

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

SENATE BILL 413

4
5 By: Senator Scott

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO
10 MAKE TECHNICAL CHANGES TO THE LAWS DEFINING THE OPERATION
11 OF MOTOR VEHICLES, AIRCRAFT, AND MOTOR BOATS WHILE
12 INTOXICATED; AND FOR OTHER PURPOSES."

Subtitle

15 "TO MAKE TECHNICAL CHANGES TO THE LAWS
16 DEFINING THE OPERATION OF MOTOR
17 VEHICLES, AIRCRAFT, AND MOTOR BOATS
18 WHILE INTOXICATED"

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

21
22 SECTION 1. Arkansas Code Annotated § 5-65-103 is amended to read as
23 follows:

24 "5-65-103. Unlawful acts.

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

28 (b) It is unlawful and punishable as provided in this act for any
29 person to operate or be in actual physical control of a motor vehicle if at
30 that time ~~there was one-tenth of one percent (0.10%) or more by weight of~~
31 ~~alcohol in the person's blood as determined by a chemical test of the person's~~
32 ~~blood, urine, breath, or other bodily substance~~ the alcohol concentration in
33 the persons breath or blood was 0.10 or more based upon the definition of
34 breath, blood, and urine concentration in § 5-65-204."

35
36 SECTION 2. Arkansas Code Annotated § 5-65-104 is amended to read as

1 follows:

2 "5-65-104. Seizure, suspension, and revocation of license - Temporary
3 permits. [Effective July 1, 1996.]

4 (a)(1) At the time of arrest for operating or being in actual physical
5 control of a motor vehicle while intoxicated or while there was ~~one-tenth of~~
6 ~~one percent (0.1%) or more by weight of alcohol in the person's blood,~~
7 ~~§ 5-65-103~~ an alcohol concentration of 0.10 or more in the persons breath or
8 blood (§ 5-65-103), or refusing to submit to a chemical test of blood, breath,
9 or urine for the purpose of determining the alcohol or controlled substance
10 contents of the person's blood or breath, (§ 5-65-202), the arrested person
11 shall immediately surrender his license, permit, or other evidence of driving
12 privilege to the arresting law enforcement officer. The officer shall seize
13 the license, permit, or other evidence of driving privilege surrendered by the
14 arrested person or found on the arrested person during a search.

15 (2) If the license, permit, or other evidence of driving
16 privilege seized by the officer has not expired and otherwise appears valid to
17 the officer, the officer shall issue to the arrested person a dated receipt
18 for that license, permit, or other evidence of driving privilege on a form
19 prescribed by the Department of Finance and Administration or its designee.
20 This receipt shall be recognized as a license and shall authorize the arrested
21 person to operate a motor vehicle for a period not to exceed thirty (30) days.
22 The receipt form shall contain and shall constitute a notice of suspension or
23 revocation of driving privileges by the Office of Driver Services of the
24 Revenue Division of the Department of Finance and Administration, effective in
25 thirty (30) days, notice of the right to a hearing within twenty (20) days,
26 and as notice that, if a hearing is to be requested, the hearing request is
27 required to be made within seven (7) calendar days of the notice being given.
28 The receipt shall also contain details and phone numbers of the Office of
29 Driver Services telling how to request the hearing. If the Office of Driver
30 Services is unable to conduct a hearing within the twenty-day period, a
31 temporary permit shall be issued and shall be valid until the date of the
32 hearing. The seized license, permit, or other evidence of driving privilege
33 and a copy of the receipt form issued to the arrested person shall be attached
34 to the sworn report of the arresting officer and shall be submitted by mail or
35 in person to the Director of the Department of Finance and Administration or
36 his designated representative within seven (7) days of the issuance of the

1 receipt. The failure of the arresting officer to timely file this report shall
 2 not affect the authority of the Office of Driver Services to suspend or revoke
 3 the driving privilege of the arrested person.

4 (3) Any notices from the Office of Driver Services required under
 5 this act which are not personally delivered shall be sent by certified mail
 6 and shall be deemed to have been delivered on the date when postmarked and
 7 shall be sent to the last known address on file with the Office of Driver
 8 Services. Refusal of the addressee to accept delivery or attempted delivery of
 9 the notice at the address obtained by the arresting law enforcement officer or
 10 on file with the Office of Driver Services shall not constitute nonreceipt of
 11 notice. For all notices which are personally delivered, the person shall be
 12 asked to sign a receipt acknowledging he received the required notice.

13 (4) The Office of Driver Services of the Revenue Division of the
 14 Department of Finance and Administration or its designated official shall
 15 suspend or revoke the driving privilege of an arrested person or shall suspend
 16 any nonresident driving privilege of an arrested person when it receives a
 17 sworn report from the law enforcement officer that he had reasonable grounds
 18 to believe the arrested person had been operating or was in actual physical
 19 control of a motor vehicle while intoxicated or while there was ~~one-tenth of~~
 20 ~~one percent (0.1%) or more by weight of alcohol in the person's blood,~~
 21 § 5-65-103 an alcohol concentration of 0.10 or more in the persons blood or
 22 breath (§ 5-65-103), which is accompanied by a written chemical test report
 23 reflecting that the arrested person was intoxicated or had an alcohol
 24 concentration of ~~one-tenth of one percent (0.1%)~~ 0.10 or more, or is
 25 accompanied by a sworn report that the arrested person refused to submit to a
 26 chemical test of blood, breath, or urine for the purpose of determining the
 27 alcohol or controlled substance contents of the person's blood or breath, (as
 28 provided in § 5-65-202). The suspension or revocation shall be based on the
 29 number of previous offenses as follows:

30 (A)(i) Suspension for one hundred twenty (120) days for the
 31 first offense of operating or being in actual physical control of a motor
 32 vehicle while intoxicated or while there was ~~one-tenth of one percent (0.1%)~~
 33 ~~or more by weight of alcohol in the person's blood,~~ § 5-65-103 an alcohol
 34 concentration of 0.10 or more in the persons blood or breath (§ 5-65-103);

35 (ii) Suspension for six (6) months for the first
 36 offense of operating or being in actual physical control of a motor vehicle

1 while intoxicated by the ingestion of or by the use of a controlled substance;

