

State DUI Laws: Arkansas

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

Arkansas Omnibus DWI Act

§ 5-65-101. Omnibus DWI Act -- Application

(a) This act shall be known as the "Omnibus DWI Act".

(b) The provisions of this act shall govern the prosecution and administrative proceedings for offenses defined by this act and committed after March 21, 1983.

(c) The provisions of this act do not apply to offenses committed prior to March 21, 1983. Those offenses shall be construed and punished in accordance with the law existing at the time of the commission of the offense. However, all pleas of guilty and nolo contendere and all findings of guilty of driving while intoxicated within three (3) years prior to March 21, 1983, shall be counted in determining the number of prior offenses for the purposes of enhancing the penalties provided by this act for violating § 5-65-103.

§ 5-65-102. Definitions

As used in this act, unless the context otherwise requires:

(1) "Intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof, to such a degree that the driver's reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself and other motorists or pedestrians;

(2) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI. The fact that any person charged with a violation of this act is or has been entitled to use that drug or controlled substance under the laws of this state shall not constitute a defense against any charge of violating this act;

(3) "Victim impact statement" means a voluntary written or oral statement of a victim, or relative of a victim, who has sustained serious injury due to a violation of this act;

(4) "Sworn report" means a signed, written statement of a certified law enforcement officer, under penalty of perjury, on a form provided by the Director of the Department of Finance and Administration.

§ 5-65-103. Unlawful acts

(a) It is unlawful and punishable as provided in this act for any person who is intoxicated to operate or be in actual physical control of a motor vehicle.

(b) It is unlawful and punishable as provided in this act for any person to operate or be in actual physical control of a motor vehicle if at that time the alcohol concentration in the person's breath or blood was eight-hundredths (0.08) or more based upon the definition of breath, blood, and urine concentration in § 5-65-204.

§ 5-65-104. Seizure, suspension, and revocation of license -- Temporary permits -- Ignition interlock restricted license

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

(2) The Office of Driver Services of the Revenue Division of the Department of Finance and Administration or its designated official shall suspend or revoke the driving privilege of an arrested person or shall suspend any nonresident driving privilege of an arrested person, as provided in § 5-65-402. The suspension or revocation shall be based on the number of previous offenses as follows:

(A) (i) Suspension for one hundred twenty (120) days for the first offense of operating or being in actual physical control of a motor vehicle while intoxicated or while there was an alcohol concentration of at least eight hundredths (0.08) but less than fifteen hundredths (0.15) by weight of alcohol in the person's blood or breath, § 5-65-103;

(ii) Suspension for six (6) months for the first offense of operating or being in actual physical control of a motor vehicle while intoxicated by the ingestion of or by the use of a controlled substance; and

(iii) Suspension for one hundred eighty (180) days for the first offense of operating or being in actual physical control of a motor vehicle while intoxicated and while there was an alcohol concentration of fifteen hundredths (0.15) or more by weight of alcohol in the person's blood or breath. Provided, however, that if the court orders issuance of an ignition interlock restricted license under § 5-65-118, the interlock restricted license shall be available immediately. The restricted driving permit provision of § 5-65-120 does not apply to this suspension;

(B) Suspension for twenty-four (24) months for a second offense of operating or being in actual physical control of a motor vehicle while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-103, within five (5) years of the first offense. Provided, however, that if the court orders issuance of an ignition interlock restricted license under § 5-65-118, the suspension period for which no restricted license shall be available shall be a minimum of one (1) year;

(C) Suspension for thirty (30) months for the third offense of operating or being in actual physical control of a motor vehicle while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-103, within five (5) years of the first offense. Provided, however, that if the court orders issuance of an ignition interlock restricted license under § 5-65-118, the suspension period for which no restricted license shall be available shall be a minimum of one (1) year; and

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

(3) If a person is a resident who is convicted of driving without a license or permit to operate a motor vehicle and the underlying basis for the suspension, revocation, or restriction of the license was for a violation of § 5-65-103, the court may order, in addition to any other penalties provided for under law, that the Office of Driver Services issue only an ignition interlock restricted permit for a period of one (1) year prior to the reinstatement or reissuance of a license or permit after the person would otherwise be eligible for reinstatement or reissuance of the person's license.

(4) In order to determine the number of previous offenses to consider when suspending or revoking the arrested person's driving privileges, the office shall consider as a previous offense:

(A) Any convictions for offenses of operating or being in actual physical control of a motor vehicle while intoxicated or while there was an alcohol concentration of eight-hundredths (0.08) or more in the person's breath or blood under § 5-65-103 or refusing to submit to a chemical test under § 5-65-202 which occurred prior to July 1, 1996;

(B) Any suspension or revocation of driving privileges for arrests for operating or being in actual physical control of a motor vehicle while intoxicated or while there is an alcohol concentration of eight-hundredths (0.08) or more in the person's breath or blood under § 5-65-103 or refusing to submit to a chemical test under § 5-65-202 occurring on or after July 1, 1996, where the person was not subsequently acquitted of the criminal charges.

(b) (1) Any person whose license is suspended or revoked pursuant to this section shall be required to complete an alcohol education program as prescribed and approved by the Highway Safety Program or an alcohol treatment program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health, unless the charges are dismissed or the person is acquitted of the charges upon which the suspension or revocation is based.

(2) A person whose license is suspended or revoked pursuant to this section shall furnish proof of attendance at, and completion of, the alcoholism treatment or education program before reinstatement of his or her suspended or revoked driver's license or shall furnish proof of dismissal or acquittal of the charge on which the suspension or revocation is based.

(3) Even if a person has filed a de novo petition for review pursuant to former subsection (c) of this section, the person shall be entitled to reinstatement of driving privileges upon complying with this subsection and shall not be required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

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

Any person whose privilege to operate a motor vehicle has been suspended or revoked under the provisions of this act, who shall operate a motor vehicle in this state during the period of such suspension or revocation, shall be imprisoned for ten (10) days and may be assessed a fine of not more than one thousand dollars (\$ 1,000).

§ 5-65-106. Impoundment of license plate

(a) When any law enforcement officer arrests a person for operating a motor vehicle while that person's operator's license or permit has been suspended or revoked under the laws of any state due to such person having previously been found guilty or having pleaded guilty or nolo contendere to violating § 5-65-103, and if the motor vehicle operated by the person is owned in whole or part by the person, the motor vehicle license plate shall be impounded by the law enforcement officer for no less than ninety (90) days.

(b) If the court determines it is in the best interest of dependents of the offender, the court shall instruct the Director of the Department of Finance and Administration to issue a temporary substitute license plate to that vehicle, and the license plate shall indicate that the original plate has been impounded.

§ 5-65-107. Persons arrested to be tried on charges -- No charges reduced -- Filing citations

(a) Persons arrested violating § 5-65-103 shall be tried on those charges or plead to such charges, and no such charges shall be reduced.

(b) Furthermore, when a law enforcement officer issues a citation for violating § 5-65-103, the citation shall be filed with the court as soon as possible.

§ 5-65-108. No probation prior to adjudication of guilt

(a) Section 16-93-301 et seq. allows judges of circuit and municipal courts to place on probation first offenders who plead guilty or nolo contendere prior to an adjudication of guilt.

(b) Upon successful completion of the probation terms, the judge is allowed to discharge the accused without a court adjudication of guilt and expunge the record.

(c) Hereafter, no circuit judge or municipal judge may utilize the provisions of § 16-93-301 et seq. in instances where the defendant is charged with violating § 5-65-103.

