

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 130

5 By: Senator G. Stubblefield
6

For An Act To Be Entitled

8 AN ACT CONCERNING THE OFFENSE OF DRIVING OR BOATING
9 WHILE INTOXICATED; CONCERNING OPERATION OF A MOTOR
10 VEHICLE OR BOAT UNDER THE INFLUENCE OF MARIJUANA;
11 ESTABLISHING A LEVEL OF MARIJUANA IN A PERSON'S
12 BODILY FLUIDS THAT LEADS TO A PRESUMPTION OF
13 INTOXICATION; TO BE KNOWN AS "SEBASTIAN'S LAW"; AND
14 FOR OTHER PURPOSES.
15

Subtitle

16
17
18 CONCERNING THE OMNIBUS DWI OR BWI ACT;
19 CONCERNING OPERATION OF A MOTOR VEHICLE
20 OR BOAT UNDER THE INFLUENCE OF MARIJUANA;
21 AND ESTABLISHING A PRESUMPTIVE LEVEL OF
22 INTOXICATION DUE TO MARIJUANA IN A
23 PERSON'S BODILY FLUIDS.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 5-10-105(a), concerning the elements of the
29 offense of negligent homicide, is amended to read as follows:

30 (a)(1) A person commits negligent homicide if he or she negligently
31 causes the death of another person, not constituting murder or manslaughter,
32 as a result of operating a vehicle, an aircraft, or a watercraft:

33 (A) While intoxicated;

34 (B)(i) If, as determined by a chemical test of the
35 person's blood, urine, breath, saliva, or other bodily substance, at that
36 time there is:



1 (a) ~~an~~ An alcohol concentration of eight
2 hundredths (0.08) or more in the person’s breath or blood based upon the
3 definition of alcohol concentration in § 5-65-204, ~~as determined by a~~
4 ~~chemical test of the person’s blood, urine, breath, saliva, or other bodily~~
5 ~~substance; or~~

6 (b) A THC concentration of five nanograms (5
7 ng) or more in the person’s blood based upon the definition of THC
8 concentration in § 5-65-102.

9 (ii) The method of the chemical test of the person’s
10 blood, urine, saliva, breath, or other bodily substance shall be made in
11 accordance with §§ 5-65-204 and 5-65-206;

12 (C) While passing a stopped school bus in violation of §
13 27-51-1004; or

14 (D) While fatigued.

15 (2) A person who violates subdivision (a)(1) of this section
16 upon conviction is guilty of a Class B felony.

17
18 SECTION 2. Arkansas Code § 5-13-202(a)(3), concerning the elements of
19 one of the possible ways to commit the offense of battery in the second
20 degree, is amended to read as follows:

21 (3) The person recklessly causes serious physical injury to
22 another person:

23 (A) By means of a deadly weapon; or

24 (B) While operating or in actual physical control of a
25 motor vehicle or motorboat if at the time:

26 (i) The person is intoxicated; ~~or~~

27 (ii) The alcohol concentration in the person’s
28 breath or blood is eight-hundredths (0.08) or more based upon the definition
29 of alcohol concentration in § 5-65-204; or

30 (iii) The THC concentration in the person’s blood is
31 five nanograms (5 ng) or more based upon the definition of THC concentration
32 in § 5-65-102; or

33
34 SECTION 3. Arkansas Code § 5-65-102, concerning definitions under the
35 Omnibus DWI or BWI Act, is amended to add an additional definition to read as
36 follows:

1 (10) "THC concentration" means grams of delta-9-
2 tetrahydrocannabinol per milliliter of blood.

3
4 SECTION 4. Arkansas Code § 5-65-103 is amended to read as follows:
5 5-65-103. Driving or boating while intoxicated.

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

9 (2) It is unlawful and punishable as provided in this chapter
10 for a person to operate or be in actual physical control of a motorboat on
11 the waters of this state or a motor vehicle if at that time the:

12 ~~(A) alcohol~~ Alcohol concentration in the person's breath or
13 blood was eight hundredths (0.08) or more based upon the definition of
14 alcohol concentration in § 5-65-204-; or

15 (B) THC concentration in the person's blood was five
16 nanograms (5 ng) or more.

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

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

22
23 SECTION 5. Arkansas Code § 5-65-104 is amended to read as follows:
24 5-65-104. Seizure, suspension, and revocation of license – Temporary
25 permits – Ignition interlock restricted license.

