

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: H3/25/99 H3/31/99*

## A Bill

HOUSE BILL 1432

5 By: Representatives Carson, Hathorn, Hale, Hausam  
6  
7

### For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE *OMNIBUS DWI*  
10 *ACT TO PROVIDE ENHANCED CRIMINAL PENALTIES FOR*  
11 *SUBSEQUENT DWI CONVICTIONS WITH HIGH BLOOD ALCOHOL*  
12 *LEVELS; AND FOR OTHER PURPOSES. "*

### Subtitle

15 "TO AMEND VARIOUS SECTIONS OF THE *OMNIBUS*  
16 *DWI ACT TO PROVIDE ENHANCED CRIMINAL*  
17 *PENALTIES FOR SUBSEQUENT DWI CONVICTIONS*  
18 *WITH HIGH BLOOD ALCOHOL LEVELS. "*

19  
20  
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 *SECTION 1. Arkansas Code 5-65-104 (a) is amended to 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 one-tenth of*  
26 *one percent (0.1%) or more by weight of alcohol in the person's blood, § 5-65-*  
27 *103, or refusing to submit to a chemical test of blood, breath, or urine for*  
28 *the purpose of determining the alcohol or controlled substance contents of the*  
29 *person's blood, § 5-65-202, the arrested person shall immediately surrender*  
30 *his license, permit, or other evidence of driving privilege to the arresting*  
31 *law enforcement officer. The officer shall seize the license, permit, or other*  
32 *evidence of driving privilege surrendered by the arrested person or found on*  
33 *the arrested person during a search.*

34 *(2) If the license, permit, or other evidence of driving*  
35 *privilege seized by the officer has not expired and otherwise appears valid to*  
36 *the officer, the officer shall issue to the arrested person a dated receipt*

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1 for that license, permit, or other evidence of driving privilege on a form  
2 prescribed by the Department of Finance and Administration or its designee.  
3 This receipt shall be recognized as a license and shall authorize the arrested  
4 person to operate a motor vehicle for a period not to exceed thirty (30) days.  
5 The receipt form shall contain and shall constitute a notice of suspension or  
6 revocation of driving privileges by the Office of Driver Services of the  
7 Revenue Division of the Department of Finance and Administration, effective in  
8 thirty (30) days, notice of the right to a hearing within twenty (20) days,  
9 and as notice that, if a hearing is to be requested, the hearing request is  
10 required to be made within seven (7) calendar days of the notice being given.  
11 The receipt shall also contain details and phone numbers of the Office of  
12 Driver Services telling how to request the hearing. If the Office of Driver  
13 Services is unable to conduct a hearing within the twenty-day period, a  
14 temporary permit shall be issued and shall be valid until the date of the  
15 hearing. The seized license, permit, or other evidence of driving privilege  
16 and a copy of the receipt form issued to the arrested person shall be attached  
17 to the sworn report of the arresting officer and shall be submitted by mail or  
18 in person to the Director of the Department of Finance and Administration or  
19 his designated representative within seven (7) days of the issuance of the  
20 receipt. The failure of the arresting officer to timely file this report shall  
21 not affect the authority of the Office of Driver Services to suspend or revoke  
22 the driving privilege of the arrested person.

23 (3) Any notices from the Office of Driver Services required under  
24 this act which are not personally delivered shall be sent by certified mail  
25 and shall be deemed to have been delivered on the date when postmarked and  
26 shall be sent to the last known address on file with the Office of Driver  
27 Services. Refusal of the addressee to accept delivery or attempted delivery of  
28 the notice at the address obtained by the arresting law enforcement officer or  
29 on file with the Office of Driver Services shall not constitute nonreceipt of  
30 notice. For all notices which are personally delivered, the person shall be  
31 asked to sign a receipt acknowledging he received the required notice.

32 (4) The Office of Driver Services of the Revenue Division of the  
33 Department of Finance and Administration or its designated official shall  
34 suspend or revoke the driving privilege of an arrested person or shall suspend  
35 any nonresident driving privilege of an arrested person when it receives a  
36 sworn report from the law enforcement officer that he had reasonable grounds

1 to believe the arrested person had been operating or was in actual physical  
2 control of a motor vehicle while intoxicated or while there was one-tenth of  
3 one percent (0.1%) or more by weight of alcohol in the person's blood, § 5-65-  
4 103, which is accompanied by a written chemical test report reflecting that  
5 the arrested person was intoxicated or had an alcohol concentration of one-  
6 tenth of one percent (0.1%) or more, or is accompanied by a sworn report that  
7 the arrested person refused to submit to a chemical test of blood, breath, or  
8 urine for the purpose of determining the alcohol or controlled substance  
9 contents of the person's blood, as provided in § 5-65-202. The suspension or  
10 revocation shall be based on the number of previous offenses as follows:

11 (A)(i) Suspension for one hundred twenty (120) days for the  
12 first offense of operating or being in actual physical control of a motor  
13 vehicle while intoxicated or while there was one-tenth of one percent (0.1%)  
14 or more by weight of alcohol in the person's blood, § 5-65-103;

15 (ii) Suspension for ~~six (6) months~~ one hundred eighty  
16 (180) days for the first offense of operating or being in actual physical  
17 control of a motor vehicle while intoxicated by the ingestion of or by the use  
18 of a controlled substance;

19 (iii) Suspension for one hundred eighty (180) days  
20 for the first offense of refusing to submit to a chemical test of blood,  
21 breath, or urine for the purpose of determining the alcohol or controlled  
22 substance contents of the person's blood, § 5-65-202;

23 (B)(i) Suspension for sixteen (16) months, during which no  
24 restricted permits may be issued, for a second offense of operating or being  
25 in actual physical control of a motor vehicle while intoxicated or while there  
26 was one-tenth of one percent (0.1%) or more by weight of alcohol in the  
27 person's blood, § 5-65-103, within ~~three (3)~~ seven (7) years of the first  
28 offense;

29 (ii) Suspension for two (2) years, during which no  
30 restricted permits may be issued, for a second offense of refusing to submit  
31 to a chemical test of blood, breath, or urine for the purposes of determining  
32 the alcohol or controlled substance contents of the person's blood, § 5-65-  
33 202, within ~~three (3)~~ seven (7) years of the first offense;

34 (C)(i) Suspension for thirty (30) months, during which no  
35 restricted permits may be issued, for the third offense of operating or being  
36 in actual physical control of a motor vehicle while intoxicated or while there

1 was one-tenth of one percent (0.1%) or more by weight of alcohol in the  
2 person's blood, § 5-65-103, within ~~three (3)~~ seven (7) years of the first  
3 offense;

4 (ii) Revocation for three (3) years, during which no  
5 restricted permits may be issued, for the third offense of refusing to submit  
6 to a chemical test of blood, breath, or urine for the purpose of determining  
7 the alcohol or controlled substance contents of the person's blood, § 5-65-  
8 202, within ~~three (3)~~ seven (7) years of the first offense;

9 (D)(i) Revocation for four (4) years, during which no  
10 restricted permits may be issued, for the fourth or subsequent offense of  
11 operating or being in actual physical control of a motor vehicle while  
12 intoxicated or while there was one-tenth of one percent (0.1%) or more by  
13 weight of alcohol in the person's blood, § 5-65-103, within a ~~three-~~ seven (7)  
14 year period of the first offense.

15 (ii) Lifetime revocation, during which no restricted  
16 permit may be issued, for the fourth or subsequent offense of refusing to  
17 submit to a chemical test of blood, breath, or urine for the purpose of  
18 determining the alcohol or controlled substance contents of the person's  
19 blood, § 5-65-202, within ~~three (3)~~ seven (7) years of the first offense; and

20 (5) If the person is a resident without a license or permit to  
21 operate a motor vehicle in this state, the Office of Driver Services shall, in  
22 addition to any other penalties provided for in this act, deny to that person  
23 the issuance of a license or permit for a period of ~~six (6) months~~ one hundred  
24 eighty (180) days for a first offense. For a second or subsequent offense by a  
25 resident without a license or permit to operate a motor vehicle, the Office of  
26 Driver Services shall, in addition to any other penalties provided for in this  
27 act, deny to that person the issuance of a license or permit for a period of  
28 one (1) year.

29 (6)(A) If the person is a nonresident, such person's privilege to  
30 operate a motor vehicle in Arkansas shall be suspended in the same manner as  
31 that of a resident. The Office of Driver Services shall notify the office that  
32 issued the nonresident's motor vehicle license of the action taken by the  
33 Office of Driver Services.

34 (B) When the person is a nonresident without a license or  
35 permit to operate a motor vehicle, the Office of Driver Services shall notify  
36 the office of issuance for that person's state of residence of action taken by

1 the Office of Driver Services.

2 (7) Upon the written request of a person whose privilege to drive  
3 has been revoked, denied, or suspended, or who has received a notice of  
4 revocation, suspension, or denial by the arresting officer, the Office of  
5 Driver Services shall grant the person an opportunity to be heard provided the  
6 request is received by the Office of Driver Services within seven (7) calendar  
7 days after the notice of the revocation, suspension, or denial is given in  
8 accordance with this section or as otherwise provided in this act. Such a  
9 request shall not operate to stay the revocation, suspension, or denial by the  
10 Office of Driver Services until the disposition of said hearing.