§ 5-65-109. Presentencing report

(a) The court shall immediately request and the Highway Safety Program or its designee shall provide a presentence screening and assessment report of the defendant upon a plea of guilty or nolo contendere to violating § 5-65-103 or a finding of guilt of violating § 5-65-103.

(b) (1) The presentence report shall be provided within thirty (30) days of the request, and the court shall not pronounce sentence until receipt of the presentence report.

(2) (A) After entry of a plea of guilty or nolo contendere, or a finding of guilt and if the sentencing of the defendant is delayed by the defendant, the clerk shall notify the defendant by first class mail sent to the defendant's last known address that the defendant has fifteen (15) days to appear and show cause for failing to appear for sentencing.

(B) After expiration of the fifteen (15) days, the court may proceed with sentencing even in the absence of the defendant.

(c) The report shall include, but not be limited to, the defendant's driving record, an alcohol problem assessment, and a victim impact statement where applicable.

§ 5-65-110. Record of violations and court actions -- Abstract

(a) Every magistrate or judge of a court shall keep or cause to be kept a record of every violation of this act presented to that court and shall keep a record of every official action by that court in reference thereto including, but not limited to, a record of every finding of guilt, plea of guilty or nolo contendere, judgment of acquittal, and the amount of fine and jail sentence.

(b) Within thirty (30) days after sentencing a person who has been found guilty, or pleaded guilty or nolo contendere on a charge of violating any provision of this act, every magistrate of the court or clerk of the court shall prepare and immediately forward to the Office of Driver Services an abstract of the record of the court covering the case in which the person was found guilty, or pleaded guilty or nolo contendere, which abstract shall be certified by the person so required to prepare it to be true and correct.

(c) The abstract shall be made upon a form furnished by the Office of Driver Services and shall include:

- (1) The name and address of the party charged;
- (2) The number, if any, of the operator's or chauffeur's license of the party charged;
- (3) The registration number of the vehicle involved;
- (4) The date of hearing;
- (5) The plea;
- (6) The judgment; and
- (7) The amount of the fine and jail sentence, as the case may be.

§ 5-65-111. Prison terms -- Exception

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

(2) However, if a passenger under sixteen (16) years of age was in the vehicle at the time of the offense, a person who pleads guilty or nolo contendere to, or is found guilty of, violating § 5-65-103, for a first offense, may be imprisoned for no fewer than seven (7) days and no more than one (1) year, except that the court may order public service in lieu of jail, and in that instance, the court shall include the reasons therefor in its written order or judgment.

(b) Any person who pleads guilty or nolo contendere to, or is found guilty of, violating § 5-65-103 or any other equivalent

penal law of another state or foreign jurisdiction shall be imprisoned or shall be ordered to perform public service in lieu of jail as follows:

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

(B) (i) However, if a person under sixteen (16) years of age was in the vehicle at the time of the offense, for no fewer than thirty (30) days but no more than one (1) year for the second offense occurring within five (5) years of the first offense or no fewer than sixty (60) days of community service.

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

(2) (A) For no fewer than ninety (90) days but no more than one (1) year for the third offense occurring within five (5) years of the first offense or no fewer than ninety (90) days of community service.

(B) (i) However, if a person under sixteen (16) years of age was in the vehicle at the time of the offense, for no fewer than one hundred twenty days (120) days but no more than one (1) year for the third offense occurring within five (5) years of the first offense or no fewer than one hundred twenty (120) days of community service.

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

(3) (A) For at least one (1) year but no more than six (6) years for the fourth offense occurring within five (5) years of the first offense or not less than one (1) year of community service and shall be guilty of a felony.

(B) (i) However, if a person under sixteen (16) years of age was in the vehicle at the time of the offense, for at least two (2) years but no more than six (6) years for the fourth offense occurring within five (5) years of the first offense or not less than two (2) years of community service and shall be guilty of a felony.

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

(4) (A) (i) For at least two (2) years but no more than ten (10) years for the fifth or subsequent offense occurring within five (5) years of the first offense or not less than two (2) years of community service and shall be guilty of a felony.

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

(B) (i) However, if a person under sixteen (16) years of age was in the vehicle at the time of the offense, for at least three (3) years but no more than ten (10) years for the fifth offense occurring within five (5) years of the first offense or not less than three (3) years of community service and shall be guilty of a felony.

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

(c) For all arrests or offenses occurring before July 30, 1999, but which have not reached a final disposition as to judgment in court, the offenses shall be decided under the law in effect at the time the offense occurred, and any defendant shall be subject to the penalty provisions in effect at that time and not under the provisions of this section.

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

§ 5-65-112. Fines

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

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

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

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

§ 5-65-114. Inability to pay -- Alternative public service work

In the event it is determined that any individual against whom fines, fees, or court costs are levied for driving while intoxicated or driving while impaired is financially unable to pay the fines, fees, or costs, the court levying the fines, fees, or costs shall order the individual to perform public service work of such type and for such duration as deemed appropriate by the court.

§ 5-65-115. Alcohol treatment or education program -- Fee

(a) (1) Any person whose driving privileges are suspended or revoked for violating § 5-65-103 shall be required to complete an alcohol education program as prescribed and approved by the Highway Safety Program or an alcoholism treatment program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health, in addition to other penalties provided by law.

(2) (A) The alcoholism education program may collect a program fee of up to seventy-five dollars (\$ 75.00) per enrollee to offset program costs.

(B) (i) A person ordered to complete an alcoholism education program or alcoholism treatment program under this section may be required to pay, in addition to the costs collected for education or treatment, a fee of up to twenty-five dollars (\$ 25.00) to offset the additional costs associated with reporting requirements under this subchapter.

(ii) The alcoholism education program shall report semiannually to the Highway Safety Program all revenue derived from this fee.

(b) (1) A person whose license is suspended or revoked for violating § 5-65-103 shall:

(A) (i) Furnish proof of attendance at and completion of the alcoholism treatment or education program before reinstatement of his or her suspended or revoked driver's license; and

(ii) Pay any fee for reinstatement required under § 5-65-119 or § 5-65-304; or

(B) Furnish proof of dismissal or acquittal of the charge on which the suspension or revocation is based.

(2) An application for reinstatement shall be made to the Office of Driver Services of the Department of Finance and Administration.

(c) Even if a person has filed a de novo petition for review pursuant to § 5-65-402, the person shall be entitled to reinstatement of driving privileges upon complying with this section and shall not be required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

(d) A person suspended under this act may enroll in an alcohol education program prior to disposition of the offense by the municipal court or circuit court but shall not be entitled to any refund of fees paid if the charges are dismissed or if the person is acquitted of the charges.

§ 5-65-116. Denial of driving privileges for minor -- Restricted permit

(a) As used in this section, the term "drug offense" shall have the same meaning ascribed to that term as provided in § 5-64-710(a)(1).

(b) (1) (A) Whenever a person who is less than eighteen (18) years of age pleads guilty or nolo contendere to, or is found guilty of, driving while intoxicated under § 5-65-101 et seq., or of any criminal offense involving the illegal possession or use of controlled substances, or of any drug offense, in this state or any other state, or is found by a juvenile court to have committed such an offense, the court having jurisdiction of such matter, including any federal court, shall prepare and transmit to the Department of Finance and Administration an order of denial of driving privileges for the minor.

(B) Courts within the State of Arkansas shall prepare and transmit all such orders within twenty-four (24) hours after the plea or finding to the department.