26 (a)(1) At the time of arrest for operating or being in actual physical
27 control of a motorboat on the waters of this state or a motor vehicle while
28 intoxicated, ~~or~~ while there was an alcohol concentration of eight hundredths
29 (0.08) or more in the person's breath or blood, ~~as provided in § 5-65-103 §~~
30 5-65-103(a)(2)(A), or while there was a THC concentration of five nanograms
31 (5 ng) or more in the person's blood, § 5-65-103(a)(2)(B), the arrested
32 person shall immediately surrender his or her driver's license, driver's
33 permit, or other evidence of driving privilege to the arresting law
34 enforcement officer as provided in § 5-65-402.

35 (2) The Office of Driver Services or its designated official
36 shall suspend or revoke the driving privilege of an arrested person or shall

1 suspend any nonresident driving privilege of an arrested person, as provided
 2 in § 5-65-402. The suspension or revocation shall be based on the number of
 3 previous offenses as follows:

4 (A) Suspension for:

5 (i)(a) Six (6) months for the first offense of
 6 operating or being in actual physical control of a motorboat on the waters of
 7 this state or a motor vehicle while intoxicated, ~~or~~ while there was an
 8 alcohol concentration of at least eight hundredths (0.08) by weight of
 9 alcohol in the person's blood or breath, ~~§ 5-65-103~~ § 5-65-103(a)(2)(A).

10 (b) If the ~~Office of Driver Services~~ office
 11 allows the issuance of an ignition interlock restricted license under § 5-65-
 12 118, the ignition interlock restricted license shall be available
 13 immediately.

14 (c) The restricted driving permit under § 5-
 15 65-120 is not allowed for a suspension under this subdivision (a)(2)(A)(i);
 16 and

17 (ii)(a) Suspension for six (6) months for the first
 18 offense of operating or being in actual physical control of a motorboat on
 19 the waters of this state or a motor vehicle while intoxicated by the
 20 ingestion of or by the use of a controlled substance.

21 (b) The ignition interlock restricted license
 22 provision of § 5-65-118 does not apply to a suspension under subdivision
 23 (a)(2)(A)(ii)(a) of this section;

24 (B)(i) Suspension for twenty-four (24) months for a second
 25 offense of operating or being in actual physical control of a motorboat on
 26 the waters of this state or a motor vehicle while intoxicated, ~~or~~ while there
 27 was an alcohol concentration of eight hundredths (0.08) or more by weight of
 28 alcohol in the person's blood or breath, ~~§ 5-65-103~~ § 5-65-103(a)(2)(A),
 29 within five (5) years of the first offense.

30 (ii) However, if the office allows the issuance of
 31 an ignition interlock restricted license under § 5-65-118, the restricted
 32 license is available immediately.

33 (iii) The ignition interlock restricted license
 34 provision of § 5-65-118 does not apply to the suspension under subdivisions
 35 (a)(2)(B)(i) and (ii) of this section if the person is arrested for an
 36 offense of operating or being in actual physical control of a motor vehicle

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

3 (C)(i) Suspension for thirty (30) months for the third
4 offense of operating or being in actual physical control of a motorboat on
5 the waters of this state or a motor vehicle while intoxicated, ~~or~~ while there
6 was an alcohol concentration of eight hundredths (0.08) or more by weight of
7 alcohol in the person's blood or breath, ~~§ 5-65-103~~ § 5-65-103(a)(2)(A),
8 within five (5) years of the first offense.

9 (ii) However, if the office allows the issuance of
10 an ignition interlock restricted license under § 5-65-118, the restricted
11 license is available immediately.

12 (iii) The ignition interlock restricted license
13 provision of § 5-65-118 does not apply to the suspension under subdivisions
14 (a)(2)(C)(i) and (ii) of this section if the person is arrested for an
15 offense of operating or being in actual physical control of a motorboat on
16 the waters of this state or a motor vehicle while intoxicated by the
17 ingestion of or by the use of a controlled substance; and

18 (D) Revocation for four (4) years, during which no
19 restricted permits may be issued, for the fourth or subsequent offense of
20 operating or being in actual physical control of a motor vehicle or motorboat
21 while intoxicated, ~~or~~ while there was an alcohol concentration of eight
22 hundredths (0.08) or more by weight of alcohol in the person's blood or
23 breath, ~~§ 5-65-103~~ § 5-65-103(a)(2)(A), or while there was a THC
24 concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-
25 103(a)(2)(B), within five (5) years of the first offense.