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

6 (B)(i) Suspension for sixteen (16) months, during which no
7 restricted permits may be issued, for a second offense of operating or being
8 in actual physical control of a motor vehicle while intoxicated or while there
9 was ~~one-tenth of one percent (0.1%) or more by weight of alcohol in the~~
10 ~~person's blood, ~~§ 5-65-103,~~ an alcohol concentration of 0.10 or more in the~~
11 ~~persons blood or breath (~~§ 5-65-103~~)~~ within three (3) years of the first
12 offense;

13 (ii) Suspension for two (2) years, during which no
14 restricted permits may be issued, for a second offense of refusing to submit
15 to a chemical test of blood, breath, or urine for the purposes of determining
16 the alcohol or controlled substance contents of the person's blood,
17 ~~§ 5-65-202,~~ within three (3) years of the first offense;

18 (C)(i) Suspension for thirty (30) months, during which no
19 restricted permits may be issued, for the third offense of operating or being
20 in actual physical control of a motor vehicle while intoxicated or while there
21 was ~~one-tenth of one percent (0.1%) or more by weight of alcohol in the~~
22 ~~person's blood, ~~§ 5-65-103,~~ an alcohol concentration of 0.10 or more in the~~
23 ~~persons blood or breath (~~§ 5-65-103~~)~~ within three (3) years of the first
24 offense;

25 (ii) Revocation for three (3) years, during which no
26 restricted permits may be issued, for the third offense of refusing to submit
27 to a chemical test of blood, breath, or urine for the purpose of determining
28 the alcohol or controlled substance contents of the person's blood,
29 ~~§ 5-65-202,~~ within three (3) years of the first offense;

30 (D)(i) Revocation for four (4) years, during which no
31 restricted permits may be issued, for the fourth or subsequent offense of
32 operating or being in actual physical control of a motor vehicle while
33 intoxicated or while there was ~~one-tenth of one percent (0.1%) or more by~~
34 ~~weight of alcohol in the person's blood, ~~§ 5-65-103,~~ an alcohol concentration~~
35 ~~of 0.10 or more in the persons blood or breath (~~§ 5-65-103~~)~~ within a
36 three-year period of the first offense.

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

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

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

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

23 (7) Upon the written request of a person whose privilege to drive
24 has been revoked, denied, or suspended, or who has received a notice of
25 revocation, suspension, or denial by the arresting officer, the Office of
26 Driver Services shall grant the person an opportunity to be heard provided the
27 request is received by the Office of Driver Services within seven (7) calendar
28 days after the notice of the revocation, suspension, or denial is given in
29 accordance with this section or as otherwise provided in this act. Such a
30 request shall not operate to stay the revocation, suspension, or denial by the
31 Office of Driver Services until the disposition of said hearing.

32 (8)(A) The hearing shall be before the Office of Driver Services
33 or its authorized agent, in the office of the Revenue Division of the
34 Department of Finance and Administration nearest the county wherein the
35 alleged events occurred for which the person was arrested, unless the Office
36 of Driver Services or its authorized agent and the arrested person agree

1 otherwise to the hearing being held in some other county or the Office of
 2 Driver Services or its authorized agent may schedule the hearing or any part
 3 thereof by telephone and conduct the hearing by telephone conference call. The
 4 hearing shall not be recorded. The scope of the hearing shall cover the issues
 5 of whether the officer had reasonable grounds to believe the person had been
 6 operating or was in actual physical control of a vehicle while intoxicated or
 7 while there was ~~one-tenth of one percent (0.1%) or more by weight of alcohol~~
 8 ~~in the person's blood~~ an alcohol concentration of 0.10 or more in the persons
 9 blood or breath (§ 5-65-103) or refused to submit to a chemical test of the
 10 blood, breath, or urine for the purpose of determining the alcohol or
 11 controlled substance contents of the person's blood or breath and whether the
 12 person was placed under arrest. At the hearing, the burden of proof shall be
 13 on the state, and the decision shall be based on a preponderance of the
 14 evidence.

15 (B) If the revocation, suspension, or denial is based upon
 16 a chemical test result indicating that the person was intoxicated or there was
 17 ~~one-tenth of one percent (0.1%) or more by weight of alcohol in the person's~~
 18 ~~blood, as provided in § 5-65-103,~~ an alcohol concentration of 0.10 or more in
 19 the persons blood or breath (§ 5-65-103) and a sworn report from a law
 20 enforcement officer, the scope of the hearing shall also cover the issues as
 21 to whether:

22 (i) The person was advised that his privilege to
 23 drive would be revoked, suspended, or denied if the test result reflected an
 24 alcohol concentration of ~~one-tenth of one percent (0.1%)~~ 0.10 or more or the
 25 presence of other intoxicating substances or combination of intoxicating
 26 substances;

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

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

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

35 (C) If the revocation, suspension, or denial is based upon
 36 the refusal of the person to submit to a chemical test as provided in

1 § 5-65-202, reflected in a sworn report by a law enforcement officer, the
2 scope of the hearing shall also include whether:

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

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

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

11 (A) Any convictions for offenses of operating or being in
12 actual physical control of a motor vehicle while intoxicated or while there is
13 ~~one-tenth of one percent (0.1%) or more by weight of alcohol in the person's~~
14 ~~blood~~ an alcohol concentration of 0.10 or more in the persons blood or breath
15 under § 5-65-103 or refusing to submit to a chemical test under § 5-65-202
16 which occurred prior to July 1, 1996; and

17 (B) Any suspension or revocation of driving privileges for
18 arrests for operating or being in actual physical control of a motor vehicle
19 while intoxicated or while there is ~~one-tenth of one percent (0.1%) or more by~~
20 ~~weight of alcohol in the person's blood~~ an alcohol concentration of 0.10 or
21 more in the persons blood or breath under § 5-65-103 or refusing to submit to
22 a chemical test under § 5-65-202 occurring on or after July 1, 1996, where the
23 person was not subsequently acquitted of the criminal charges.

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

29 (c) A person adversely affected by the hearing disposition order of the
30 Office of Driver Services of the Revenue Division of the Department of Finance
31 and Administration or its authorized agent may file a de novo petition for
32 review within thirty (30) days in the circuit court in the county in which the
33 offense took place. The filing of a petition for review will not stay or place
34 in abeyance the decision of the Office of Driver Services or its authorized
35 agent. The administrative hearings held pursuant to this section shall be
36 exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq. On

1 review, the circuit court shall hear the case de novo in order to determine
2 whether, based on a preponderance of the evidence, grounds exist for
3 revocation, suspension, or denial of the person's privilege to drive.