(C) Courts outside Arkansas having jurisdiction over any such person holding driving privileges issued by the State of Arkansas shall prepare and transmit such orders pursuant to agreements or arrangements entered into between that state and the Director of the Department of Finance and Administration.

(D) Such arrangements or agreements may also provide for the forwarding by the department of orders issued by courts within this state to the state wherein any such person holds driving privileges issued by that state.

(2) For any such person holding driving privileges issued by the State of Arkansas, courts within this state in cases of extreme and unusual hardship may provide in an order for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school.

(c) Penalties prescribed in this section and § 27-16-914 shall be in addition to all other penalties prescribed by law for the offenses covered by this section and § 27-16-914.

(d) In regard to any offense involving illegal possession under this section, it shall be a defense if the controlled substance is the property of an adult who owns the vehicle.

§ 5-65-117. Seizure and sale of motor vehicles

(a) Any person who pleads guilty, nolo contendere, or is found guilty of violating § 5-65-103 for a fourth offense occurring within three (3) years of the first offense, may, at the discretion of the court, have his motor vehicle seized, and title to such motor vehicle, if seized, shall be forfeited to the state. If ordered by the court, it shall be the duty of the sheriff of the county in which the offense occurred to seize the motor vehicle. The court shall have the discretion to issue an order directing the sheriff to sell the motor vehicle seized, within thirty (30) days from the date of judgment, at public auction to the highest bidder.

(b) The sheriff shall advertise the motor vehicle for sale for a period of two (2) weeks prior to the date of sale by at least one (1) insertion per week in a newspaper having a bona fide circulation in the county. The notice shall include a brief description of the motor vehicle to be sold, and the time, place, and terms of sale.

(c) The proceeds of the sale of the seized motor vehicle shall be deposited in the county general fund.

(d) After the sheriff has made the sale and has turned over the proceeds of the sale to the county treasurer, he shall report his actions to the court in which the defendant was tried. Such report shall be filed with the court within sixty (60) days from the date of judgment.

(e) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

§ 5-65-118. Additional penalties -- Ignition interlock devices

(a) (1) (A) In addition to the other penalties authorized for violations of this chapter, a court, in its discretion, upon a finding of guilt or a plea of guilty or nolo contendere for violating § 5-65-103 for a first or second offense, may order the person to operate only a motor vehicle which is equipped with a functioning ignition interlock device, and this restriction may continue for a period of up to one (1) year after the person's license is no longer suspended or restricted under the provisions of § 5-65-104.

(B) Upon a finding that a person is financially able to afford an ignition interlock device and upon a plea of guilty or nolo contendere to, or a finding of guilt of, a violation of § 5-65-103 for a third or subsequent offense, the court shall order the offender to operate only a motor vehicle which is equipped with a functioning ignition interlock device for up to one (1) year after the person's license is no longer suspended or restricted under § 5-65-104.

(2) The court, at the time of sentencing, may order the Office of Driver Services of the Department of Finance and Administration to issue a restricted license in accordance with the requirements under the provisions of § 5-65-104 to the person only after the person has verified installation of a functioning ignition interlock device to the office in any motor vehicle the person intends to operate, except for exemptions allowed under subsection (g) of this section.

(3) The court shall establish:

(A) A specific calibration setting no lower than two hundredths of one percent (.02%) nor more than five hundredths of one percent (.05%) of alcohol in the person's blood at which the ignition interlock device will prevent the motor vehicle's being started; and

(B) The period of time that the person shall be subject to the restriction.

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

(b) Upon ordering the use of an ignition interlock device, the court shall:

(1) State on the record the requirement for and the period of use of the device, provided however, that if the court orders the use of an ignition interlock device in conjunction with the issuance of a restricted license under the provisions of § 5-65-104, the period of requirement of use of the device shall be at least the remaining time period of the original suspension imposed under § 5-65-104, and so notify the Office of Driver Services of the Department of Finance and Administration;

(2) Direct that the records of the Office of Driver Services reflect:

(A) That the person may not operate a motor vehicle that is not equipped with an ignition interlock device; and

(B) Whether the court has expressly permitted the person to operate a motor vehicle without an ignition interlock device under subdivision (g)(2) of this section;

(3) Direct the Office of Driver Services to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person may operate only a motor vehicle equipped with an ignition interlock device and, prior to the issuance of a restricted license under the provisions of § 5-65-104 by the Office of Driver Services, require the person to show proof of installation of a certified ignition interlock device;

(4) Require proof of the installation of the device and periodic reporting by the person for verification of the proper operation of the device;

(5) Require the person to have the device serviced and monitored at least every sixty-seven (67) days for proper use and accuracy by an entity approved by the Department of Health; and

(6) Require the person to pay the reasonable cost of leasing or buying, monitoring, and maintaining the device and may establish a payment schedule therefor.

(c) (1) A person sentenced under this section to operate only a motor vehicle that is equipped with an ignition interlock device may not solicit or have another person start or attempt to start a motor vehicle equipped with such a device.

(2) Except as provided in subsection (g) of this section, a violation of this subsection is a Class A misdemeanor.

(d) (1) A person may not start or attempt to start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is sentenced under this section to operate only a motor vehicle that is equipped with an ignition interlock device.

(2) Except as provided in subsection (g) of this section, a violation of this subsection is a Class A misdemeanor.

(e) (1) A person may not tamper with or in any way attempt to circumvent the operation of an ignition interlock device that has been installed in a motor vehicle.

(2) Except as provided in subsection (g) of this section, a violation of this subsection is a Class A misdemeanor.

(f) (1) A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person whom the provider of the vehicle knows or should know was sentenced to operate only a motor vehicle equipped with an ignition interlock device.

(2) Except as provided in subsection (g) of this section, a violation of this subsection is a Class A misdemeanor.

(g) Any person found to have violated subsections (c)-(f) of this section is guilty of a Class A misdemeanor; provided, however, that penalty shall not apply if:

(1) The starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle;

(2) (A) The court finds that a person is required to operate a motor vehicle in the course and scope of the person's employment and, if the vehicle is owned by the employer, that the person may operate that vehicle during regular working hours for the purposes of his employment without installation of an ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is with the vehicle.

(B) This employment exemption shall not apply, however, if the business entity that owns the vehicle is owned or controlled by the person who is prohibited from operating a motor vehicle not equipped with an ignition interlock device; or

(3) If the person cannot provide proof of installation of a functioning ignition interlock device to the Office of Driver Services under § 5-65-118(a), the Office of Driver Services shall not issue a restricted license as authorized under § 5-65-118.

(h) In addition to any other penalties authorized under this section, if the court finds that the person has violated the conditions under this section related to the proper use, circumvention, or maintenance of an ignition interlock device, the court shall remove the ignition interlock restricted license from the person and order the Office of Driver Services to reinstate a license suspension for the term of the original license suspension. Provided, however, that the term of the reinstated suspension shall begin on the date of the court-ordered suspension under this subsection.

(i) Any person whose license was suspended under § 5-65-104 who would otherwise be eligible to obtain an ignition interlock restricted license may petition the court for a hearing, and the court may order the Office of Driver Services of the Revenue Division of the Department of Finance and Administration or its designated official to issue an ignition

interlock restricted license as authorized under the applicable section of §§ 5-65-104 and 5-65-205.

(j) (1) The Department of Health shall certify the ignition interlock systems for use in this state, shall approve the entities which install and monitor the systems, and shall adopt rules and regulations for the certification of the ignition interlock systems and system installation.