26 (3) If a person is a resident who is convicted of driving
27 without a license or permit to operate a motor vehicle or motorboat and the
28 underlying basis for the suspension, revocation, or restriction of the
29 license or permit was for a violation of § 5-65-103, in addition to any other
30 penalties provided for under law, the court may restrict the offender to an
31 ignition interlock restricted license for a period of one (1) year prior to
32 the reinstatement or reissuance of a license or permit after the person would
33 otherwise be eligible for reinstatement or reissuance of the person's license
34 or permit.

35 (4) In order to determine the number of previous offenses to
36 consider when suspending or revoking the arrested person's driving privilege,

1 the office shall consider as a previous offense any of the following that
 2 occurred within the five (5) years immediately before the current offense:

3 (A) A conviction for an offense of operating or being in
 4 actual physical control of a motorboat on the waters of this state or a motor
 5 vehicle while intoxicated, ~~or~~ while there was an alcohol concentration of
 6 eight hundredths (0.08) or more in the person's breath or blood, § 5-65-
 7 103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng)
 8 or more in the person's blood, § 5-65-103(a)(2)(B), including a violation of
 9 § 5-10-105(a)(1)(A) or § 5-10-105(a)(1)(B), that occurred:

- 10 (i) In Arkansas; or
- 11 (ii) In another state; or

12 (B) A suspension or revocation of driving privilege for an
 13 arrest for operating or being in actual physical control of a motorboat on
 14 the waters of this state or a motor vehicle while intoxicated, ~~or~~ while there
 15 was an alcohol concentration of eight hundredths (0.08) or more in the
 16 person's breath or blood ~~under § 5-65-103, § 5-65-103(a)(2)(A), or while~~
 17 there was a THC concentration of five nanograms (5 ng) or more in the
 18 person's blood, § 5-65-103(a)(2)(B), when the person was not subsequently
 19 acquitted of the criminal charges.

20 (b)(1)(A) A person whose driving privilege is suspended or revoked
 21 under this section is required to complete an alcohol education program or an
 22 alcohol treatment program as approved by the Division of Behavioral Health
 23 Services unless the charges are dismissed or the person is acquitted of the
 24 charges upon which the suspension or revocation is based.

25 (B) If during the period of suspension or revocation under
 26 subdivision (b)(1)(A) of this section the person commits an additional
 27 violation of § 5-65-103, he or she is also required to complete an approved
 28 alcohol education program or alcohol treatment program for each additional
 29 violation, unless:

- 30 (i) The additional charges are dismissed; or
- 31 (ii) He or she is acquitted of the additional

32 charges.

33 (2) A person whose driving privilege is suspended or revoked
 34 under this section shall furnish proof of:

35 (A) Attendance at and completion of the alcohol education
 36 program or the alcohol treatment program required under subdivision (b)(1)(A)

1 of this section before reinstatement of his or her suspended or revoked
 2 driving privilege; or

3 (B) Dismissal or acquittal of the charge on which the
 4 suspension or revocation is based.

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

10

11 SECTION 6. Arkansas Code § 5-65-202 is amended to read as follows:
 12 5-65-202. Implied consent.

13 (a) A person who operates a motorboat on the waters of this state or a
 14 motor vehicle or is in actual physical control of a motorboat on the waters
 15 of this state or a motor vehicle is deemed to have given consent, subject to
 16 § 5-65-203, to one (1) or more chemical tests of his or her blood, breath,
 17 saliva, or urine for the purpose of determining the alcohol concentration or
 18 controlled substance content of his or her breath or blood if:

19 (1) The person is arrested for any offense arising out of an act
 20 alleged to have been committed while the person was driving or boating while
 21 intoxicated, ~~or~~ driving or boating while there was an alcohol concentration
 22 of eight hundredths (0.08) or more in the person's breath or blood, § 5-65-
 23 103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng)
 24 or more in the person's blood, § 5-65-103(a)(2)(B);

25 (2) The person is involved in an accident while operating or in
 26 actual physical control of a motorboat on the waters of this state or a motor
 27 vehicle; or

28 (3) At the time the person is arrested for driving or boating
 29 while intoxicated, the law enforcement officer has reasonable cause to
 30 believe that the person, while operating or in actual physical control of a
 31 motorboat on the waters of this state or a motor vehicle, is intoxicated, ~~or~~
 32 has an alcohol concentration of eight hundredths (0.08) or more in the
 33 person's breath or blood, § 5-65-103(a)(2)(A), or while there was a THC
 34 concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-
 35 103(a)(2)(B).