4 (d)(1) Any decision rendered at an administrative hearing held under
5 this section shall have no effect on any criminal case arising from any
6 violation of § 5-65-103 or § 5-65-202.

7 (2) Any decision rendered by a court of law for a criminal case
8 arising from any violation of § 5-65-103 or § 5-65-202 shall affect the
9 administrative suspensions or revocation of the driver's license as follows:

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

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

16 (3) If a person is acquitted of the charges of violating
17 § 5-65-103 or § 5-65-202, or if the charges are dismissed, the Office of
18 Driver Services shall reinstate the person's driver license at no cost to the
19 person, and the charges shall not be used to determine the number of previous
20 offenses when administratively suspending or revoking the driving privilege of
21 any arrested person in the future.

22 (e) Any person whose privilege to drive has been denied, suspended, or
23 revoked shall remain under such denial, suspension or revocation, until such
24 time that person applies to and is granted by the Office of Driver Services
25 for reinstatement of such privilege to drive, and remains subject to penalties
26 as provided in § 5-65-105 or until he is acquitted of violating § 5-65-103.

27 (f) The administrative suspension or revocation of a driver's license
28 as provided for by this section shall be supplementary to and in addition to
29 the suspensions or revocations of driver licenses which are ordered by a court
30 of competent jurisdiction for offenses under §§ 5-64-710, 5-65-116, and
31 27-16-914, or any other traffic or criminal offense wherein a suspension or
32 revocation of the driver's license is a penalty for the violation.

33 (g) For all arrests or offenses occurring before July 1, 1996, but
34 which have not reached a final disposition as to judgment in court, the
35 offenses shall be decided under the law in effect at the time the offense
36 occurred, and any defendant shall be subject to the penalty provisions in

1 effect at that time and not under the provisions of this section."

2

3 SECTION 3. Arkansas Code Annotated § 5-65-119 is amended to read as
4 follows:

5 "5-65-119. Distribution of fee.

6 The Office of Driver Services shall charge a fee of seventy-five dollars
7 (\$75.00) for reinstating a driving privilege suspended or revoked because of
8 an arrest for operating or being in actual physical control of a motor vehicle
9 while intoxicated or while there was ~~one-tenth of one percent (0.1%) or more~~
10 ~~by weight of alcohol in the person's blood, § 5-65-103, an alcohol~~
11 concentration of 0.10 or more (§ 5-65-103) or refusing to submit to a chemical
12 test of blood, breath, or urine, for the purpose of determining the alcohol or
13 controlled substance contents of the person's blood or breath, (§ 5-65-202),
14 which shall be distributed as follows:

15 (1) Fourteen percent (14%) of the revenues derived from this fee shall
16 be deposited in the State Treasury as special revenues and credited to the
17 Public Health Fund to be used exclusively for the Department of Health's Blood
18 Alcohol Program;

19 (2) Sixty-six percent (66%) of the revenues derived from this fee shall
20 be deposited as special revenues in the State Treasury into the Constitutional
21 Officers Fund and the State Central Services Fund as a direct revenue to be
22 used by the Office of Driver Services of the Revenue Division of the
23 Department of Finance and Administration for use in supporting the
24 administrative driver's licensing revocation and sanctions programs provided
25 for in this subchapter; and

26 (3) Twenty percent (20%) of the revenues derived from this fee shall be
27 deposited in the State Treasury, and the Treasurer of State shall credit them
28 as general revenues to the various funds in the respective amounts to each and
29 to be used for the purposes as provided in the Revenue Stabilization Law,
30 § 19-5-101 et seq."

31

32 SECTION 4. Arkansas Code Annotated § 5-65-202 is amended to read as
33 follows:

34 "5-65-202. Implied consent.

35 (a) Any person who operates a motor vehicle or is in actual physical
36 control of a motor vehicle in this state shall be deemed to have given

1 consent, subject to the provisions of § 5-65-203, to a chemical test or tests
 2 of his or her blood, breath, or urine for the purpose of determining the
 3 alcohol or controlled substance content of his or her blood or breath if:

4 (1) The driver is arrested for any offense arising out of acts
 5 alleged to have been committed while the person was driving while intoxicated
 6 or driving while there was ~~one-tenth of one percent (0.10%) or more of alcohol~~
 7 ~~in the person's blood~~ an alcohol concentration of 0.10 or more in the persons
 8 blood or breath; or

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

11 (3) At the time the person is arrested for driving while
 12 intoxicated, the law enforcement officer has reasonable cause to believe that
 13 the person, while operating or in actual physical control of a motor vehicle,
 14 is intoxicated or has ~~one-tenth of one percent (0.10%) or more of alcohol in~~
 15 ~~his or her blood~~ an alcohol concentration of 0.10 or more in the persons
 16 blood or breath.

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

21

22 SECTION 5. Arkansas Code Annotated § 5-65-203 is amended to read as
 23 follows:

24 "5-65-203. Administration.

25 (a) The chemical test or tests shall be administered at the direction
 26 of a law enforcement officer having reasonable cause to believe the person to
 27 have been operating or in actual physical control of a motor vehicle while
 28 intoxicated or while there was ~~one-tenth of one percent (0.10%) or more of~~
 29 ~~alcohol in the person's blood~~ an alcohol concentration of 0.10 or more in the
 30 persons blood or breath.

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

34 (1) If the person tested requests that additional tests be made,
 35 as authorized in § 5-65-204(e), the cost of the additional tests shall be
 36 borne by the person tested.

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

4

5 SECTION 6. Arkansas Code Annotated § 5-65-204 is amended to read as
6 follows:

7 "5-65-204. Validity - Approved methods.

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

9 (A) Grams of alcohol per one hundred (100) milliliters, or
10 cubic centimeters, of blood; or

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

13 (2) The alcohol concentration of other bodily substances shall be
14 based upon grams of alcohol per one hundred (100) milliliters, or cubic
15 centimeters, of blood, the same being percent weight per volume or percent
16 alcohol concentration.

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

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

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

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

35 (2) No person, institution, or office in this state who withdraws
36 blood for the purpose of determining alcohol or controlled substance content

1 thereof at the request of a law enforcement officer under the provisions of
 2 this subchapter shall be held liable for violating any of the criminal laws of
 3 this state in connection therewith, nor shall any physician, institution, or
 4 person acting under the direction or supervision of a physician be held liable
 5 in tort for the withdrawal of such blood unless such persons are negligent in
 6 connection therewith, or the blood is taken over the objections of the
 7 subject.

