

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 518 OF 1995
SENATE BILL 127

4 **By: Senators Canada, Scott, Hoofman, Fitch, Jeffries, Ross, Gwatney, Bookout, Smith,**
5 **Gordon, Webb, Keet, Russ, Walters, Boozman, Brown**
6 ***By: Representatives Mullinix, Lynn, Allen and T. Smith***

For An Act To Be Entitled

9 "AN ACT TO PROHIBIT THE OPERATION OF A *MOTORBOAT* OR
10 CERTAIN OTHER MARINE DEVICES WHILE UNDER THE INFLUENCE OF
11 ALCOHOL OR CONTROLLED SUBSTANCES; AND FOR OTHER PURPOSES."

Subtitle

14 "TO PROHIBIT OPERATION OF A *MOTORBOAT* OR
15 CERTAIN OTHER MARINE DEVICES WHILE UNDER
16 THE INFLUENCE OF ALCOHOL OR CONTROLLED
17 SUBSTANCES."

18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. As used in this act:

22 (1) "Controlled substance" means a drug, substance, or immediate
23 precursor in Schedules I through VI of the Uniform Controlled Substance Act.

24 (2) "Intoxicated" means influenced or affected by the ingestion of
25 alcohol, a controlled substance, any intoxicant, or any combination thereof,
26 to such a degree that the operator's reactions, motor skills and judgement are
27 substantially altered and the operator, therefore, constitutes a clear and
28 substantial danger of physical injury or death to himself or others.

29 (3) "*Motorboat*" means any vessel operated upon water and which is
30 propelled by machinery, whether or not the machinery is the principal source
31 of propulsion.

32 (4) "*Operator*" means a person who is controlling the speed and
33 direction of a motorboat or a person who is in direct physical control of the
34 motorboat.

35 (5) "*Waters*" means any public waters within the territorial limits of
36 the State of Arkansas.

1

2 SECTION 2. No person shall operate any motorboat on the waters of this
3 state, while:

4 (1) Intoxicated; or

5 (2) There is one-tenth of one percent (0.10%) or more by weight
6 of alcohol in the person_s blood, as determined by a chemical test of the
7 person_s blood, urine, breath, or other bodily substance.

8

9 SECTION 3. In the case of a motorboat or device, only where the
10 certified law enforcement officer has probable cause to believe that the
11 operator of the motorboat is operating while intoxicated or operating while
12 there is one-tenth of one percent (0.10%) or more, by weight, of alcohol in
13 the person's blood, the law enforcement officer is authorized to administer
14 and may test the operator, at the scene, by using a field breathalyzer or
15 other approved method to determine if the operator may be operating a
16 motorboat or device in violation of this act. The consumption of alcohol or
17 the possession of open containers aboard a vessel shall not in and of itself
18 constitute probable cause.

19

20 SECTION 4. (a) For first offense, a person violating this Act shall be
21 punished by imprisonment in the county or municipal jail for not more than one
22 (1) year or by fine of not less than two hundred fifty dollars (\$250) nor more
23 than one thousand dollars (\$1,000) or both fine and imprisonment. In
24 addition, the court shall order the person not to operate a motorboat for a
25 period of ninety (90) days. Neither reckless operation of a motorboat nor any
26 other boating or water safety infraction is a lesser included offense under a
27 charge in violation of this Act.

28 (b) For a second offense within a three (3) year period, the person who
29 violates this Act shall be punished by a fine of not less than five hundred
30 dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) and by
31 imprisonment in the county or municipal jail for not more than one (1) year.
32 The sentence shall include a mandatory sentence which is not subject to
33 suspension or probation of imprisonment in the county or municipal jail for
34 not less than forty-eight (48) consecutive hours or community service for not
35 less than twenty (20) days. In addition, the court shall order the person not

1 to operate a motorboat for a period of one (1) year.

2 (c) For a third or subsequent offense within a three (3) year period,
3 the person who violates this Act shall be punished by a fine of not less than
4 one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) and
5 by imprisonment in the county or municipal jail for not less than sixty (60)
6 days nor more than one (1) year, to include a minimum of sixty (60) days which
7 shall be served in the county or municipal jail and which cannot be probated
8 or suspended. In addition, the court shall order the person not to operate a
9 motorboat for a period of three (3) years.

10 (d) A person who has been arrested for violating this Act shall not be
11 released from jail under bond or otherwise, until there is less than one-tenth
12 of one percent (0.10%) by weight of alcohol in the person's blood and the
13 person is no longer intoxicated.