11 (8)(A) The hearing shall be before the Office of Driver Services  
12 or its authorized agent, in the office of the Revenue Division of the  
13 Department of Finance and Administration nearest the county wherein the  
14 alleged events occurred for which the person was arrested, unless the Office  
15 of Driver Services or its authorized agent and the arrested person agree  
16 otherwise to the hearing being held in some other county or the Office of  
17 Driver Services or its authorized agent may schedule the hearing or any part  
18 thereof by telephone and conduct the hearing by telephone conference call. The  
19 hearing shall not be recorded. The scope of the hearing shall cover the issues  
20 of whether the officer had reasonable grounds to believe the person had been  
21 operating or was in actual physical control of a vehicle while intoxicated or  
22 while there was one-tenth of one percent (0.1%) or more by weight of alcohol  
23 in the person's blood or refused to submit to a chemical test of the blood,  
24 breath, or urine for the purpose of determining the alcohol or controlled  
25 substance contents of the person's blood and whether the person was placed  
26 under arrest. At the hearing, the burden of proof shall be on the state, and  
27 the decision shall be based on a preponderance of the evidence.

28 (B) If the revocation, suspension, or denial is based upon  
29 a chemical test result indicating that the person was intoxicated or there was  
30 one-tenth of one percent (0.1%) or more by weight of alcohol in the person's  
31 blood, as provided in § 5-65-103, and a sworn report from a law enforcement  
32 officer, the scope of the hearing shall also cover the issues as to whether:

33 (i) The person was advised that his privilege to  
34 drive would be revoked, suspended, or denied if the test result reflected an  
35 alcohol concentration of one-tenth of one percent (0.1%) or more or the  
36 presence of other intoxicating substances or combination of intoxicating

1 substances;

2 (ii) The breath, blood, or urine specimen was  
3 obtained from the person within the established and certified criteria of the  
4 Department of Health;

5 (iii) The testing procedures used were in accordance  
6 with existing rules; and

7 (iv) The test result in fact reflects an alcohol  
8 concentration, presence of other intoxicating substances, or a combination  
9 thereof.

10 (C) If the revocation, suspension, or denial is based upon  
11 the refusal of the person to submit to a chemical test as provided in § 5-65-  
12 202, reflected in a sworn report by a law enforcement officer, the scope of  
13 the hearing shall also include whether:

14 (i) The person refused to submit to the test or  
15 tests; and

16 (ii) The person was informed that his privilege to  
17 drive would be revoked, suspended, or denied if the person refused to submit  
18 to the test or tests.

19 (9) In order to determine the number of previous offenses to  
20 consider when suspending or revoking the arrested person's driving privileges,  
21 the Office of Driver Services shall consider as a previous offense:

22 (A) Any convictions for offenses of operating or being in  
23 actual physical control of a motor vehicle while intoxicated or while there is  
24 one-tenth of one percent (0.1%) or more by weight of alcohol in the person's  
25 blood under § 5-65-103 or refusing to submit to a chemical test under § 5-65-  
26 202 which occurred prior to July 1, 1996; and

27 (B) Any suspension or revocation of driving privileges for  
28 arrests for operating or being in actual physical control of a motor vehicle  
29 while intoxicated or while there is one-tenth of one percent (0.1%) or more by  
30 weight of alcohol in the person's blood under § 5-65-103 or refusing to submit  
31 to a chemical test under § 5-65-202 occurring on or after July 1, 1996, where  
32 the person was not subsequently acquitted of the criminal charges."

33

34 SECTION 2. Arkansas Code 5-65-105 is amended to read as follows:

35 "5-65-105. Operation of motor vehicle during period of license  
36 suspension or revocation.

1 Any person whose privilege to operate a motor vehicle has been suspended  
2 or revoked under the provisions of this act, who shall, during the period of  
3 such suspension or revocation, operate a motor vehicle in this state, shall be  
4 imprisoned for ten (10) days, and the motor vehicle may, within the discretion  
5 of the court, be immobilized for a period not to exceed thirty (30) days."  
6

7 SECTION 3. Arkansas Code 5-65-111 is amended to read as follows:

8 "5-65-111. Prison terms - Exception.

9 (a) Any person who pleads guilty, nolo contendere, or is found guilty  
10 of violating § 5-65-103 may, for a first offense, be imprisoned for no less  
11 than twenty-four (24) hours and no more than one (1) year, except that the  
12 court may order public service in lieu of jail, and, in such instance, the  
13 court shall include the reasons therefor in its written order or judgment.