36 (b) A person who is dead, unconscious, or otherwise in a condition

1 rendering him or her incapable of refusal is deemed not to have withdrawn the
 2 consent provided by subsection (a) of this section, and one (1) or more
 3 chemical tests may be administered subject to § 5-65-203.

4
 5 SECTION 7. Arkansas Code § 5-65-203 is amended to read as follows:
 6 5-65-203. Administration of a chemical test.

7 (a) One (1) or more chemical tests authorized in § 5-65-202 shall be
 8 administered at the direction of a law enforcement officer having reasonable
 9 cause to believe the person to have been operating or in actual physical
 10 control of a motorboat on the waters of this state or a motor vehicle while
 11 intoxicated, ~~or~~ while there was an alcohol concentration of eight hundredths
 12 (0.08) or more in the person's breath or blood, § 5-65-103(a)(2)(A), or while
 13 there was a THC concentration of five nanograms (5 ng) or more in the
 14 person's blood, § 5-65-103(a)(2)(B).

15 (b)(1) The law enforcement agency by which the law enforcement officer
 16 is employed shall designate which chemical test or chemical tests shall be
 17 administered, and the law enforcement agency is responsible for paying any
 18 expense incurred in conducting the chemical test or chemical tests.

19 (2) If the person tested requests that an additional chemical
 20 test or chemical tests be made as authorized in § 5-65-204(d), the cost of
 21 the additional chemical test or chemical tests shall be borne by the person
 22 tested, unless the person is found not guilty, in which case the arresting
 23 law enforcement agency shall reimburse the person for the cost of the
 24 additional chemical test or chemical tests.

25 (3) If a person objects to the taking of his or her blood for a
 26 chemical test as authorized in this chapter, the breath, saliva, or urine of
 27 the person may be used for the chemical test.

28
 29 SECTION 8. Arkansas Code § 5-65-204(b)(1)(A), concerning the validity
 30 of a chemical test to determine the presence and amount of alcohol in a
 31 person's blood, urine, saliva, or breath, is amended to read as follows:

32 (b)(1)(A) A To be considered valid under this chapter, a chemical test
 33 made to determine the presence and amount of alcohol in a person's blood,
 34 urine, saliva, or breath ~~to be considered valid under this chapter, or to~~
 35 determine the presence and amount of delta-9-tetrahydrocannabinol in a
 36 person's blood, shall be performed according to a method approved by the

1 Department of Health and the State Board of Health or by an individual
2 possessing a valid certificate issued by the department for this purpose.

3
4 SECTION 9. Arkansas Code § 5-65-206(a), concerning the presumptive
5 limits indicating intoxication ascertained through a chemical test that may
6 be used as evidence in prosecution, is amended to read as follows:

7 (a)(1) It is presumed at the trial of a person who is charged with a
8 violation of § 5-65-103 that the person was not intoxicated if the:

9 (A) ~~alcohol~~ Alcohol concentration of the person's blood,
10 urine, breath, saliva, or other bodily substance is four hundredths (0.04) or
11 less by weight as shown by chemical analysis at the time of or within four
12 (4) hours after the alleged offense; or

13 (B) THC concentration of the person's blood is less than
14 two nanograms (2 ng) by weight as shown by chemical analysis at the time of
15 the alleged offense.

16 (2) A Although the following facts may be considered with other
17 competent evidence in determining the guilt or innocence of the person, a
18 presumption does not exist if at the time of the alleged offense the person
19 has:

20 (A) ~~an~~ An alcohol concentration of more than four
21 hundredths (0.04) but less than eight hundredths (0.08) by weight of alcohol
22 in the ~~defendant's~~ person's blood, urine, breath, or other bodily substance,
23 ~~although this fact may be considered with other competent evidence in~~
24 ~~determining the guilt or innocence of the defendant; or~~

25 (B) A THC concentration of two nanograms (2 ng) or more
26 but less than five nanograms (5 ng) by weight in the person's blood.