(2) The regulations shall require the ignition interlock systems, as a minimum, to:

(A) Not impede the safe operation of the vehicle;

(B) Minimize the opportunities to be bypassed;

(C) Work accurately and reliably in unsupervised environments;

(D) Measure, properly and accurately, the person's blood alcohol levels;

(E) Minimize the inconvenience to a sober user; and

(F) Be manufactured by an entity that is responsible for installation, user training, and servicing and maintenance of the systems, and that is capable of providing monitoring reports to the courts.

(3) The Department of Health shall develop a warning label to be affixed to all ignition interlock systems used in the state to warn any person of the possible penalties for tampering with or attempting to circumvent the interlock system.

(4) The Department of Health shall publish and update a list of certified ignition interlock manufacturers and approved ignition interlock system installers, and it shall be provided periodically to each municipal and circuit court in the state.

§ 5-65-119. Distribution of fee

The Office of Driver Services of the Department of Finance and Administration shall charge a fee of one hundred fifty dollars (\$ 150) for reinstating a driving privilege suspended or revoked because of an arrest for operating or being in actual physical control of a motor vehicle while intoxicated or while there was an alcohol concentration of eight-hundredths (0.08) or more in the person's breath or blood, § 5-65-103, or refusing to submit to a chemical test of blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood or breath, § 5-65-205, which shall be distributed as follows:

(1) Seven percent (7%) of the revenues derived from this fee shall be deposited in the State Treasury as special revenues and credited to the Public Health Fund to be used exclusively for the Office of Alcohol Testing of the Department of Health;

(2) Thirty-three percent (33%) of the revenues derived from this fee shall be deposited as special revenues in the State Treasury into the Constitutional Officers Fund and the State Central Services Fund as a direct revenue to be used by the Office of Driver Services for use in supporting the administrative driver's licensing revocation and sanctions programs provided for in this subchapter;

(3) Ten percent (10%) of the revenues derived from this fee shall be deposited in the State Treasury, and the

Treasurer of State shall credit them as general revenues to the various funds in the respective amounts to each and to be used for the purposes as provided in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(4) Fifty percent (50%) of the revenues derived from this fee shall be deposited in the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund.

§ 5-65-120. Restricted driving permit

(a) On July 1, 1996, and thereafter, the Office of Driver Services or its designated agent, following the administrative hearing for suspension or revocation of a driver's license as provided for in § 5-65-402, or upon the request of the person whose privilege to drive has been denied or suspended, may modify the denial or suspension in cases of extreme and unusual hardship by the issuance of a restricted driving permit when, upon review of the person's driving record for a time period of five (5) years prior to the current suspension or denial of driving privilege, it is determined, at the discretion of the Office of Driver Services or its designated agent, that the person is not a multiple traffic law offender or that the person does not present a threat to the general public and that no other adequate means of transportation exists for that person except to allow driving in any or all of the following situations:

- (1) To and from his or her place of employment;
- (2) In the course of his or her employment;
- (3) To and from an educational institution for the purpose of attending classes if the person is enrolled and regularly attending classes at the institution;
- (4) To and from the alcohol safety education and treatment course for drunk drivers; or
- (5) To and from a hospital or clinic for medical treatment or care for an illness, disease, or other medical condition of the driver or a family member.

(b) The restricted driving permit shall state the specific times and circumstances under which driving is permitted, but shall not be granted to any person suspended for a second or subsequent offense of violating § 5-65-103, § 5-65-205, § 5-65-303, or § 5-65-310.

(c) For all arrests or offenses occurring before July 30, 1999, but which have not reached a final disposition as to judgment in court, the offenses shall be decided under the law in effect at the time the offense occurred, and any defendant shall be subject to the penalty provisions in effect at that time and not under the provisions of this section.

SUBCHAPTER 2. CHEMICAL ANALYSIS OF BODY SUBSTANCES

§ 5-65-201. Rules and regulations

The State Department of Health is authorized to promulgate rules and regulations reasonably necessary to carry out the purposes of this act.

§ 5-65-202. Implied consent

(a) Any person who operates a motor vehicle or is in actual physical control of a motor vehicle in this state shall be deemed to have given consent, subject to the provisions of § 5-65-203, to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the alcohol or controlled substance content of his or her breath or blood if:

(1) The driver is arrested for any offense arising out of acts alleged to have been committed while the person was driving while intoxicated or driving while there was an alcohol concentration of eight-hundredths (0.08) or more in the person's breath or blood; or

(2) The person is involved in an accident while operating or in actual physical control of a motor vehicle; or

(3) At the time the person is arrested for driving while intoxicated, the law enforcement officer has reasonable cause to believe that the person, while operating or in actual physical control of a motor vehicle, is intoxicated or has an alcohol concentration of eight-hundredths (0.08) or more in the person's breath or blood.

(b) Any person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this section, and the tests may be administered subject to the provisions of § 5-65-203.

§ 5-65-203. Administration

(a) The chemical test or tests shall be administered at the direction of a law enforcement officer having reasonable cause to believe the person to have been operating or in actual physical control of a motor vehicle while intoxicated or while there was an alcohol concentration of eight-hundredths (0.08) or more in the person's breath or blood.

(b) (1) The law enforcement agency by which that officer is employed shall designate which of the tests shall be administered, and the agency shall be responsible for paying all expenses incurred in conducting the tests.

(2) If the person tested requests that additional tests be made, as authorized in § 5-65-204(e), the cost of the additional tests shall be borne by the person tested, unless the person is found not guilty, in which case the arresting law enforcement agency shall reimburse the person for the cost of the additional tests.

(3) If any person shall object to the taking of his blood for a test, as authorized in this chapter, the breath or urine of the person may be used to make the analysis.

§ 5-65-204. Validity -- Approved methods

(a) (1) Alcohol concentration shall mean either:

(A) Grams of alcohol per one hundred milliliters (100 ml) or one hundred cubic centimeters (100 cc) of blood; or

(B) Grams of alcohol per two hundred ten liters (210 l) of breath.

(2) The alcohol concentration of other bodily substances shall be based upon grams of alcohol per one hundred

milliliters (100 ml), or one hundred cubic centimeters (100 cc) of blood, the same being percent weight per volume or percent alcohol concentration.

(b) Chemical analyses of the person's blood, urine, or breath to be considered valid under the provisions of this act shall have been performed according to methods approved by the Department of Health or by an individual possessing a valid permit issued by the Department of Health for this purpose. The Department of Health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the Department of Health.

(c) Chemical analyses of the person's blood, urine, breath, or other bodily substance for determining the alcohol content of the blood or breath, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Board of Health.

(d) (1) When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of this section, blood may be drawn by a physician or a person acting under the direction and supervision of a physician.

(2) This limitation shall not apply to the taking of breath or urine specimens.

(3) No person, institution, or office in this state who withdraws blood for the purpose of determining alcohol or controlled substance content thereof at the request of a law enforcement officer under the provisions of this subchapter shall be held liable for violating any of the criminal laws of this state in connection therewith, nor shall any physician, institution, or person acting under the direction or supervision of a physician be held liable in tort for the withdrawal of such blood unless such persons are negligent in connection therewith, or the blood is taken over the objections of the subject.

(e) (1) The person tested may have a physician or a qualified technician, registered nurse, or other qualified person of his own choice administer a complete chemical test in addition to any test administered at the direction of a law enforcement officer.

(2) The law enforcement officer shall advise the person in writing of this right and that if the person chooses to have an additional test and the person is found not guilty, the arresting law enforcement agency will reimburse the person for the cost of the additional test.

