

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Snyder**

A Bill

SENATE BILL 484

For An Act To Be Entitled

8 "AN ACT TO CREATE A TRAFFIC OFFENSE OF DRIVING UNDER THE
9 INFLUENCE FOR DRIVERS UNDER THE AGE OF TWENTY-ONE (21)
10 YEARS OF AGE; TO PRESCRIBE THE PENALTIES FOR VIOLATIONS OF
11 THE ACT TO INCLUDE LICENSE SUSPENSIONS, FINES AND PUBLIC
12 SERVICE; TO PROVIDE FOR AN UNDERAGE ALCOHOL AND DRIVING
13 EDUCATION PROGRAM FOR OFFENDERS; TO PROVIDE THERE SHALL BE
14 NO PROBATION OR EXPUNGEMENT FOR VIOLATIONS; AND FOR OTHER
15 PURPOSES."

Subtitle

17 "AN ACT TO CREATE A TRAFFIC OFFENSE OF DRIVING UNDER THE
18 INFLUENCE FOR DRIVERS UNDER THE AGE OF 21 YEARS OF AGE AND
19 PRESCRIBES PENALTIES."
20

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

23

24 SECTION 1. The act may be known and cited as the "Underage Driving
25 Under the Influence Law" or the "Underage DUI Law".

26

27 SECTION 2. As used in this act, unless the context otherwise requires:

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

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

1 Arkansas.

2

3 SECTION 3. (a) It is unlawful and punishable as provided in this act
4 for any underage person to operate or be in actual physical control of a motor
5 vehicle while under the influence of an alcoholic beverage or similar
6 intoxicant.

7 (b) It is unlawful and punishable as provided in this act for any
8 underage person to operate or be in actual physical control of a motor vehicle
9 if at that time there was one-fiftieth of one percent (0.02%), *but less than*
10 *one-tenth of one percent (0.10%)*, by weight of alcohol in the person's blood
11 as determined by a chemical test of the person's blood or breath, or other
12 bodily substance.

13

14 SECTION 4. Seizure, suspension, and revocation of license - Temporary
15 permits.

16 (a)(1) At the time of arrest for violating Section 3, the arresting
17 officer shall seize the motor vehicle operator's license of the underage
18 person arrested and issue to such person a temporary driving permit to expire
19 on the date of arraignment.

20 (2) The arresting officer shall remit the seized driver_s license
21 to the court.

22 (3) Upon arraignment, the judge shall issue such person a
23 temporary permit to expire on the date of the trial.

24 (4) If the person is convicted of violating Section 3, the court
25 shall transmit the driver_s license to the Office of Driver Services and shall
26 instruct the Office of Driver Services to suspend or revoke the person's
27 driver_s license as follows:

28 (A) Suspension for not less than ninety (90) days nor more
29 than one hundred twenty (120) days for the first offense;

30 (B) Suspension for not less than one (1) year nor more than
31 eighteen (18) months for a second offense while underage;

32 (C) Revocation for the third or subsequent offense
33 occurring while the person is underage. Revocation shall be until the
34 underage person reaches the age of twenty-one (21) or for a period of three
35 (3) years, which ever is longer.

1 (5) For suspension or revocation purposes under this act, an
2 underage person who has one (1) or more previous convictions for a violation
3 of the Omnibus DWI Act, Arkansas Code §§ 5-65-101 et seq, shall be deemed to
4 have a conviction for a violation of this act for each conviction for DWI.

5 (b)(1) Any underage person who is found guilty or enters a plea of
6 guilty to a first offense under this act may petition the Office of Driver
7 Services that he or she be issued a restricted driver_s permit for employment-
8 related purposes or to attend a state-required alcohol and driving education
9 program.

10 (2) The Office of Driver Services shall notify each underage
11 person that he or she may request a restricted permit and shall advise the
12 person of the time and place for making such request and for the hearing
13 thereon, which shall be conducted within ten (10) days from the guilty plea or
14 conviction.

15 (3) The notice shall be given by mailing the notice to the last
16 known address of the person whose driver_s license is suspended.

17 (4) Any previously issued temporary permit shall remain in effect
18 until the hearing date.

19 (5) Furthermore, the sentencing court may postpone acceptance of
20 a guilty plea or sentencing following a conviction until a determination of
21 the request for a restricted driver_s permit has been made.