14 (b) Any person who pleads guilty, nolo contendere, or is found guilty  
15 of violating § 5-65-103 or any other equivalent penal law of another state or  
16 foreign jurisdiction shall be imprisoned:

17 (1) For no less than seven (7) days and no more than one (1) year  
18 for the second offense occurring within ~~three (3)~~ seven (7) years of the first  
19 offense where, at the time of the second offense, such person is found to have  
20 had a blood alcohol level by weight of less than fifteen hundredths (0.15) or  
21 is otherwise found to be intoxicated;

22 (2) For no less than fourteen (14) days and no more than two (2)  
23 years for the second offense occurring within seven (7) years of the first  
24 offense where, at the time of the second offense, such person is found to have  
25 had a blood alcohol level by weight of fifteen hundredths (0.15) or higher;

26 ~~(2) (3)~~ (3) For no less than ninety (90) days nor more than ~~one (1)~~  
27 year two (2) years for the third offense occurring within ~~three (3)~~ seven (7)  
28 years of the first offense where, at the time of the third offense, such  
29 person is found to have had a blood alcohol level by weight of less than  
30 fifteen hundredths (0.15) or is otherwise found to be intoxicated;

31 (4) For no less than one hundred eighty (180) days and no more  
32 than four (4) years for the third offense occurring within seven (7) years of  
33 the first offense where, at the time of the third offense, such person is  
34 found to have had a blood alcohol level by weight of fifteen hundredths (0.15)  
35 or higher;

36 ~~(3) (5)~~ (5) For at least ~~one (1) year~~ two (2) years but no more than

1 ~~six (6)~~ ten (10) years for the fourth or subsequent offense occurring within  
2 ~~three (3)~~ seven (7) years of the first offense and shall be guilty of a  
3 felony.

4 (c) For purposes of imposing the enhanced penalties provided for  
5 herein, if a person is convicted of a first offense DWI and is found to have  
6 had a blood alcohol content (BAC) of between ten hundredths (0.10) and  
7 fourteen hundredths (0.14) percent, the court shall impose the enhanced  
8 penalties provided for second and subsequent offenses, as applicable, where  
9 such person is found to have a blood alcohol content (BAC) of fifteen  
10 hundredths (0.15) percent or higher within seven (7) years of such first  
11 conviction.

12 (d) The prison terms prescribed herein shall be ordered in addition to  
13 any fines imposed pursuant to Arkansas Code 5-65-112, administrative license  
14 suspension or revocation, or other applicable administrative or criminal  
15 sanctions."

16  
17 SECTION 4. Arkansas Code 5-65-112 is amended to read as follows:

18 "5-65-112. Fines.

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

21 (1) No less than one hundred fifty dollars (\$150) nor more than  
22 one thousand dollars (\$1,000) for the first offense where such person is found  
23 to have had a blood alcohol level by weight of less than fifteen hundredths  
24 (0.15) or is otherwise found to be intoxicated;

25 (2) No less than three hundred dollars (\$300) nor more than two  
26 thousand dollars (\$2,000) for the first offense where such person is found to  
27 have had a blood alcohol level by weight of fifteen hundredths (0.15) or  
28 higher;

29 ~~(2)(3)~~ (3) No less than four hundred dollars (\$400) nor more than  
30 three thousand dollars (\$3,000) for the second offense occurring within ~~three~~  
31 ~~(3)~~ seven (7) years of the first offense where, at the time of the second  
32 offense, such person is found to have had a blood alcohol level by weight of  
33 less than fifteen hundredths (0.15) or is otherwise found to be intoxicated;

34 (4) No less than eight hundred dollars (\$800) nor more than six  
35 thousand dollars (\$6,000) for the second offense occurring within seven (7)  
36 years of the first offense where, at the time of the second offense, such



1 person is found to have had a blood alcohol level by weight of fifteen  
 2 hundredths (0.15) or higher;

3 ~~(3)(5)~~ No less than nine hundred dollars (\$900) one thousand  
 4 dollars (\$1,000) nor more than five thousand dollars (\$5,000) eight thousand  
 5 dollars (\$8,000) for the third or subsequent offense occurring within three  
 6 ~~(3)~~ seven (7) years of the first offense where, at the time of the third of  
 7 subsequent offense, such person is found to have had a blood alcohol level by  
 8 weight of less than fifteen hundredths (0.15) or is otherwise found to be  
 9 intoxicated; and-

10 (6) No less than two thousand dollars (\$2,000) nor more than ten  
 11 thousand dollars (\$10,000) for the third or subsequent offense occurring  
 12 within seven (7) years of the first offense where, at the time of the third of  
 13 subsequent offense, such person is found to have had a blood alcohol level by  
 14 weight of fifteen hundredths (0.15) or higher.