(3) The refusal or failure of a law enforcement officer to advise a person of this right and to permit and assist the person to obtain a test shall preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer.

(f) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test shall be made available to him or his attorney.

§ 5-65-205. Refusal to submit.

(a) If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency, as provided in § 5-65-202, none shall be given, and the person's motor vehicle operator's license shall be seized by the law enforcement officer, and the officer shall immediately deliver to the

person from whom the license was seized a temporary driving permit, as provided by § 5-65-402.

(b) The Office of Driver Services of the Revenue Division of the Department of Finance and Administration shall then proceed to suspend or revoke the driving privilege of the arrested person, as provided in § 5-65-402. The suspension shall be as follows:

(1) (A) Suspension for one hundred eighty (180) days for the first offense of refusing to submit to a chemical test of blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood or breath. However, if the court orders issuance of an ignition interlock restricted license under § 5-65-118, the interlock restricted license shall be available immediately. The restricted driving permit provision of § 5-65-120 does not apply to this suspension.

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

(2) Suspension for two (2) years, during which no restricted permits may be issued, for a second offense of refusing to submit to a chemical test of blood, breath, or urine for the purposes of determining the alcohol or controlled substance contents of the person's blood or breath within five (5) years of the first offense;

(3) Revocation for three (3) years, during which no restricted permits may be issued, for the third offense of refusing to submit to a chemical test of blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood within five (5) years of the first offense; and

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

(c) For all arrests or offenses occurring before July 30, 1999, but which have not reached a final disposition as to judgment in court, the offenses shall be decided under the law in effect at the time the offense occurred, and any defendant shall be subject to the penalty provisions in effect at that time and not under the provisions of this section.

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

(1) Any conviction for offenses of operating or being in actual physical control of a motor vehicle while intoxicated or in violation of § 5-65-103 or refusing to submit to a chemical test which occurred prior to July 1, 1996; and

(2) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-103 or violation of § 5-65-205(a) occurring on or after July 1, 1996, where the person was subsequently convicted of the criminal charges.

(e) If the person is a resident without a license or permit to operate a motor vehicle in this state, the Office of Driver Services shall, in addition to any other penalties provided for in this section, deny to that person the issuance of a license or permit for a period of six (6) months for a first offense. For a second or subsequent offense by a resident without a license or permit to operate a motor vehicle, the Office of Driver Services shall, in addition to any other penalties provided for in this section, deny to that person the issuance of a license or permit for a period of one (1) year.

§ 5-65-206. Evidence in prosecution

(a) In any criminal prosecution of a person charged with the offense of driving while intoxicated, the amount of alcohol in the defendant's breath or blood at the time or within four (4) hours of the alleged offense, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance shall give rise to the following:

(1) If there was at that time an alcohol concentration of four-hundredths (0.04) or less in the defendant's blood, urine, breath, or other bodily substance, it shall be presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at the time an alcohol concentration in excess of four-hundredths (0.04) but less than eight-hundredths (0.08) by weight of alcohol in the defendant's blood, urine, breath, or other bodily substance, this fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(b) The foregoing provisions shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question whether or not the defendant was intoxicated.

(c) The chemical analysis referred to in this section shall be made by a method approved by the State Board of Health.

(d) (1) (A) The records and reports of certifications, rules, evidence analysis, or other documents pertaining to work performed by the Office of Alcohol Testing of the Department of Health under the authority of this chapter shall be received as competent evidence as to the matters contained in them in the courts of this state, subject to the applicable rules of criminal procedure when duly attested to by the program director or his assistant, in the form of an original signature or by certification of a copy.

(B) These documents shall be self-authenticating.

(2) However, the instrument performing the chemical analysis shall have been duly certified at least one (1) time in the last three (3) months preceding arrest, and the operator of the instrument shall have been properly trained and certified.

(3) Nothing in this section shall be deemed to abrogate a defendant's right of cross-examination of the person who performs the calibration test or check on the instrument, the operator of the instrument, or a representative of the Office of Alcohol Testing.

(4) The testimony of the appropriate analyst or official may be compelled by the issuance of a proper subpoena given ten (10) days prior to the date of hearing or trial, in which case the records and reports shall be admissible through the analyst or official, who shall be subject to cross-examination by the defendant or his counsel.

§ 5-65-207. Alcohol testing devices

(a) (1) Every instrument used to determine the alcohol content of the breath for the purpose of determining if the person was operating a motor vehicle while intoxicated or with an alcohol concentration of eight-hundredths (0.08) or more shall be so constructed that the analysis is made automatically when a sample of the person's breath is placed in the instrument, and without any adjustment or other action of the person administering the analysis.

(2) The instrument shall be so constructed that the alcohol content is shown by visible digital display on the instrument and on an automatic readout.

(b) Any breath analysis made by or through the use of an instrument that does not conform to the requirements prescribed in this section shall be inadmissible in any criminal or civil proceeding.

(c) (1) The State Board of Health is authorized to adopt appropriate rules and regulations to carry out the intent and purposes of this section, and only instruments approved by the board as meeting the requirements of this section and regulations of the board shall be used for making the breath analysis for determining alcohol concentration.

(2) (A) The Department of Health is specifically authorized to limit by its rules the types or models of testing devices which may be approved for use in Arkansas for the purposes set forth in this section.

(B) The approved types or models will be specified by manufacturer's name and model.

(d) All law enforcement agencies which conduct alcohol testing shall be in full compliance with the provisions of this section by June 28, 1989.

§ 5-65-208. Collisions -- Testing required

(a) When the driver of a motor vehicle is involved in an accident resulting in loss of human life or where there is reason to believe death may result, and there exists probable cause to believe that the driver is guilty of a violation of the state's law prohibiting driving while under the influence, in addition to penalties established elsewhere under state law, a test or tests of the driver's blood, breath, or urine shall be administered to the driver, even if fatally injured, to determine the presence of and percentage of concentration of alcohol or drugs, or both, in the person's body.

(b) (1) The police officer who responds to such collision, the physician in attendance, or any other person designated by state law who was present when the death occurred, shall order the test or tests as soon as practicable.

(2) (A) The medical personnel who conducted the foregoing test or tests of the driver's blood, breath, or urine shall forward the results of such test or tests to the Department of Arkansas State Police, which shall establish and maintain the results of the analyses required by subsection (a) of this section in a database.

(B) The information in the database shall reflect the number of fatal motor vehicle accidents in which:

(i) Alcohol was found to be a factor, with the percentage of alcohol concentration involved;

(ii) Drugs were found to be a factor, listing the class of drugs so found and their amounts; and

(iii) Both alcohol and drugs were found to be factors, with the percentage of alcohol concentration involved, and listing the class of drugs so found and their amounts.

(c) The results of the analyses required by this section shall be reported to the Department of Arkansas State Police and may be used by state and local officials only for statistical purposes that do not reveal the identity of the deceased person.

SUBCHAPTER 3. UNDERAGE DRIVING UNDER THE INFLUENCE

§ 5-65-301. Title

This subchapter may be known and cited as the "Underage Driving Under the Influence Law" or the "Underage DUI Law".

§ 5-65-302. Definitions

As used in this subchapter, unless the context otherwise requires:

(1) "Influence" means being controlled or affected by the ingestion of an alcoholic beverage or similar intoxicant, or any combination thereof, to such a degree that the driver's reactions, motor skills, and judgment are altered or diminished, even to the slightest scale, and the underage driver, therefore, due to inexperience and lack of skill, constitutes a danger of physical injury or death to himself and other motorists or pedestrians;

(2) "Underage" means any person who is under the age of twenty-one (21) years old and therefore may not legally consume alcoholic beverages in Arkansas.