22 (6) If at the hearing it is determined that the underage person
23 has no reasonable alternative mode of transportation to and from his or her
24 place of employment, or to a state-required alcohol and driving education
25 program, or that driving of a motor vehicle is an essential part of the
26 person's work, and he or she has no previous convictions for a violation of
27 this act or the Omnibus DWI Act, Arkansas Code §§ 5-65-101 et seq, the
28 restricted driver permit may be issued. If the court has required an alcohol
29 and driving education program that exceeds the length of the suspension under
30 this section, a restricted driver permit may be issued for the purpose of
31 completing the required program. Any person to whom a restricted permit has
32 been issued who shall operate a motor vehicle other than for the purposes and
33 under the conditions prescribed in the permit shall, upon conviction therefor,
34 be imprisoned for two (2) days.

35 (c) The Office of Driver Services shall charge a fee of twenty-five

1 dollars (\$25.00) for reinstating a driver_s license suspended because of a
2 conviction for a violation of Section 3. Forty percent (40%) of the revenues
3 derived from this fee shall be deposited in the State Treasury as special
4 revenues and credited to the Public Health Fund to be used exclusively for the
5 Department of Health-Blood Alcohol Program.

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7 SECTION 5. Fines.

8 (a) Any person who pleads guilty, nolo contendere, or is found guilty
9 of violating Section 3 shall be fined:

10 (1) No less than one hundred dollars (\$100) nor more than five
11 hundred dollars (\$500) for the first offense;

12 (2) No less than two hundred dollars (\$200) nor more than one
13 thousand dollars (\$1,000) for the second offense occurring underage;

14 (3) No less than five hundred dollars (\$500) nor more than two
15 thousand dollars (\$2,000) for the third or subsequent offense occurring
16 underage.

17 (b) For the purpose of determining an underage person_s fines under
18 this act, an underage person who has one (1) or more previous convictions for
19 a violation of the Omnibus DWI Act, Arkansas Code §§ 5-65-101 et seq, shall be
20 deemed to have a conviction for a violation of this act for each conviction
21 for DWI.

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23 SECTION 6. Public service work. Any underage person who pleads guilty,
24 nolo contendere, or is found guilty of violating Section 3 shall be ordered by
25 the court to perform public service work of the type and for the duration as
26 deemed appropriate by the court.

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28 SECTION 7. Alcohol and driving education program.

29 (a) Any underage person who pleads guilty or nolo contendere, or is
30 found guilty of violating Section 3, shall, in addition to other penalties
31 provided herein, be required to complete an alcohol and driving education
32 program for underage drivers as prescribed and approved by the Arkansas
33 Highway Safety Program. The Arkansas Highway Safety Program shall approve
34 only those programs in alcohol and driving education which are targeted at the
35 underage driving group and are intended to intervene and prevent repeat

1 occurrences of driving under the influence or DWI. The alcohol and driving
2 education program may collect a program fee of up to fifty dollars (\$50.00)
3 per enrollee to offset program costs. A person ordered to complete an alcohol
4 and driving education program under this section, may be required to pay, in
5 addition to the costs collected for the program, a fee of up to twenty-five
6 dollars (\$25.00) to off-set the additional costs associated with reporting
7 requirements under this act. An approved alcohol and driving education
8 program shall report semi-annually to the Arkansas Highway Safety Program all
9 revenue derived from these fees.

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

13 (c) Within six (6) months of the final adjudication of guilt, the
14 driver shall furnish proof of attendance at and completion of the alcohol and
15 driving education program. If the proof is not furnished, the driver shall be
16 cited for contempt of court and assessed an additional court cost of two
17 hundred dollars (\$200), with fifty dollars (\$50.00) retained by the municipal
18 court. The remaining moneys received from this additional court costs shall
19 be remitted at least quarterly, by January 1, April 1, July 1, and October 1
20 to the Director of the Department of Finance and Administration. The moneys
21 so received by the director shall be deposited in the State Treasury to be
22 credited to the Highway Safety Special Fund for use to support programs of the
23 Arkansas Highway Safety Program.

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

28

29 SECTION 8. No probation prior to adjudication of guilt.

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

35 (b) No circuit judge or municipal judge may utilize the provisions of

1 Arkansas Code §§ 16-93-301 et seq. in instances where an underage person is
2 charged with violating Section 3 of this act.

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

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

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

- 18 (1) The name and address of the party charged;
- 19 (2) The number, if any, of the driver_s license of the party
20 charged;
- 21 (3) The registration number of the vehicle involved;
- 22 (4) The date of hearing;
- 23 (5) The plea;
- 24 (6) The judgment; and
- 25 (7) The amount of the fine and other sentence, as the case may
26 be.