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

12 (1) The law enforcement officer shall advise the person of this
 13 right.

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

18 (f) Upon the request of the person who shall submit to a chemical test
 19 or tests at the request of a law enforcement officer, full information
 20 concerning the test shall be made available to him or his attorney."
 21

22 SECTION 7. Arkansas Code Annotated 5-65-206 is amended to read as
 23 follows:

24 "5-65-206. Evidence in prosecution.

25 (a) In any criminal prosecution of a person charged with the offense of
 26 driving while intoxicated, the amount of alcohol in the defendant's blood or
 27 breath at the time or within two (2) hours of the alleged offense, as shown by
 28 chemical analysis of the defendant's blood, urine, breath, or other bodily
 29 substance shall give rise to the following:

30 (1) If there was at that time ~~one-twentieth of one percent~~
 31 ~~(0.05%) or less by weight of alcohol in the defendant's blood, urine, breath,~~
 32 ~~or other bodily substance~~ an alcohol concentration of one twentieth (0.05) or
 33 less in the persons blood or breath, it shall be presumed that the defendant
 34 was not under the influence of intoxicating liquor;

35 (2) If there was at the time in excess of ~~one-twentieth of one~~
 36 ~~percent (0.05%) but less than one-tenth of one percent (0.10%) by weight of~~

1 ~~alcohol in the defendant's blood, urine, breath, or other bodily substance~~ an
2 alcohol concentration of one twentieth (0.05) but less than one tenth (0.10)
3 in the persons blood or breath, such fact shall not give rise to any
4 presumption that the defendant was or was not under the influence of
5 intoxicating liquor, but this fact may be considered with other competent
6 evidence in determining the guilt or innocence of the defendant.

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

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

12 (d) The records and reports of certifications, rules, evidence
13 analysis, or other documents pertaining to work performed by the blood alcohol
14 program of the Department of Health under the authority of this chapter shall
15 be received as competent evidence as to the matters contained therein in the
16 courts of this state subject to the applicable rules of criminal procedure
17 when duly attested to by the program director or his assistant, in the form of
18 an original signature or by certification of a copy. These documents shall be
19 self-authenticating.

20 (1) However, the ~~machine~~ instrument performing the chemical
21 analysis shall have been duly certified at least once in the last three (3)
22 months preceding arrest and the operator thereof shall have been properly
23 trained and certified.

24 (2) Nothing in this section shall be deemed to abrogate a
25 defendant's right of cross-examination of the person calibrating the ~~machine~~
26 instrument, the operator of the ~~machine~~ instrument, or any person performing
27 work in the blood alcohol program of the Department of Health, who shall be
28 made available by the state if notice of intention to cross-examine is given
29 ten (10) days prior to the date of hearing or trial.

30 (3) The testimony of the appropriate analyst or official may be
31 compelled by the issuance of a proper subpoena, in which case, the records and
32 reports shall be admissible through the analyst or official, who shall be
33 subject to cross-examination by the defendant or his counsel."

34

35 SECTION 8. Arkansas Code Annotated § 5-65-207 is amended to read as
36 follows:

1 "5-65-207. ~~Blood Breath~~ alcohol testing devices.

2 (a) Every ~~machine or~~ instrument used to determine the alcohol content
3 of the breath ~~or blood of any person by analysis of the breath of the person~~
4 for the purpose of determining if the person was operating a motor vehicle
5 while intoxicated or with ~~a blood alcohol content of one-tenth of one percent~~
6 ~~(0.10%) or more~~ an alcohol concentration of 0.10 or more in the persons blood
7 or breath shall be so constructed that the analysis is made automatically when
8 a sample of the person's breath is placed in the ~~machine or~~ instrument, and
9 without any adjustment or other action of the person administering the
10 analysis, and the ~~machine~~ instrument shall be so constructed that the ~~blood~~
11 alcohol content is shown by visible digital display on the ~~machine~~ instrument
12 and on an automatic readout.

13 (b) Any such breath analysis made by or through the use of ~~a machine or~~
14 an instrument that does not conform to the requirements prescribed herein
15 shall be inadmissible in any criminal or civil proceeding.

16 (c) The State Board of Health is authorized to adopt appropriate rules
17 and regulations to carry out the intent and purposes of this section, and only
18 ~~machines or~~ instruments approved by the board as meeting the requirements of
19 this section and regulations of the board shall be used for making the breath
20 analysis for determining blood alcohol content. The Department of Health is
21 specifically authorized to limit by its rules the types or models of testing
22 devices which may be approved for use in Arkansas for the purposes set forth
23 in this section. The approved types or models will be specified by
24 manufacturer's name and model.

25 (d) All law enforcement agencies which conduct ~~blood~~ alcohol testing
26 shall be in full compliance with the provisions of this section by June 28,
27 1989."

28

29 SECTION 9. Arkansas Code Annotated § 5-65-303 is amended to read as
30 follows:

31 "5-65-303. Conduct proscribed.

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

36 (b) It is unlawful and punishable as provided in this subchapter for

1 any underage person to operate or be in actual physical control of a motor
 2 vehicle if at that time there was ~~one-fiftieth of one percent (0.02%) but less~~
 3 ~~than one-tenth of one percent (0.10%) by weight of alcohol in the person's~~
 4 ~~blood~~ an alcohol concentration of 0.02 but less than 0.10 in the persons
 5 blood or breath as determined by a chemical test of the person's blood or
 6 breath or other bodily substance."

7

8 SECTION 10. Arkansas Code Annotated § 5-65-309 is amended to read as
 9 follows:

10 "5-65-309. Implied consent.

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

16 (1) The driver is arrested for any offense arising out of acts
 17 alleged to have been committed while the underage person was driving while
 18 under the influence or driving while there was ~~one-fiftieth of one percent~~
 19 ~~(0.02%) but less than one-tenth of one percent (0.10%) of alcohol in the~~
 20 ~~person's blood~~ an alcohol concentration of 0.02 but less than 0.10 in the
 21 persons blood or breath; or

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

24 (3) The underage person is stopped by a law enforcement officer
 25 who has reasonable cause to believe that the person, while operating or in
 26 actual physical control of a motor vehicle, is under the influence or has
 27 ~~one-fiftieth of one percent (0.02%) but less than one-tenth of one percent~~
 28 ~~(0.10%) of alcohol in his or her blood~~ an alcohol concentration of 0.02 but
 29 less than 0.10 in the persons blood or breath.