§ 5-65-303. Conduct proscribed

(a) It is unlawful and punishable as provided in this subchapter for any underage person to operate or be in actual physical control of a motor vehicle while under the influence of an alcoholic beverage or similar intoxicant.

(b) It is unlawful and punishable as provided in this subchapter for any underage person to operate or be in actual physical control of a motor vehicle if at that time there was an alcohol concentration of two-hundredths (0.02) but less than eight-hundredths (0.08) in the person's breath or blood as determined by a chemical test of the person's blood or breath or other bodily substance.

§ 5-65-304. Seizure, suspension, and revocation of license -- Temporary permits

(a) At the time of arrest for violating § 5-65-303, the arresting officer shall seize the motor vehicle operator's license of the underage person arrested and issue to such person a temporary driving permit as provided by § 5-65-402.

(b) (1) The Office of Driver Services of the Department of Finance and Administration shall suspend or revoke the driving privileges of the arrested person under the provisions of § 5-65-402 and the arrested person shall have the same right to hearing and judicial review as provided under § 5-65-402.

(2) The suspension or revocation shall be as follows:

(A) Suspension for ninety (90) days for the first offense of violating § 5-65-303;

(B) Suspension for one (1) year for the second offense of violating § 5-65-303; and

(3) (A) Revocation for the third or subsequent offense occurring while the person is underage.

(B) Revocation shall be until the underage person reaches the age of twenty-one (21) or for a period of three (3)

years, whichever is longer.

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

(1) Any convictions which occurred prior to July 1, 1996, for the offenses of:

(A) Operating or being in actual physical control of a motor vehicle while intoxicated or in violation of § 5-65-103; or

(B) Refusing to submit to a chemical test;

(2) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-103 or violation of § 5-65-205(a) occurring on or after July 1, 1996, where the person was subsequently convicted of the criminal charges;

(3) Any convictions for violating § 5-65-303 or § 5-65-310 prior to July 30, 1999; and

(4) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-303 or § 5-65-310 occurring on or after July 30, 1999, where the person was subsequently convicted of the criminal charges.

(d) (1) The Office of Driver Services shall charge a fee of twenty-five dollars (\$ 25.00) for reinstating a driver's license suspended because of a violation of § 5-65-303 or § 5-65-310.

(2) Forty percent (40%) of the revenues derived from this fee shall be deposited in the State Treasury as special revenues and credited to the Public Health Fund to be used exclusively for the Department of Health's Blood Alcohol Program.

§ 5-65-305. Fines

(a) Any person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-303 or § 5-65-310 shall be fined:

(1) No less than one hundred dollars (\$ 100) and not more than five hundred dollars (\$ 500) for the first offense;

(2) No less than two hundred dollars (\$ 200) and not more than one thousand dollars (\$ 1,000) for the second offense occurring underage; and

(3) No less than five hundred dollars (\$ 500) and not more than two thousand dollars (\$ 2,000) for the third or subsequent offense occurring underage.

(b) For the purpose of determining an underage person's fines under this subchapter, an underage person who has one (1) or more previous convictions or suspensions for a violation of § 5-65-103 or § 5-65-205 shall be deemed to have a conviction for a violation of this subchapter for each conviction for driving while intoxicated.

§ 5-65-306. Public service work

(a) Any underage person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-303 or § 5-65-310 shall be ordered by the court to perform public service work of the type and for the duration as deemed appropriate by the court.

(b) The period of community service shall be for:

(1) No fewer than thirty (30) days for a second offense of violating § 5-65-303; and

(2) No fewer than sixty (60) days for a third or subsequent offense of violating § 5-65-303.

§ 5-65-307. Alcohol and driving education program

(a) (1) Any underage person who has his or her driving privileges suspended, revoked, or denied for violating § 5-65-303 shall be required to complete an alcohol and driving education program for underage drivers as prescribed and approved by the Highway Safety Program or an alcoholism treatment program, or both, in addition to other penalties provided in this chapter.

(2) The Highway Safety Program shall approve only those programs in alcohol and driving education which are targeted at the underage driving group and are intended to intervene and prevent repeat occurrences of driving under the influence or driving while intoxicated.

(3) (A) (i) The alcohol and driving education program may collect a program fee of up to seventy-five dollars (\$ 75.00) per enrollee to offset program costs.

(ii) A person ordered to complete an alcohol and driving education program or an alcoholism treatment program under this section may be required to pay, in addition to the costs collected for the program, a fee of up to twenty-five dollars (\$ 25.00) to offset the additional costs associated with reporting requirements under this subchapter.

(B) An approved alcohol and driving education program shall report semiannually to the Highway Safety Program all revenue derived from these fees.

(b) Prior to reinstatement of a driver's license suspended or revoked under this subchapter, the driver shall furnish proof of attendance at and completion of the alcohol and driving education program.

(c) The Highway Safety Program is authorized to promulgate rules and regulations reasonably necessary to carry out the purposes of this section regarding the approval and monitoring of the alcohol and driving education programs.

(d) (1) (A) A person whose license is suspended or revoked for violating § 5-65-303 or § 5-65-310 shall:

(i) (a) Furnish proof of attendance at and completion of the alcoholism treatment or education program before reinstatement of his or her suspended or revoked driver's license; and

(b) Pay any fee for reinstatement required under § 5-65-119 or § 5-65-304; or

(ii) Furnish proof of dismissal or acquittal of the charge on which the suspension, or revocation is based.

(B) An application for reinstatement shall be made to the Office of Driver Services.

(2) Even if a person has filed a de novo petition for review pursuant to § 5-65-402, the person shall be entitled to reinstatement of driving privileges upon complying with this subsection and shall not be required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

(3) (A) A person suspended under this chapter may enroll in an alcohol education program prior to disposition of the offense by the municipal or circuit court but shall not be entitled to any refund of fees paid if the charges are dismissed or if the person is acquitted of the charges.

(B) A person who enrolls in an alcohol education program shall not be entitled to any refund of fees paid if the person is subsequently acquitted.

§ 5-65-308. No probation prior to adjudication of guilt

(a) (1) Section 16-93-301 et seq. allows judges of circuit and municipal courts to place on probation first offenders who plead guilty or nolo contendere prior to an adjudication of guilt, and, upon successful completion of probation, the judge may discharge the accused without a court adjudication of guilt and expunge the record.

(2) No circuit judge or municipal judge may utilize the provisions of § 16-93-301 et seq. in instances where an underage person is charged with violating § 5-65-303.

(b) Every magistrate or judge of a court shall keep or cause to be kept a record of every violation of this subchapter presented to that court and shall keep a record of every official action by that court in reference thereto, including, but not limited to, a record of every finding of guilt, plea of guilty or nolo contendere, or judgment of acquittal, and the amount of fine and other sentence.

(c) Within thirty (30) days after sentencing a person who has been found guilty or pleaded guilty or nolo contendere on a charge of violating any provision of this subchapter, every magistrate of the court or clerk of the court shall prepare and immediately forward to the Office of Driver Services an abstract of the record of the court covering the case in which the person was found guilty or pleaded guilty or nolo contendere, which abstract shall be certified by the person so required to prepare it to be true and correct.

(d) The abstract shall be made upon a form furnished by the Office of Driver Services and shall include:

- (1) The name and address of the party charged;
- (2) The number, if any, of the driver's license of the party charged;
- (3) The registration number of the vehicle involved;
- (4) The date of hearing;
- (5) The plea;

(6) The judgment; and

(7) The amount of the fine and other sentence, as the case may be.