14

15 SECTION 5. (a) Any person who pleads guilty or nolo contendere, or is
16 found guilty of violating this Act, shall, in addition to other penalties
17 provided herein, be required to complete an alcohol education program as
18 prescribed and approved by the Arkansas Highway Safety Program or an
19 alcoholism treatment program as approved by the Bureau of Alcohol and Drug
20 Abuse Prevention of the Department of Health. Such alcoholism education
21 program may collect a program fee of up to fifty dollars (\$50.00) per enrollee
22 to offset program costs. A person ordered to complete an alcoholism treatment
23 program under this section may be required to pay, in addition to the costs
24 collected for treatment, a fee of up to twenty-five dollars (\$25.00) to offset
25 the additional costs associated with reporting requirements under this Act.
26 The alcoholism education program shall report semiannually to the Arkansas
27 Highway Safety Program all revenue derived from this fee.

28 (b) Within six (6) months of the final adjudication of guilt, the
29 operator shall furnish proof of attendance at and completion of the alcoholism
30 treatment or education program. If such proof is not furnished, the operator
31 shall be cited for contempt of court and assessed an additional court cost of
32 two hundred dollars (\$200.00), with fifty dollars (\$50.00) retained by the
33 municipal court. The remaining moneys received from these additional court
34 costs shall be remitted at least quarterly, by January 1, April 1, July 1, and
35 October 1 to the Director of the Department of Finance and Administration.

1 One-half (1/2) of the moneys so received by the director shall be deposited in
2 the State Treasury to be credited to the Highway Safety Special Fund for use
3 to support programs of the Arkansas Highway Safety Program. The remaining
4 one-half (1/2) of such moneys received by the director shall be deposited in
5 the State Treasury to be credited to the Alcohol and Drug Safety Fund to
6 support alcoholism treatment programs of the Division of Alcohol and Drug
7 Abuse Prevention.

8

9 SECTION 6. Any person who operates a *motorboat* on the waters of this
10 state in violation of court order, shall be imprisoned for ten (10) days.

11

12 SECTION 7. (a) Any person who operates a *motorboat* in this state shall
13 be deemed to have given consent, subject to the provisions of Section 7 of
14 this Act, to a chemical test or tests of his or her blood, breath, or urine
15 for the purpose of determining the alcohol or controlled substance content of
16 his or her blood if:

17 (1) The operator is arrested for any offense arising out of acts
18 alleged to have been committed while the person was operating while
19 intoxicated or operating while there was one-tenth of one percent (0.10%) or
20 more, by weight, of alcohol in the person_s blood; or

21 (2) The person is involved in an accident while operating a
22 *motorboat*; or

23 (3) At the time the person is arrested for operating while
24 intoxicated, the law enforcement officer has reasonable cause to believe that
25 the person, while operating a *motorboat*, is intoxicated or has one-tenth of
26 one percent (0.10%) or more, by weight, of alcohol in his or her blood.

27 (b) Any person who is dead, unconscious, or otherwise in a condition
28 rendering the person incapable of refusal shall be deemed not to have
29 withdrawn the consent provided by subsection (a) of this section, and the test
30 may be administered subject to the provisions of Section 7.

31

32 SECTION 8. (a) The chemical test or tests shall be administered at the
33 direction of a law enforcement officer having reasonable cause to believe the
34 person to have been operating a *motorboat* while intoxicated or while there is
35 one-tenth of one percent (0.10%) or more, by weight, of alcohol in the

1 person_s blood.

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

5 (1) If the person tested requests that additional tests be made,
6 as authorized in Section 8(d) of this Act, the cost of the additional tests
7 shall be borne by the person tested.

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

11

12 SECTION 9. (a) Chemical analyses of the person's blood, urine, or
13 breath to be considered valid under the provisions of this Act must be
14 performed according to methods approved by the Arkansas State Board of Health
15 or by an individual possessing a valid permit issued by the Department of
16 Health for this purpose. The Department of Health is authorized to approve
17 satisfactory techniques or methods, to ascertain the qualifications and
18 competence of individuals to conduct such analyses, and to issue permits which
19 shall be subject to termination or revocation at the discretion of the
20 Department of Health.

21 (b) When a person submits to a blood test at the request of a law
22 enforcement officer, blood may be drawn by a physician or a person acting
23 under the direction and supervision of a physician.

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

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

34 (c) Upon the request of the person who submits to a chemical test or
35 tests at the request of a law enforcement officer, full information concerning

1 the test shall be made available to him or his attorney.