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

34

35 SECTION 11. Arkansas Code Annotated § 5-65-310 is amended to read as
 36 follows:

1 "5-65-310. Refusal to submit.

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

9 (b) The arresting officer shall remit the seized driver's license to
10 the court, and, upon an arraignment, the judge shall issue that person a
11 temporary permit to expire on the date of trial.

12 (c) If the judge determines that the law enforcement officer had
13 reasonable cause to believe the arrested underage person had been driving
14 under the influence or while there was ~~one-fiftieth of one percent (0.02%) but~~
15 ~~less than one-tenth of one percent (0.10%) of alcohol in the person's blood~~ an
16 alcohol concentration of 0.02 but less than 0.10 in the persons blood or
17 breath, and the underage person refused to submit to the test upon the request
18 of the law enforcement officer, the judge shall order the Office of Driver
19 Services to suspend the person's driver's license as follows:

20 (1) Suspension for not less than ninety (90) days nor more than
21 one hundred eighty (180) days if the underage person had not previously
22 refused the test while underage and if the underage person had not been
23 convicted of driving while under the influence or driving while there was
24 ~~one-fiftieth of one percent (0.02%) but less than one-tenth of one percent~~
25 ~~(0.10%) of alcohol in the person's blood while underage~~ an alcohol
26 concentration of 0.02 but less than 0.10 in the persons blood or breath;

27 (2) Suspension for not less than one (1) year nor more than
28 eighteen (18) months if the underage person had previously refused the test
29 while underage or if the underage person had been convicted of driving while
30 under the influence or driving while there was ~~one-fiftieth of one percent~~
31 ~~(0.02%) but less than one-tenth of one percent (0.10%) of alcohol in the~~
32 ~~person's blood while underage~~ an alcohol concentration of 0.01 but less than
33 0.10 in the persons blood or breath.

34 (d) If the underage person is a resident without a license or permit to
35 operate a motor vehicle in this state, the Office of Driver Services shall
36 deny to the person the issuance of a license or permit for a period of two (2)

1 years after the date of the arrest.

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

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

9

10 SECTION 12. Arkansas Code Annotated § 5-65-311 is amended to read as
11 follows:

12 "5-65-311. Relationship to other laws.

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

16 (b) For the purposes of this subchapter, there is no presumption, as
17 there is found in § 5-65-206, that a person is not under the influence of an
18 intoxicating substance, such as alcohol or a similar intoxicant, if the
19 person's blood or breath alcohol concentration is ~~five hundredths of one~~
20 ~~percent (0.05%)~~ 0.05 or less.

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

27 (d) If there is evidence of ~~more than one-twentieth of one percent~~
28 ~~(0.05%) but less than one-tenth of one percent (0.10%) by weight of alcohol in~~
29 ~~a person's blood, breath, or other bodily substances~~ an alcohol concentration
30 of more than 0.05 but less than 0.10 in the persons blood or breath, this
31 fact shall not preclude a person under twenty-one (21) years of age from being
32 prosecuted for driving while intoxicated under § 5-65-101 et seq."

33

34 SECTION 13. Arkansas Code Annotated § 5-75-102 is amended to read as
35 follows:

36 "5-75-102. Unlawful acts.

1 (a) It is unlawful and punishable as provided in this chapter for any
 2 person who is intoxicated to operate, navigate, or be in actual physical
 3 control of any aircraft.

4 (b) It is unlawful and punishable as provided in this chapter for any
 5 person to operate, navigate, or be in actual physical control of any aircraft
 6 if at that time there was ~~four-hundredths of one percent (0.04%) or more by~~
 7 ~~weight of alcohol in the person's blood~~ an alcohol concentration of 0.04 or
 8 more as determined by a chemical test of the person's blood, urine, breath, or
 9 other bodily substance.

10 (c)(1) Any person who pleads guilty, nolo contendere, or is found
 11 guilty of violating subsection (a) or (b) of this section shall be guilty of a
 12 Class A misdemeanor.

13 (2) For a second offense occurring within one (1) year, any
 14 person who pleads guilty, nolo contendere, or is found guilty of violating
 15 subsection (a) or (b) of this section shall be guilty of a Class D felony.

16 (d)(1) If a person under arrest for violating subsection (a) or (b) of
 17 this section refuses upon the request of a law enforcement officer to submit
 18 to a chemical test as provided in § 5-75-103, none shall be given; however,
 19 any person who refuses to submit to a chemical test as provided for in
 20 § 5-75-103 shall be guilty of a Class A misdemeanor.

21 (2) For a second offense occurring within one (1) year, any
 22 person who refuses to submit to a chemical test as provided for in § 5-75-103
 23 shall be guilty of a Class D felony.

24 (e) A complete report of all arrests and convictions made under the
 25 provisions of this chapter shall be forwarded to the Federal Aviation
 26 Administration or any other agency responsible for the licensing of pilots or
 27 navigators."

28

29 SECTION 14. Arkansas Code Annotated § 5-75-103 is amended to read as
 30 follows:

31 "5-75-103. Implied consent.

32 (a) Any person who operates or navigates any aircraft or is in actual
 33 physical control of any aircraft in this state shall be deemed to have given
 34 consent, subject to the provisions of § 5-75-104, to a chemical test or tests
 35 of his or her blood, breath, or urine for the purpose of determining the
 36 alcohol or controlled substance content of his or her blood, if:

1 (1) The operator or navigator is arrested for any offense arising
 2 out of acts alleged to have been committed while the person was operating or
 3 navigating any aircraft while intoxicated or operating or navigating any
 4 aircraft while there was ~~four-hundredths of one percent (0.04%) or more of~~
 5 ~~alcohol in the person's blood~~ an alcohol concentration of 0.04 or more in the
 6 persons blood or breath; or

7 (2) The person is involved in an accident while operating,
 8 navigating, or in actual physical control of any aircraft; or

9 (3) The person is stopped by a law enforcement officer who has
 10 reasonable cause to believe that the person, while operating, navigating, or
 11 in actual physical control of any aircraft, is intoxicated or has
 12 ~~four-hundredths of one percent (0.04%) or more of alcohol in his or her blood~~
 13 an alcohol concentration of 0.04 or more in the persons blood or breath.

14 (b) Any person who is dead, unconscious, or otherwise in a condition
 15 rendering him incapable of refusal shall be deemed not to have withdrawn the
 16 consent provided by subsection (a) of this section, and the tests may be
 17 administered subject to the provisions of § 5-75-104."