§ 5-65-309. Implied consent

(a) Any underage person who operates a motor vehicle or is in actual physical control of a motor vehicle in this state shall be deemed to have given consent, subject to the provisions of § 5-65-203, to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the alcohol or controlled substance content of his or her breath or blood if:

(1) The driver is arrested for any offense arising out of acts alleged to have been committed while the underage person was driving while under the influence or driving while there was an alcohol concentration of two-hundredths (0.02) but less than eight-hundredths (0.08) in his or her breath or blood; or

(2) The underage person is involved in an accident while operating or in actual physical control of a motor vehicle; or

(3) The underage person is stopped by a law enforcement officer who has reasonable cause to believe that the person, while operating or in actual physical control of a motor vehicle, is under the influence or has an alcohol concentration of two-hundredths (0.02) but less than eight-hundredths (0.08) in his or her breath or blood.

(b) Any underage person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this section, and the tests may be administered subject to the provisions of § 5-65-203.

§ 5-65-310. Refusal to submit

(a) If an underage person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency, as provided in § 5-65-309, none shall be given, and the person's driver's license shall be seized by the law enforcement officer and the officer shall immediately deliver to the person from whom the license was seized a temporary driving permit as provided by § 5-65-402.

(b) (1) The Office of Driver Services of the Department of Finance and Administration shall suspend or revoke the driving privileges of the arrested person under § 5-65-402.

(2) The director shall suspend the person's driving privileges as follows:

(A) Suspension for ninety (90) days for a first offense under this section;

(B) Suspension for one (1) year for a second offense under this section; and

(C) (i) Revocation for the third or subsequent offense occurring while the person is underage.

(ii) Revocation shall be until the underage person reaches the age of twenty-one (21) or for a period of three (3) years, whichever is longer.

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

(1) Any conviction for an offense which occurred prior to July 1, 1996, of:

(A) Operating or being in actual physical control of a motor vehicle while intoxicated or in violation of § 5-65-103; or

(B) Refusing to submit to a chemical test;

(2) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-103 or violation of § 5-65-205 occurring on or after July 1, 1996, where the person was subsequently convicted of the criminal charges;

(3) Any convictions for violating § 5-65-303 or § 5-65-310 prior to July 30, 1999; and

(4) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-303 or § 5-65-310 occurring on or after July 30, 1999, where the person was subsequently convicted of the criminal charges.

(d) (1) If the person is a resident without a license or permit to operate a motor vehicle in this state, in addition to any other penalties provided for in this section, the Office of Driver Services shall deny to that person the issuance of a license or permit for a period of six (6) months for a first offense.

(2) For a second or subsequent offense by a resident without a license or permit to operate a motor vehicle, in addition to any other penalties provided for in this section, the Office of Driver Services shall deny to that person the issuance of a license or permit for a period of one (1) year.

(e) When a nonresident's privilege to operate a motor vehicle in this state has been suspended, the Office of Driver Services shall notify the office of issuance of that person's nonresident motor vehicle license of action taken by the Office of Driver Services.

(f) (1) The Office of Driver Services shall charge a fee of twenty-five dollars (\$ 25.00) for reinstating a driver's license suspended or revoked for a violation of this section.

(2) Forty percent (40%) of the revenues derived from this fee shall be deposited in the State Treasury as special revenues and credited to the Public Health Fund to be used exclusively for the Department of Health's Blood Alcohol Program.

§ 5-65-311. Relationship to other laws

(a) Penalties prescribed in this subchapter for underage driving under the influence shall be in addition to all other penalties prescribed by law for the offenses under other laws of the State of Arkansas.

(b) For the purposes of this subchapter, there is no presumption, as there is found in § 5-65-206, that a person is not under the influence of an intoxicating substance, such as alcohol or a similar intoxicant, if the person's alcohol concentration is four hundredths (0.04%) of one percent or less.

(c) The administration of the chemical tests for breath or blood alcohol, the instruments used to administer those tests, the procedures used to calibrate and maintain those instruments, and the use of the test results as evidence shall be the same as for those tests and instruments used for testing breath or blood alcohol concentrations under the Omnibus DWI Act, § 5-65-101 et seq.

(d) If there is evidence of an alcohol concentration of more than four-hundredths (0.04) but less than eight-hundredths (0.08) in a person's blood, breath, or other bodily substances, this fact shall not preclude a person under twenty-one (21) years of age from being prosecuted for driving while intoxicated under the Omnibus DWI Act, § 5-65-101 et seq.

SUBCHAPTER 4. ADMINISTRATIVE DRIVER'S LICENSE SUSPENSION

§ 5-65-401. Definitions

As used in this subchapter, unless the context otherwise requires:

- (1) "Disqualification" means a prohibition against driving a commercial motor vehicle;
- (2) "Immobilization" means revocation or suspension of the registration or license plate of a motor vehicle; and
- (3) "Sworn report" means a signed, written statement of a certified law enforcement officer, under penalty of perjury, on a form provided by the Director of the Department of Finance and Administration.

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

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

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

(2) (A) (i) If the license, permit, or other evidence of driving privilege seized by the officer has not expired and otherwise appears valid to the officer, the officer shall issue to the arrested person a dated receipt for that license, permit, or other evidence of driving privilege on a form prescribed by the Office of Driver Services of the Department of Finance and Administration.

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

(B) (i) The receipt form shall contain and shall constitute a notice of suspension, disqualification, or revocation of driving privileges by the Office of Driver Services of the Department of Finance and Administration, effective in thirty (30) days, notice of the right to a hearing within twenty (20) days and, if a hearing is to be requested, as notice that the hearing request is required to be made within seven (7) calendar days of the notice being given.

(ii) The receipt shall also contain phone numbers and the address of the Office of Driver Services and inform the driver of the procedure for requesting a hearing.

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

(D) (i) The seized license, permit, or other evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be attached to the sworn report of the arresting officer and shall be submitted by mail or in person to the Office of Driver Services or his designated representative within seven (7) days of the issuance of the receipt.

(ii) The failure of the arresting officer to timely file this report shall not affect the authority of the Office of Driver Services to suspend, disqualify, or revoke the driving privilege of the arrested person.

(3) (A) Any notices from the Office of Driver Services required under this subchapter which are not personally delivered shall be sent by certified mail and shall be deemed to have been delivered on the date when postmarked and shall be sent to the last known address on file with the Office of Driver Services.

(B) Refusal of the addressee to accept delivery or attempted delivery of the notice at the address obtained by the arresting law enforcement officer or on file with the Office of Driver Services shall not constitute nonreceipt of notice.

(C) For all notices which are personally delivered, the person shall be asked to sign a receipt acknowledging he received the required notice.

(4) (A) The Office of Driver Services or its designated official shall suspend, revoke, or disqualify the driving privilege of an arrested person or shall suspend, revoke, or disqualify any nonresident driving privilege of an arrested person when it receives a sworn report from the law enforcement officer that he had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle in violation of § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2) which is accompanied by a written chemical test report or a sworn report that the person was operating or in actual physical control of a motor vehicle in violation of § 5-65-103, § 5-65-303, or § 27-23-114, or is accompanied by a sworn report that the arrested person refused to submit to a chemical test of blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood in violation of § 5-65-205, § 5-65-310, or § 27-23-114(a)(5).

