

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
First Extraordinary Session, 2015

As Engrossed: S5/27/15
A Bill

Call Item 5
SENATE BILL 4

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

For An Act To Be Entitled

AN ACT CONCERNING THE OFFENSES OF DRIVING WHILE INTOXICATED AND UNDERAGE DRIVING UNDER THE INFLUENCE; CONCERNING THE OFFENSES OF DRIVING OR BOATING WHILE INTOXICATED AND DRIVING OR BOATING UNDER THE INFLUENCE WHILE UNDERAGE, AS CREATED BY ACTS 2015, NO. 299; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE OFFENSES OF DRIVING WHILE INTOXICATED, UNDERAGE DRIVING UNDER THE INFLUENCE, DRIVING OR BOATING WHILE INTOXICATED, AND DRIVING OR BOATING UNDER THE INFLUENCE WHILE UNDERAGE; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative intent.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the waters of this state or 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 alcohol concentration in § 5-65-204.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

/s/D. Johnson