18

19 SECTION 15. Arkansas Code Annotated § 5-75-104 is amended to read as
 20 follows:

21 "5-75-104. Administration.

22 (a) The chemical test or tests shall be administered at the direction
 23 of a law enforcement officer having reasonable cause to believe the person to
 24 have been operating, navigating, or in actual physical control of any aircraft
 25 while intoxicated or while there was ~~four-hundredths of one percent (0.04%) or~~
 26 ~~more of alcohol in the person's blood~~ an alcohol concentration of 0.04 or more
 27 in the persons blood or breath.

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

31 (1) If the person tested requests that additional tests be made,
 32 as authorized in § 5-75-105, the cost of the additional tests shall be borne
 33 by the person tested.

34 (2) If any person shall object to the taking of his blood for a
 35 test, as authorized herein, the breath or urine of the person may be used to
 36 make the analysis."

1

2 SECTION 16. Arkansas Code Annotated § 5-75-106 is amended to read as
3 follows:

4 "5-75-106. Criminal prosecution - Evidence.

5 (a) In any criminal prosecution of a person charged with the offense of
6 operating or navigating any aircraft while intoxicated, the amount of alcohol
7 in the defendant's blood at the time or within two (2) hours of the alleged
8 offense, as shown by chemical analysis of the defendant's blood, urine,
9 breath, or other bodily substance shall give rise to the following:

10 (1) If there was at that time ~~less than four-hundredths of one~~
11 ~~percent (0.04%) by weight of alcohol in the defendant's blood, urine, breath,~~
12 ~~or other bodily substance~~ an alcohol concentration of less than 0.04 in the
13 persons blood or breath, it shall be presumed that the defendant was not
14 under the influence of intoxicating liquor; and

15 (2) If there was at the time ~~four-hundredths of one percent~~
16 ~~(0.04%) or more by weight of alcohol in the defendant's blood, urine, breath,~~
17 ~~or other bodily substance~~ an alcohol concentration of 0.04 or more in the
18 persons blood or breath, such fact shall not give rise to any presumption
19 that the defendant was or was not under the influence of intoxicating liquor,
20 but this fact may be considered with other competent evidence in determining
21 the guilt or innocence of the defendant.

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

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

27 (d)(1) The records and reports of certifications, rules, evidence
28 analysis, or other documents pertaining to work performed by the blood alcohol
29 program of the Department of Health under the authority of this chapter shall
30 be received as competent evidence as to the matters contained therein in the
31 courts of this state, subject to the applicable rules of criminal procedure,
32 when duly attested to by the program director or his assistant, in the form of
33 an original signature or by certification of a copy. These documents shall be
34 self-authenticating.

35 (2) However, the ~~machine~~ instrument performing the chemical
36 analysis shall have been duly certified at least once in the last three (3)

1 months preceding arrest, and the operator thereof shall have been properly
2 trained and certified.

3 (3) Nothing in this section shall be deemed to abrogate a
4 defendant's right of cross-examination of the person calibrating the ~~machine~~
5 instrument, the operator of the ~~machine~~ instrument, or any person performing
6 work in the blood alcohol program of the Department of Health, who shall be
7 made available by the state if notice of intention to cross-examine is given
8 ten (10) days prior to the date of hearing or trial.

9 (4) The testimony of the appropriate analyst or official may be
10 compelled by the issuance of a proper subpoena, in which case, the records and
11 reports shall be admissible through the analyst or official, who shall be
12 subject to cross-examination by the defendant or his counsel."
13

14 SECTION 17. Arkansas Code Annotated § 5-75-107 is amended to read as
15 follows:

16 "5-75-107. Blood Breath alcohol testing devices.

17 (a) Every ~~machine or~~ instrument used to determine the alcohol content
18 of the breath ~~or blood of any person by analysis of the breath of the person~~
19 for the purpose of determining if the person was operating or navigating any
20 aircraft while intoxicated or with ~~a blood alcohol content of four-hundredths~~
21 ~~of one percent (0.04%)~~ an alcohol concentration of 0.04 or more in the
22 persons blood or breath shall be so constructed that the analysis is made
23 automatically when a sample of the person's breath is placed in the ~~machine or~~
24 instrument, and without any adjustment or other action of the person
25 administering the analysis, and the ~~machine~~ instrument shall be so constructed
26 that the blood alcohol content is shown by visible digital display on the
27 ~~machine~~ instrument and on an automatic readout.

28 (b) Any such breath analysis made by or through the use of ~~a machine or~~
29 an instrument that does not conform to the requirements prescribed herein
30 shall be inadmissible in any criminal or civil proceeding.

31 (c)(1) The State Board of Health is authorized to adopt appropriate
32 rules and regulations to carry out the intent and purposes of this section,
33 and only ~~machines or~~ instruments approved by the board as meeting the
34 requirements of this section and the regulations of the board shall be used
35 for making the breath analysis for determining ~~blood~~ alcohol content.

36 (2) The Department of Health is specifically authorized to limit

1 by its rules the types or models of testing devices which may be approved for
2 use in Arkansas for the purposes set forth in this section. The approved
3 types or models will be specified by manufacturer's name and model."
4

5 SECTION 18. Chapter 75 of Title 5 is amended by adding the following
6 new section:

7 "5-75-108. Validity - Approved methods.

8 For purposes of this chapter:

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

10 (A) Grams of alcohol per one hundred (100) milliliters, or
11 cubic centimeters, of blood; or

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

14 (2) The alcohol concentration of other bodily substances shall be
15 based upon grams of alcohol per one hundred (100) milliliters, or cubic
16 centimeters, of blood, the same being percent weight per volume or percent
17 alcohol concentration.

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

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

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

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

36 (2) No person, institution, or office in this state who withdraws

1 blood for the purpose of determining alcohol or controlled substance content
 2 thereof at the request of a law enforcement officer under the provisions of
 3 this subchapter shall be held liable for violating any of the criminal laws of
 4 this state in connection therewith, nor shall any physician, institution, or
 5 person acting under the direction or supervision of a physician be held liable
 6 in tort for the withdrawal of such blood unless such persons are negligent in
 7 connection therewith, or the blood is taken over the objections of the
 8 subject.

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

13 (1) The law enforcement officer shall advise the person of this
 14 right.