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

6 (1) The law enforcement officer shall advise the person of this
7 right.

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

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13 SECTION 10. If the court determines that the law enforcement officer
14 had reasonable cause to believe the arrested person had been operating a
15 motorboat in violation of this Act and the person refused to submit to the
16 test upon request of the law enforcement officer, the court shall *levy a fine*
17 *not to exceed five hundred dollars (\$500) and* suspend the operating privileges
18 of the person for a period of six (6) months, in addition to any other
19 suspension imposed for violating this Act.

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21 SECTION 11. The fact that any person charged with violating this Act is
22 or has been legally entitled to use alcohol or a controlled substance shall
23 not constitute a defense against any charge of violating this Act.

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25 SECTION 12. (a) In any criminal prosecution of a person charged with
26 violating Section 2 of this Act, the amount of alcohol in the defendant's
27 blood 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, it shall be presumed that the defendant was not
33 under the influence of intoxicating liquor.

34 (2) If there was at the time in excess of one-twentieth of one
35 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,
2 such fact shall not give rise to any presumption that the defendant was or was
3 not under the influence of intoxicating liquor, but this fact may be
4 considered with other competent evidence in determining the guilt or innocence
5 of the defendant.

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

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

17 (d) The machine performing the chemical analysis must have been
18 certified at least once in the last three (3) months preceding arrest and the
19 operator thereof must have been properly trained and certified.

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

26 (f) The testimony of the appropriate analyst or official may be
27 compelled by subpoena, in which case, the records and reports shall be
28 admissible through the analyst or official, who shall be subject to
29 cross-examination by the defendant or his counsel.

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31 SECTION 13. (a) Every machine or instrument used to determine the
32 alcohol content of the breath or blood of any person by analysis of the breath
33 of the person for the purpose of determining if the person was operating a
34 vessel, etc. while intoxicated or with a blood alcohol content of one-tenth of
35 one percent (0.10%) or more by weight shall be so constructed that the

1 analysis is made automatically when a sample of the person's breath is placed
2 in the machine or instrument, and without any adjustment or other action of
3 the person administering the analysis, and the machine shall be so constructed
4 that the blood alcohol content is shown by visible digital display on the
5 machine and on an automatic readout.

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

9 (c) The State Board of Health is authorized to adopt appropriate
10 regulations to carry out the intent and purposes of this Act, and only
11 machines or instruments approved by the board as meeting the requirements of
12 this section and regulations of the board shall be used for making the breath
13 analysis for determining blood alcohol content. The State Board of Health is
14 specifically authorized to limit by its regulations the types or models of
15 testing devices which may be approved for use in Arkansas for the purposes set
16 forth in this Act. The approved types or models shall be specified by
17 manufacturer's name and model.

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19 SECTION 14. All fines for violations of this Act shall be remitted to
20 the issuing law enforcement office to be used by that office for the
21 administration and enforcement of this Act.

22

23 SECTION 15. All provisions of this Act of a general and permanent
24 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
25 Code Revision Commission shall incorporate the same in the Code.

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27 SECTION 16. If any provision of this Act or the application thereof to
28 any person or circumstance is held invalid, such invalidity shall not affect
29 other provisions or applications of the Act which can be given effect without
30 the invalid provision or application, and to this end the provisions of this
31 Act are declared to be severable.

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33 SECTION 17. All laws and parts of laws in conflict with this Act are
34 hereby repealed.

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1 SECTION 18. EMERGENCY. It is hereby found and determined by the
2 General Assembly that the act of operating a *motorboat* while under the
3 influence of alcoholic beverages or drugs constitutes a serious and immediate
4 threat to the safety of all citizens of this state; that increasing the
5 penalty for this dangerous conduct may serve as a deterrent to such behavior;
6 that increased income derived from the levying of such penalties can best be
7 utilized to provide immediate alcohol and drug safety rehabilitation and
8 treatment programs both to prevent an increase in the use of alcoholic
9 beverages and drugs and to rehabilitate persons convicted of related offenses;
10 and that this Act will increase the penalty for operating a *motorboat* under
11 the influence of drugs and alcohol and provide alcohol and drug treatment
12 programs to persons convicted of operating a *motorboat* under the influence of
13 alcohol or drugs. Therefore, an emergency is hereby declared to exist, and
14 this Act being necessary for the immediate preservation of the public peace,
15 health, and safety shall be in full force and effect from and after May 1,
16 1995.

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/s/Canada et al

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APPROVED: 3-6-95

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