27
28 SECTION 10. Arkansas Code § 5-65-402(a)(8), concerning a hearing on
29 the suspension, revocation, or disqualification of a person's driving
30 privilege of an arrested person, is amended to read as follows:

31 (8)(A) The hearing shall be before the office or its authorized
32 agent, in the office of the Revenue Division of the Department of Finance and
33 Administration nearest the county where the alleged event occurred for which
34 the person was arrested, unless the office or its authorized agent and the
35 arrested person agree otherwise to the hearing's being held in some other
36 county or that the office or its authorized agent may schedule the hearing or

1 any part of the hearing by telephone and conduct the hearing by telephone
 2 conference call.

3 (B) The hearing shall not be recorded.

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

6 (D) The scope of the hearing shall cover the issues of
 7 whether the arresting law enforcement officer had reasonable grounds to
 8 believe that the person:

9 (i) Had been operating or was in actual physical
 10 control of a motorboat on the waters of this state or a motor vehicle or
 11 commercial motor vehicle while:

12 (a) Intoxicated or impaired;

13 (b) The person's blood alcohol concentration
 14 measured by weight of alcohol in the person's blood was equal to or greater
 15 than the blood alcohol concentration prohibited by ~~§ 5-65-103(a)(2)~~ § 5-65-
 16 103(a)(2)(A);

17 (c) The blood alcohol concentration of a
 18 person under twenty-one (21) years of age was equal to or greater than the
 19 blood alcohol concentration prohibited by § 5-65-303; ~~or~~

20 (d) The person's blood alcohol concentration
 21 measured by weight of alcohol in the person's blood was equal to or greater
 22 than the blood alcohol concentration prohibited by § 27-23-114; or

23 (e) The THC concentration in the person's
 24 blood by weight was equal to or greater than the THC concentration prohibited
 25 by § 5-65-103(a)(2)(B); or

26 (ii) Refused to submit to a chemical test of the
 27 blood, breath, saliva, or urine for the purpose of determining the alcohol
 28 concentration or controlled substance ~~contents~~ content of the person's breath
 29 or blood and whether the person was placed under arrest;

30 (iii) Was under twenty-one (21) years of age and
 31 purchased or was in possession of any intoxicating liquor, wine, or beer; or

32 (iv) Was under twenty-one (21) years of age and
 33 attempted to purchase an alcoholic beverage or use a fraudulent or altered
 34 personal identification document for the purpose of purchasing an alcoholic
 35 beverage illegally or other material or substance restricted to adult
 36 purchase or possession under existing law.

1 (E)(i) The office or its agent at the hearing shall
 2 consider any document submitted to the office by the arresting law
 3 enforcement agency, any document submitted by the arrested person, and the
 4 statement of the arrested person.

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

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

12 (a) The arrested person was advised that his
 13 or her privilege to drive would be revoked, disqualified, suspended, or
 14 denied if the chemical test result reflected an alcohol concentration or THC
 15 concentration equal to or in excess of the amount by weight of blood provided
 16 by law or the presence of other intoxicating substances;

17 (b) The breath, blood, saliva, or urine
 18 specimen was obtained from the arrested person within the established and
 19 certified criteria of the Department of Health;

20 (c) The chemical testing procedure used was in
 21 accordance with existing rules; and

22 (d) The chemical test result in fact reflects
 23 an alcohol concentration or THC concentration, the presence of other
 24 intoxicating substances, or a combination of alcohol concentration ~~or~~ and
 25 other intoxicating ~~substance~~ substances.

26 (ii) If the revocation, suspension,
 27 disqualification, or denial is based upon the refusal of the arrested person
 28 to submit to a chemical test as provided in § 5-65-205, § 5-65-310, or § 27-
 29 23-114(a)(5), reflected in a sworn report by the arresting law enforcement
 30 officer, the scope of the hearing shall also include whether:

31 (a) The arrested person refused to submit to
 32 the chemical test; and

33 (b) The arrested person was informed that his
 34 or her privilege to drive would be revoked, disqualified, suspended, or
 35 denied if the arrested person refused to submit to the chemical test.

36