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

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

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

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

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

(v) The driving privileges of any person violating § 27-23-114(a)(1) or § 27-23-114(a)(2) shall be disqualified as

provided by § 27-23-112; and

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

(5) (A) If the person is a resident without a license or permit to operate a motor vehicle in this state, the Office of Driver Services shall, in addition to any other penalties provided for in this section, deny to that person the issuance of a license or permit for a period of six (6) months for a first offense.

(B) For a second or subsequent offense by a resident without a license or permit to operate a motor vehicle, the Office of Driver Services shall, in addition to any other penalties provided for in this section, deny to that person the issuance of a license or permit for a period of one (1) year.

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

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

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

(7) (A) Upon the written request of a person whose privilege to drive has been revoked, denied, disqualified, or suspended, or who has received a notice of revocation, suspension, disqualification, or denial by the arresting officer, the Office of Driver Services shall grant the person an opportunity to be heard provided the request is received by the Office of Driver Services within seven (7) calendar days after the notice of the revocation, suspension, disqualification, or denial is given in accordance with this section or as otherwise provided in this chapter.

(B) Such a request shall not operate to stay the revocation, suspension, disqualification, or denial by the Office of Driver Services until the disposition of said hearing.

(8) (A) The hearing shall be before the Office of Driver Services or its authorized agent, in the office of the Revenue Division of the Department of Finance and Administration nearest the county wherein the alleged events occurred for which the person was arrested, unless the Office of Driver Services or its authorized agent and the arrested person agree otherwise to the hearing being held in some other county or that the Office of Driver Services or its authorized agent may schedule the hearing or any part thereof by telephone and conduct the hearing by telephone conference call.

(B) (i) The hearing shall not be recorded.

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

(iii) The scope of the hearing shall cover the issues of whether the officer had reasonable grounds to believe the person:

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

intoxicated or impaired, while the person's blood alcohol concentration measured by weight of alcohol in the person's blood was equal to or greater than the blood alcohol concentration prohibited by § 5-65-103(b), while the blood alcohol concentration of a person under the age of twenty-one (21) was equal to or greater than the blood alcohol concentration prohibited by § 5-65-303, or while the person's blood alcohol concentration measured by weight of alcohol in the person's blood was equal to or greater than the blood alcohol concentration prohibited by § 27-23-114; or

(b) Refused to submit to a chemical test of the blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood and whether the person was placed under arrest.

(iv) (a) The office or its agent at the hearing shall consider all documents submitted to the office by the arresting agency, documents submitted by the driver, and the statement of the driver.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The court may conduct such a hearing by telephone conference with the consent of the parties.

(3) The administrative hearings held pursuant to this section shall be exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

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

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

(d) (1) Any decision rendered at an administrative hearing held under this section shall have no effect on any criminal case arising from any violation of § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5).

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

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

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

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

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

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

(f) The administrative suspension, disqualification, or revocation of a driver's license as provided for by this section shall be supplementary to and in addition to the suspensions, disqualifications, or revocations of driver's licenses which are ordered by a court of competent jurisdiction for offenses under §§ 5-64-710, 5-65-116, and 27-16-914, or any other traffic or criminal offense wherein a suspension, disqualification, or revocation of the driver's license is a penalty for the violation.

(g) For all arrests or offenses occurring before July 30, 1999, but which have not reached a final disposition as to judgment in court, the offenses shall be decided under the law in effect at the time the offense occurred, and any defendant shall be subject to the penalty provisions in effect at that time and not under the provisions of this section.

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

(i) (a) Furnish proof of attendance at and completion of the alcoholism treatment or education program before reinstatement of his or her suspended or revoked driver's license; and

(b) Pay any fee for reinstatement required under § 5-65-119 or § 5-65-304; or

(ii) Furnish proof of dismissal or acquittal of the charge on which the suspension or revocation is based.

(B) An application for reinstatement shall be made to the Office of Driver Services.

(2) Even if a person has filed a de novo petition for review pursuant to subsection (c) of this section, the person shall be entitled to reinstatement of driving privileges upon complying with this subsection and shall not be required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

(3) A person suspended under this section may enroll in an alcohol education program prior to disposition of the offense by the municipal or circuit court but shall not be entitled to any refund of fees paid if the charges are dismissed or if the person is acquitted of the charges.

§ 5-65-403. Notice and receipt from arresting officer

(a) At the time of arrest for violating § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2), the arresting officer shall provide written notice to the arrested person:

(1) That if the person's driving privileges have been suspended, disqualified, or revoked for violating § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2) in the previous five (5) years, the registration of all motor vehicles owned by the arrested person shall be suspended effective in thirty (30) days; and

(2) (A) Of the right to a hearing within twenty (20) days; and

(B) That if a hearing is to be requested the hearing request is required to be made within seven (7) calendar days of

the notice being given.

(b) The receipt shall also contain phone numbers and the address of the Office of Driver Services and inform the driver of the procedure for requesting a hearing.

(c) If the Office of Driver Services is unable to conduct a hearing within the twenty-day period, a temporary permit shall be issued and shall be valid until the date of the hearing.

(d) (1) The seized license, permit, or other evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be attached to the sworn report of the arresting officer and shall be submitted by mail or in person to the Director of the Department of Finance and Administration or his designated representative within seven (7) days of the issuance of the receipt.

(2) The failure of the arresting officer to timely file this report shall not affect the authority of the Office of Driver Services to suspend the registration of all motor vehicles owned by the arrested person.

(e) Any notices from the Office of Driver Services required under this section which are not personally delivered shall be sent as provided by § 5-65-402.

(f) (1) If the person is a nonresident, such person's motor vehicle registration in Arkansas shall be suspended in the same manner as that of a resident.

(2) The Office of Driver Services shall notify the office that issued the nonresident's motor vehicle registration of the action taken by the Office of Driver Services.

(g) The hearing shall be held by the Office of Driver Services at the conclusion of any hearing under § 5-65-402 and the scope of the hearing shall be limited to:

(1) Determining if the arrested person's driving privileges had been suspended, revoked, or disqualified for violation of § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2) in the five (5) years prior to the current offense; and

(2) Determining if any motor vehicles are licensed or registered in the arrested person's name as either owner or co-owner of the vehicle.

(h) (1) (A) A person adversely affected by the hearing disposition order of the Office of Driver Services or its authorized agent may file a de novo petition for review within thirty (30) days in the circuit court in the county in which the offense took place.

(B) The filing of a petition for review will not stay or place in abeyance the decision of the Office of Driver Services or its authorized agent.

(2) The administrative hearings held pursuant to this section shall be exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) On review, the circuit court shall hear the case de novo in order to determine whether, based on a preponderance of the evidence, grounds exist for suspension of the person's motor vehicle registration.

(i) The suspension ordered shall be equal to the suspension of driving privileges ordered under § 5-65-402 or one (1) year, whichever is longer, but shall not exceed five (5) years.

(j) (1) (A) The director may grant a restricted registration to a family member or co-owner of any immobilized motor vehicle, upon determination that the person is completely dependent on the motor vehicle for the necessities of life.

(B) A restricted registration shall not be valid for use by the person whose driving privileges have been suspended or revoked.

(2) Operation of a motor vehicle in a manner inconsistent with the restricted registration or license plate shall have the same effect as operating an unlicensed motor vehicle.

(k) If the director orders immobilization of a motor vehicle, notice of immobilization shall be sent by first class mail to all persons, other than the arrested driver, listed as owners or co-owners of the immobilized motor vehicle in the records of the Office of Motor Vehicle.