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

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

22
 23 SECTION 19. Arkansas Code Annotated § 5-76-102 is amended to read as
 24 follows:

25 "5-76-102. Unlawful acts.

26 (a) No person shall operate any motorboat on the waters of this state
 27 while:

28 (1) Intoxicated; or

29 (2) There is ~~one-tenth of one percent (0.10%) or more, by weight,~~
 30 ~~of alcohol in the person's blood~~ an alcohol concentration of 0.10 or more, as
 31 determined by a chemical test of the person's blood, urine, breath, or other
 32 bodily substance.

33 (b)(1) In the case of a motorboat or device, only where the certified
 34 law enforcement officer has probable cause to believe that the operator of the
 35 motorboat is operating while intoxicated or operating while there is ~~one-tenth~~
 36 ~~of one percent (0.10%) or more, by weight, of alcohol in the person's blood~~ an

1 alcohol concentration of 0.10 or more in the persons blood or breath, the law
2 enforcement officer is authorized to administer and may test the operator, at
3 the scene, by using a field ~~breathalyzer~~ instrument or other approved method
4 to determine if the operator may be operating a motorboat or device in
5 violation of this section.

6 (2) The consumption of alcohol or the possession of open
7 containers aboard a vessel shall not in and of itself constitute probable
8 cause.

9 (c)(1)(A) For a first offense, a person violating this section shall be
10 punished by imprisonment in the county or municipal jail for not more than one
11 (1) year or by a fine of not less than two hundred fifty dollars (\$250) nor
12 more than one thousand dollars (\$1,000) or by both fine and imprisonment.

13 (B) In addition, the court shall order the person not to
14 operate a motorboat for a period of ninety (90) days.

15 (2)(A)(i) For a second offense within a three-year period, a
16 person violating this section shall be punished by a fine of not less than
17 five hundred dollars (\$500) nor more than two thousand five hundred dollars
18 (\$2,500) and by imprisonment in the county or municipal jail for not more than
19 one (1) year.

20 (ii) The sentence shall include a mandatory sentence
21 which is not subject to suspension or probation of imprisonment in the county
22 or municipal jail for not less than forty-eight (48) consecutive hours or
23 community service for not less than twenty (20) days.

24 (B) In addition, the court shall order the person not to
25 operate a motorboat for a period of one (1) year.

26 (3)(A) For a third or subsequent offense within a three-year
27 period, a person violating this section shall be punished by a fine of not
28 less than one thousand dollars (\$1,000) nor more than five thousand dollars
29 (\$5,000) and by imprisonment in the county or municipal jail for not less than
30 sixty (60) days nor more than one (1) year, to include a minimum of sixty (60)
31 days which shall be served in the county or municipal jail and which cannot be
32 probated or suspended.

33 (B) In addition, the court shall order the person not to
34 operate a motorboat for a period of three (3) years.

35 (4) Any person who operates a motorboat on the waters of this
36 state in violation of a court order shall be imprisoned for ten (10) days.

1 (d) A person who has been arrested for violating this section shall not
2 be released from jail, under bond or otherwise, until there is ~~less than~~
3 ~~one-tenth of one percent (0.10%) by weight of alcohol in the person's blood~~ an
4 alcohol concentration of less than 0.10 in the persons blood or breath and
5 the person is no longer intoxicated.

6 (e)(1) In any criminal prosecution of a person charged with violating
7 subsection (a) of this section, the amount of alcohol in the defendant's blood
8 at the time of or within two (2) hours of the alleged offense, as shown by
9 chemical analysis of the defendant's blood, urine, breath, or other bodily
10 substance, shall give rise to the following:

11 (A) If there was at that time ~~one-twentieth of one percent~~
12 ~~(0.05%) or less, by weight, of alcohol in the defendant's blood, urine,~~
13 ~~breath, or other bodily substance~~ an alcohol concentration of one twentieth
14 (0.05) or less in the persons blood or breath, it shall be presumed that the
15 defendant was not under the influence of intoxicating liquor;

16 (B) If there was at that time ~~in excess of one-twentieth of~~
17 ~~one percent (0.05%) but less than one-tenth of one percent (0.10%), by weight,~~
18 ~~of alcohol in the defendant's blood, urine, breath, or other bodily substance~~
19 an alcohol concentration in excess of one twentieth (0.05) but less than one
20 tenth (0.10) in the persons blood or breath, such fact shall not give rise to
21 any presumption that the defendant was or was not under the influence of
22 intoxicating liquor, but this fact may be considered with other competent
23 evidence in determining the guilt or innocence of the defendant.

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

27 (3)(A) The records and reports of certifications, rules, evidence
28 analysis, or other documents pertaining to work performed by the Blood Alcohol
29 Program of the Department of Health under the authority of this chapter shall
30 be received as competent evidence as to the matters contained therein in the
31 courts of this state, subject to the applicable rules of criminal procedure,
32 when attested to by the program director or his assistant, in the form of an
33 original signature or by certification of a copy.

34 (B) These documents shall be self-authenticating.

35 (f) The fact that any person charged with violating subsection (a) of
36 this section is or has been legally entitled to use alcohol or a controlled

1 substance shall not constitute a defense against any charge of violating
2 subsection (a) of this section.

3 (g) All fines for violations of this chapter shall be remitted to the
4 issuing law enforcement office to be used by that office for the
5 administration and enforcement of this chapter.

6 (h) Neither reckless operation of a motorboat nor any other boating or
7 water safety infraction is a lesser included offense under a charge in
8 violation of this section."

9

10 SECTION 20. Arkansas Code Annotated § 5-76-104 is amended to read as
11 follows:

12 "5-76-104. Implied consent.

13 (a)(1) Any person who operates a motorboat in this state shall be
14 deemed to have given consent, subject to the provisions of subsection (c) of
15 this section, to a chemical test or tests of his or her blood, breath, or
16 urine for the purpose of determining the alcohol or controlled substance
17 content of his or her blood if:

18 (A) The operator is arrested for any offense arising out of
19 acts alleged to have been committed while the person was operating while
20 intoxicated or operating while there was ~~one-tenth of one percent (0.10%) or~~
21 ~~more, by weight, of alcohol in the person's blood~~ an alcohol concentration of
22 0.10 or more in the persons blood or breath; or

23 (B) The person is involved in an accident while operating a
24 motorboat; or

25 (C) At the time the person is arrested for operating while
26 intoxicated, the law enforcement officer has reasonable cause to believe that
27 the person, while operating a motorboat, is intoxicated or has ~~one-tenth of~~
28 ~~one percent (0.10%) or more, by weight, of alcohol in his or her blood~~ an
29 alcohol concentration of 0.10 or more in the persons blood or breath.