15 (b) The fines prescribed herein shall be imposed in addition to any  
 16 prison terms ordered pursuant to Arkansas Code 5-65-111, administrative  
 17 license suspension or revocation, or other applicable administrative or  
 18 criminal sanctions."

19  
 20 SECTION 5. Arkansas Code 5-65-115 is amended to read as follows:

21 "5-65-115. Alcohol treatment or education program - Fee.

22 (a) Any person who pleads guilty or nolo contendere, or is found guilty  
 23 of violating § 5-65-103, shall, in addition to other penalties provided  
 24 herein, be required to complete an alcohol education program as prescribed and  
 25 approved by the Arkansas Highway Safety Program or an alcoholism treatment  
 26 program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the  
 27 Department of Health. Such alcoholism education program may collect a program  
 28 fee of up to fifty dollars (\$50.00) per enrollee to offset program costs. A  
 29 person ordered to complete an alcoholism treatment program under this section  
 30 may be required to pay, in addition to the costs collected for treatment, a  
 31 fee of up to twenty-five dollars (\$25.00) to offset the additional costs  
 32 associated with reporting requirements under this subchapter. The alcoholism  
 33 education program shall report semiannually to the Arkansas Highway Safety  
 34 Program all revenue derived from this fee.

35 (b) A person who pleads guilty or nolo contendere to, or who is found  
 36 guilty of violating, § 5-65-103, shall furnish proof of attendance at, and

1 completion of the alcoholism treatment or education program before  
2 reinstatement of his or her driver's license suspended or revoked under this  
3 act."

4  
5 SECTION 6. Arkansas Code 5-65-117(a) is amended to read as follows:

6 "(a) Any person who pleads guilty, nolo contendere, or is found guilty  
7 of violating § 5-65-103 for a fourth offense occurring within ~~three (3)~~ seven  
8 (7) years of the first offense, may, at the discretion of the court, shall  
9 have his motor vehicle seized, and the state shall initiate forfeiture  
10 proceedings against it pursuant to §§5-64-501 through 5-64-509. Upon  
11 forfeiture of the vehicle, title to such motor vehicle, if seized, shall be  
12 forfeited to the state. If ordered by the court, it shall be the duty of the  
13 sheriff of the county in which the offense seizure occurred shall to seize the  
14 motor vehicle. The court shall have the discretion to issue an order  
15 directing the sheriff to sell the motor vehicle seized, within thirty (30)  
16 days from the date of judgment, at public auction to the highest bidder."

17  
18 SECTION 7. Arkansas Code 5-65-118(a) is amended to read as follows:

19 "(a)(1) In addition to the other penalties authorized for violations of  
20 this chapter, a court may, in its discretion, upon finding a person  
21 financially able to afford an interlock device and upon a finding of guilt or  
22 a plea of guilty or nolo contendere for violating § 5-65-103, for a first or  
23 second offense, order the person to operate only a motor vehicle which is  
24 equipped with a functioning ignition interlock device, and this restriction  
25 may continue for a period of up to one (1) year after such person's license is  
26 no longer suspended or restricted under the provisions of § 5-65-104.  
27 However, upon finding a person financially able to afford an interlock device  
28 and upon a finding of guilt or a plea of guilty or nolo contendere for  
29 violating § 5-65-103, for a third or subsequent offense, the court shall order  
30 the third or subsequent offender to operate only a motor vehicle which is  
31 equipped with a functioning ignition interlock device, and this restriction  
32 may continue for a period of up to one (1) year after such person's license is  
33 no longer suspended or restricted under the provisions of § 5-65-104.

34 (2) The court shall establish a specific calibration setting no  
35 lower than two hundredths of one percent (.02%) nor more than five hundredths  
36 of one percent (.05%) of alcohol in the person's blood at which the ignition

1 *interlock device will prevent the motor vehicle from being started and the*  
2 *period of time that the person shall be subject to the restriction.*

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

7  
8 *SECTION 8. All provisions of this act of a general and permanent nature*  
9 *are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code*  
10 *Revision Commission shall incorporate the same in the Code.*

11  
12 *SECTION 9. If any provision of this act or the application thereof to*  
13 *any person or circumstance is held invalid, such invalidity shall not affect*  
14 *other provisions or applications of the act which can be given effect without*  
15 *the invalid provision or application, and to this end the provisions of this*  
16 *act are declared to be severable.*

17 *SECTION 10. All laws and parts of laws in conflict with this act are*  
18 *hereby repealed.*

19 */s/ Carson, et al*  
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