or is found
28 guilty of violating § 5-65-103 shall be fined:

29 (1) No less than one hundred fifty dollars (\$150) and no more
30 than one thousand dollars (\$1,000) for the first offense;

31 (2) No less than four hundred dollars (\$400) and no more than
32 three thousand dollars (\$3,000) for the second offense ~~occurring within five~~
33 ~~(5) years of the first offense; and~~

34 (3) No less than nine hundred dollars (\$900) and no more than
35 five thousand dollars (\$5,000) for the third ~~or subsequent~~ offense ~~occurring~~
36 ~~within five (5) years of the first offense;~~

1 (4) No less than one thousand five hundred dollars (\$1,500) and
 2 no more than ten thousand dollars (\$10,000) for the fourth offense, in
 3 addition to the fine authorized in § 5-4-201 for a Class C felony; and

4 (5) No less than three thousand dollars (\$3,000) and no more
 5 than fifteen thousand dollars (\$15,000) for the fifth or subsequent offense,
 6 in addition to the fine authorized in § 5-4-201 for a Class B felony.

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

12
 13 SECTION 4. Arkansas Code § 5-65-117(a), concerning the seizure and
 14 sale of motor vehicles driven by persons convicted of driving while
 15 intoxicated, is amended to read as follows:

16 (a)(1)(A) Any person who pleads guilty or nolo contendere or is found
 17 guilty of violating § 5-65-103 for a ~~fourth~~ second or subsequent offense
 18 occurring within three (3) years of ~~the first~~ a prior offense or of violating
 19 § 5-65-105, at the discretion of the court, may have his or her motor vehicle
 20 seized.

21 (B) If the motor vehicle is seized, the title to the motor
 22 vehicle is forfeited to the state.

23 (2)(A) If ordered by the court, it is the duty of the sheriff of
 24 the county where the offense occurred to seize the motor vehicle.

25 (B) The court may issue an order directing the sheriff to
 26 sell the motor vehicle seized at a public auction to the highest bidder
 27 within thirty (30) days from the date of judgment.

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