30 (2) Any person who is dead, unconscious, or otherwise in a
31 condition rendering the person incapable of refusal, shall be deemed not to
32 have withdrawn the consent provided by subdivision (a) (1) of this section,
33 and the test may be administered subject to the provisions of subsection (c)
34 of this section.

35 (b) If a court determines that a law enforcement officer had reasonable
36 cause to believe an arrested person had been operating a motorboat in

1 violation of § 5-76-102(a) and the person refused to submit to the test upon
2 request of the law enforcement officer, the court shall levy a fine not to
3 exceed five hundred dollars (\$500) and suspend the operating privileges of the
4 person for a period of six (6) months, in addition to any other suspension
5 imposed for violating § 5-76-102(a).

6 (c)(1) The chemical test or tests shall be administered at the
7 direction of a law enforcement officer having reasonable cause to believe the
8 person to have been operating a motorboat while intoxicated or while there is
9 ~~one-tenth of one percent (0.10%) or more, by weight, of alcohol in the~~
10 ~~person's blood~~ an alcohol concentration of 0.10 or more in the persons blood
11 or breath.

12 (2) The law enforcement agency by which that officer is employed
13 shall designate which of the aforesaid tests shall be administered, and the
14 agency shall be responsible for paying all expenses incurred in conducting the
15 tests.

16 (A) If a person tested requests that additional tests be
17 made, as authorized in subsection (g) of this section, the cost of the
18 additional tests shall be borne by the person tested.

19 (B) If any person shall object to the taking of his blood
20 for a test, as authorized herein, the breath or urine of the person may be
21 used to make the analysis.

22 (d)(1) Chemical analyses of a person's blood, urine, or breath, to be
23 considered valid under the provisions of this chapter, must be performed
24 according to methods approved by the State Board of Health or by an individual
25 possessing a valid permit issued by the Department of Health for that purpose.

26 (2) The Department of Health is authorized to approve
27 satisfactory techniques or methods, to ascertain the qualifications and
28 competence of individuals to conduct such analyses, and to issue permits which
29 shall be subject to termination or revocation at the discretion of the
30 Department of Health.

31 (e)(1) When a person submits to a blood test at the request of a law
32 enforcement officer, blood may be drawn by a physician or by a person acting
33 under the direction and supervision of a physician.

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

36 (3) No person, institution, or office in this state who withdraws

1 blood for the purpose of determining alcohol or controlled substance content
 2 thereof at the request of a law enforcement officer shall be held liable for
 3 violating any of the criminal laws of this state in connection therewith, nor
 4 shall any physician, institution, or person acting under the direction or
 5 supervision of a physician be held liable in tort for the withdrawal of such
 6 blood unless such persons are negligent in connection therewith, or the blood
 7 is taken over the objections of the subject.

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

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

15 (2) The law enforcement officer shall advise the person of this
 16 right.

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

21

22 SECTION 21. Arkansas Code Annotated § 5-76-105 is amended to read as
 23 follows:

24 "5-76-105. Chemical analysis.

25 (a)(1) Every ~~machine or~~ instrument used to determine the alcohol
 26 content of the breath ~~or blood of any person by analysis of the breath of the~~
 27 ~~person~~ for the purpose of determining if the person was operating a vessel,
 28 etc., while intoxicated or with ~~a blood alcohol content of one-tenth of one~~
 29 ~~percent (0.10%) or more, by weight~~ an alcohol concentration of 0.10 or more in
 30 the persons blood or breath, shall be so constructed that the analysis is
 31 made automatically when a sample of the person's breath is placed in the
 32 ~~machine or~~ instrument and without any adjustment or other action of the person
 33 administering the analysis, and the ~~machine~~ instrument shall be so constructed
 34 that the blood alcohol content is shown by visible digital display on the
 35 ~~machine~~ instrument and on an automatic readout.

36 (2) The ~~machine~~ instrument performing the chemical analysis must

1 have been certified at least once in the last three (3) months preceding
 2 arrest, and the operator thereof must have been properly trained and
 3 certified.

4 (3) Any such breath analysis made by or through the use of a
 5 ~~machine or~~ an instrument that does not conform to the requirements prescribed
 6 in this subsection shall be inadmissible in any criminal or civil proceeding.

7 (b)(1) Nothing in this section shall be deemed to abrogate a
 8 defendant's right of cross-examination of the person calibrating the ~~machine~~
 9 instrument, the operator of the ~~machine~~ instrument, or any person performing
 10 work in the Blood Alcohol Program of the Department of Health, who shall be
 11 made available by the state if notice of intention to cross-examine is given
 12 at least ten (10) days prior to the date of hearing or trial.

13 (2) The testimony of the appropriate analyst or official may be
 14 compelled by subpoena, in which case, the records and reports shall be
 15 admissible through the analyst or official, who shall be subject to
 16 cross-examination by the defendant or his counsel."

17

18 SECTION 22. Chapter 76 of Title 5 is amended by adding the following
 19 new section:

20 "5-76-107. Validity - Approved methods.

21 For purposes of this chapter:

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

23 (A) Grams of alcohol per one hundred (100) milliliters, or
 24 cubic centimeters, of blood; or

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

27 (2) The alcohol concentration of other bodily substances shall be
 28 based upon grams of alcohol per one hundred (100) milliliters, or cubic
 29 centimeters, of blood, the same being percent weight per volume or percent
 30 alcohol concentration.

31 (b) Chemical analyses of the person's blood, urine, or breath to be
 32 considered valid under the provisions of this act shall have been performed
 33 according to methods approved by the Department of Health or by an individual
 34 possessing a valid permit issued by the Department of Health for this purpose.
 35 The Department of Health is authorized to approve satisfactory techniques or
 36 methods, to ascertain the qualifications and competence of individuals to

1 conduct such analyses, and to issue permits which shall be subject to
2 termination or revocation at the discretion of the Department of Health.

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

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

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

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

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

26 (1) The law enforcement officer shall advise the person of this
27 right.

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

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

35

36 SECTION 23. All provisions of this act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

3

4 SECTION 24. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 act are declared to be severable.

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10 SECTION 25. All laws and parts of laws in conflict with this act are
11 hereby repealed.

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