

1 State of Arkansas
2 90th General Assembly
3 First Extraordinary Session, 2015
4

As Engrossed: S5/27/15
A Bill

Call Item 5
SENATE BILL 4

5 By: Senators D. Johnson, J. Dismang, Burnett, E. Cheatham, A. Clark, Collins-Smith, K. Ingram, B.
6 Pierce, E. Williams
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE OFFENSES OF DRIVING WHILE
10 INTOXICATED AND UNDERAGE DRIVING UNDER THE INFLUENCE;
11 CONCERNING THE OFFENSES OF DRIVING OR BOATING WHILE
12 INTOXICATED AND DRIVING OR BOATING UNDER THE
13 INFLUENCE WHILE UNDERAGE, AS CREATED BY ACTS 2015,
14 NO. 299; TO DECLARE AN EMERGENCY; AND FOR OTHER
15 PURPOSES.
16
17

Subtitle

19 CONCERNING THE OFFENSES OF DRIVING WHILE
20 INTOXICATED, UNDERAGE DRIVING UNDER THE
21 INFLUENCE, DRIVING OR BOATING WHILE
22 INTOXICATED, AND DRIVING OR BOATING UNDER
23 THE INFLUENCE WHILE UNDERAGE; AND TO
24 DECLARE AN EMERGENCY.
25
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. DO NOT CODIFY. Legislative intent.

30 (a) It is the intent of the General Assembly with this act to address
31 the Supreme Court's holding in Leeka v. State, 2015 Ark. 183 (2015), that the
32 state must prove a culpable mental state in a prosecution for driving while
33 intoxicated.

34 (b) The General Assembly intends for this act to establish that the
35 current offenses of driving while intoxicated and underage driving under the
36 influence, as well as the offenses of driving or boating while intoxicated



1 and driving or boating under the influence while underage that were created
2 by Acts 2015, No. 299, § 6, be strict liability offenses, which are offenses
3 that require no culpable mental state be proven.

4
5 SECTION 2. Arkansas Code § 5-2-204 is amended to read as follows:

6 5-2-204. Elements of culpability – Exceptions to culpable mental state
7 requirement.

8 (a) A person does not commit an offense unless his or her liability is
9 based on conduct that includes a voluntary act or the omission to perform an
10 act that he or she is physically capable of performing.

11 (b) A person does not commit an offense unless he or she acts with a
12 culpable mental state with respect to each element of the offense that
13 requires a culpable mental state.

14 (c) However, a culpable mental state is not required if:

15 (1) The offense is a violation unless a culpable mental state is
16 expressly included in the definition of the offense; ~~or~~

17 (2) An offense defined by a statute not a part of the Arkansas
18 Criminal Code clearly indicates a legislative intent to dispense with any
19 culpable mental state requirement for the offense or for any element of the
20 offense; or

21 (3) The offense is defined as a strict liability offense.

22
23 SECTION 3. Arkansas Code § 5-65-103, concerning the offense of driving
24 while intoxicated, effective until July 22, 2015, is amended to add a new
25 subsection to read as follows:

26 (c) An alcohol-related offense under this section is a strict
27 liability offense.

28
29 SECTION 4. Arkansas Code § 5-65-103, as amended by Acts 2015, No. 299,
30 § 6, is amended to read as follows:

31 5-65-103. Driving or boating while intoxicated.

32 (a)(1) It is unlawful and punishable as provided in this chapter for a
33 person who is intoxicated to operate or be in actual physical control of a
34 motorboat on the waters of this state or a motor vehicle.

35 (2) It is unlawful and punishable as provided in this chapter
36 for a person to operate or be in actual physical control of a motorboat on

1 the waters of this state or a motor vehicle if at that time the alcohol
2 concentration in the person's breath or blood was eight-hundredths (0.08) or
3 more based upon the definition of alcohol concentration in § 5-65-204.

4 (b) The consumption of alcohol or the possession of an open container
5 of alcohol aboard a motorboat does not in and of itself constitute probable
6 cause that the person committed the offense of boating while intoxicated.

7 (c) An alcohol-related offense under this section is a strict
8 liability offense.

9
10 SECTION 5. Arkansas Code § 5-65-303, concerning the offense of
11 underage driving under the influence, effective until July 22, 2015, is
12 amended to add a new subsection to read as follows:

13 (c) An alcohol-related offense under this section is a strict
14 liability offense.

15
16 SECTION 6. Arkansas Code § 5-65-303, as amended by Acts 2015, No. 299,
17 § 6, is amended to read as follows:

18 5-65-303. Driving or boating under the influence while underage.

19 (a) A person commits the offense of driving or boating under the
20 influence while underage if he or she is underage and operates or is in
21 actual physical control of a motorboat on the waters of this state or a motor
22 vehicle while:

23 (1) Under the influence of an alcoholic beverage or similar
24 intoxicant; or

25 (2) At that time there was an alcohol concentration of two-
26 hundredths (0.02) but less than eight-hundredths (0.08) in his or her breath,
27 blood, urine, or saliva as determined by a chemical test.

28 (b) A violation of this section is an unclassified misdemeanor with
29 penalties as prescribed by this subchapter.

30 (c) An alcohol-related offense under this section is a strict
31 liability offense.

32
33 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
34 General Assembly of the State of Arkansas that the Supreme Court of Arkansas
35 held in Leeka v. State, 2015 Ark. 183 (2015), that in order to sustain a
36 conviction for driving while intoxicated, the state must prove that the

1 defendant had a reckless mental state despite the statute not expressly
2 requiring that the defendant's mental state be proven; that the General
3 Assembly intended and still intends to keep driving while intoxicated a
4 strict liability offense requiring no culpable mental state; that the General
5 Assembly passed and the Governor signed Act No. 299 during the 2015 Regular
6 Session which amended § 5-65-103 by combining the offenses of driving while
7 intoxicated and boating while intoxicated; that Act 299 also amended § 5-65-
8 303 by combining the offenses of underage driving under the influence and
9 underage boating under the influence; that Act No. 299 does not become
10 effective until July 22, 2015; that the new offenses of driving and boating
11 while intoxicated and driving or boating under the influence while underage
12 are strict liability offenses requiring no culpable mental state; that
13 Sections 2, 3, and 5 of this act are necessary because the offenses of
14 driving while intoxicated and underage driving under the influence should not
15 have an applicable culpable mental state as they are strict liability
16 offenses; and that Sections 4 and 6 of this act are necessary because the
17 offenses of driving or boating while intoxicated and underage driving or
18 boating under the influence should not have an applicable culpable mental
19 state as they are strict liability offenses. Therefore, an emergency is
20 declared to exist, and:

21 (1) Sections 2, 3, and 5 of this act being immediately necessary
22 for the preservation of the public peace, health, and safety shall become
23 effective on:

24 (A) The date of its approval by the Governor;

25 (B) If the bill is neither approved nor vetoed by the
26 Governor, the expiration of the period of time during which the Governor may
27 veto the bill; or

28 (C) If the bill is vetoed by the Governor and the veto is
29 overridden, the date the last house overrides the veto; and

30 (2) Sections 4 and 6 of this act being necessary for the
31 preservation of the public peace, health, and safety shall become effective
32 on July 22, 2015.

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34 */s/D. Johnson*