27

28 SECTION 9. Implied consent.

29 (a) Any underage person who operates a motor vehicle or is in actual
30 physical control of a motor vehicle in this state shall be deemed to have
31 given consent, subject to the provisions of the Omnibus DWI Act, Arkansas Code
32 § 5-65-203, to a chemical test or tests of his or her blood, breath, or urine
33 for the purpose of determining the alcohol or controlled substance content of
34 his or her blood if:

- 35 (1) The driver is arrested for any offense arising out of acts

1 alleged to have been committed while the underage person was driving while
2 under the influence or driving while there was one-fiftieth of one percent
3 (0.02%), *but less than one-tenth of one percent (0.10%),* of alcohol in the
4 person's blood; or

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

7 (3) The underage person is stopped by a law enforcement officer
8 who has reasonable cause to believe that the person, while operating or in
9 actual physical control of a motor vehicle, is under the influence or has one-
10 fiftieth of one percent (0.02%), *but less than one-tenth of one percent*
11 *(0.10%),* of alcohol in his or her blood.

12 (b) Any underage person who is dead, unconscious, or otherwise in a
13 condition rendering him incapable of refusal shall be deemed not to have
14 withdrawn the consent provided by subsection (a) of this section, and the
15 tests may be administered subject to the provisions of Arkansas Code §
16 5-65-203.

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18 SECTION 10. Refusal to submit.

19 (a) If an underage person under arrest refuses upon the request of a
20 law enforcement officer to submit to a chemical test designated by the law
21 enforcement agency, as provided in Section 9 of this act, none shall be given,
22 and the person's driver_s license shall be seized by the law enforcement
23 officer, and the officer shall immediately deliver to the person from whom the
24 license was seized a temporary driving permit which shall expire on the date
25 of arraignment.

26 (b) The arresting officer shall remit the seized driver_s license to
27 the court, and, upon an arraignment, the judge shall issue that person a
28 temporary permit to expire on the date of trial.

29 (c) If the judge determines that the law enforcement officer had
30 reasonable cause to believe the arrested underage person had been driving
31 under the influence or while there was one-fiftieth of one percent (0.02%),
32 *but less than one-tenth of one percent (0.10%),* of alcohol in the person's
33 blood, and the underage person refused to submit to the test upon the request
34 of the law enforcement officer, the judge shall order the Office of Driver
35 Services to suspend the person's driver_s license as follows:

1 (1) Suspension for not less than ninety (90) days nor more than
2 one hundred eighty (180) days if the underage person had not previously
3 refused the test while underage and if the underage person had not been
4 convicted of driving while under the influence or driving while there was one-
5 fiftieth of one percent (0.02%), *but less than one-tenth of one percent*
6 *(0.10%)*, of alcohol in the person's blood while underage;

7 (2) Suspension for not less than one (1) year nor more than
8 eighteen (18) months if the underage person had previously refused the test
9 while underage or if the underage person had been convicted of driving while
10 under the influence or driving while there was one-fiftieth of one percent
11 (0.02%), *but less than one-tenth of one percent (0.10%)*, of alcohol in the
12 person's blood while underage;

13 (d) If the underage person is a resident without a license or permit to
14 operate a motor vehicle in this state, the Office of Driver Services shall
15 deny to the person the issuance of a license or permit for a period of two (2)
16 years after the date of the arrest.

17 (e) (1) If the person is a nonresident, that person's privilege of
18 operating a motor vehicle in Arkansas shall be suspended for not less than six
19 (6) months.

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

24

25 SECTION 11. Relationship to other laws.

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

29 (b) For the purposes of this act, there is no presumption, as there is
30 found in Arkansas Code § 5-65-206, that a person is not under the influence of
31 an intoxicating substance, such as alcohol or similar intoxicant, if the
32 person's blood alcohol concentration is five hundredths of one percent (0.05%)
33 or less.

34 (c) The administration of the chemical tests for blood alcohol, the
35 machines and instruments used to administer those tests, the procedures used

1 to calibrate and maintain those machines and instruments, and the use of the
2 test results as evidence shall be the same as for those tests and machines and
3 instrument used for testing blood alcohol concentrations under the Omnibus DWI
4 Act, Arkansas Code §§ 5-65-101 et seq.

5 (d) *If there is evidence of more than one-twentieth of one percent*
6 *(0.05%) but less than one-tenth of one percent (0.10%) by weight of alcohol in*
7 *a person's blood, breath, or other bodily substances, this fact shall not*
8 *preclude a person under twenty-one (21) years of age from being prosecuted for*
9 *driving while intoxicated under Arkansas Code §§5-65-101 et seq.*

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11

12 SECTION 12. All provisions of this act of general and permanent nature
13 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
14 Revision Commission shall incorporate the same in the Code.

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16 SECTION 13. If any provisions of this act or the application thereof to
17 any person or circumstance is held invalid, the invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provisions or application, and to this end the provisions of this
20 act are declared to be severable.

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22 SECTION 14. All laws and parts of laws in conflict with this act are
23 hereby repealed.

24

/s/ Senator Snyder

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