

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Enrolled: H1/16/01 H1/19/01 S2/15/01

A Bill

Act 561 of 2001
HOUSE BILL 1141

5 By: Representatives Rodgers, Bennett, Minton, Files, Glover, Womack, Milum, Cleveland, Bolin, Altes,
6 Bledsoe, McMellon, Childers, Holt, Scroggin, Agee, Shoffner, Duggar, Hausam, Hutchinson, Seawel,
7 Eason, Haak, Jones, Hickinbotham, Fite, Cook, *M. Steele, Dees, Green, W. Walker, King, J. Taylor,*
8 *Trammell, T. Roebuck, Bookout, Moore, Mack, Schall, Creekmore, Dangeau*
9 By: Senators Faris, Brown, *Webb*

For An Act To Be Entitled

13 AN ACT TO CHANGE THE DWI THRESHOLD FROM 0.10% TO 0.08;
14 AND FOR OTHER PURPOSES.

Subtitle

17 TO CHANGE THE DWI THRESHOLD FROM 0.10%
18 TO 0.08.

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

23 SECTION 1. Arkansas Code 5-10-105(a)(1) is amended to read as follows:

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

27 (A) While intoxicated; or

28 (B) If at that time there is ~~one-tenth of one percent~~
29 ~~(0.10%) or more by weight of alcohol in the person's blood~~ an alcohol
30 concentration of eight-hundredths (0.08) or more in the person's breath or
31 blood based upon the definition of breath, blood and urine concentration in §
32 5-65-204 as determined by a chemical test of the person's blood, urine,
33 breath, or other bodily substance.

35 SECTION 2. Arkansas Code 5-65-103(b) is amended to read as follows:

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

1 person to operate or be in actual physical control of a motor vehicle if at
2 that time ~~there was one tenth of one percent (0.10%) or more by weight of~~
3 ~~alcohol in the person's blood as determined by a chemical test of the person's~~
4 ~~blood, urine, breath, or other bodily substance~~ the alcohol concentration in
5 the person's breath or blood was eight-hundredths (0.08) or more based upon
6 the definition of breath, blood and urine concentration in § 5-65-204.
7

8 SECTION 3. Arkansas Code 5-65-104(a)(1) is amended to read as follows:

9 (a)(1) At the time of arrest for operating or being in actual physical
10 control of a motor vehicle while intoxicated or while there was ~~one tenth of~~
11 ~~one percent (0.1%) or more by weight of alcohol in the person's~~ an alcohol
12 concentration of eight-hundredths (0.08) or more in the person's breath or
13 blood, § 5-65-103, or refusing to submit to a chemical test of blood, breath,
14 or urine for the purpose of determining the alcohol or controlled substance
15 contents of the person's blood or breath, § 5-65-202, the arrested person
16 shall immediately surrender his license, permit, or other evidence of driving
17 privilege to the arresting law enforcement officer. The officer shall seize
18 the license, permit, or other evidence of driving privilege surrendered by the
19 arrested person or found on the arrested person during a search.
20

21 SECTION 4. Arkansas Code 5-65-104(a)(4) is amended to read as follows:

22 (4) The Office of Driver Services of the Revenue Division of the
23 Department of Finance and Administration or its designated official shall
24 suspend or revoke the driving privilege of an arrested person or shall suspend
25 any nonresident driving privilege of an arrested person when it receives a
26 sworn report from the law enforcement officer that he had reasonable grounds
27 to believe the arrested person had been operating or was in actual physical
28 control of a motor vehicle while intoxicated or while there ~~was one tenth of~~
29 ~~one percent (0.1%) or more by weight of alcohol in the person's~~ an alcohol
30 concentration of eight-hundredths (0.08) or more in the person's breath or
31 blood, § 5-65-103, which is accompanied by a written chemical test report
32 reflecting that the arrested person was intoxicated or had an alcohol
33 concentration of ~~one tenth of one percent (0.1%) or more~~ eight-hundredths
34 (0.08) or more in the breath or blood, or is accompanied by a sworn report
35 that the arrested person refused to submit to a chemical test of blood,
36 breath, or urine for the purpose of determining the alcohol or controlled

1 substance contents of the person's blood or breath, as provided in § 5-65-202.
2 The suspension or revocation shall be based on the number of previous offenses
3 as follows:

4 (A)(i) Suspension for one hundred twenty (120) days for the
5 first offense of operating or being in actual physical control of a motor
6 vehicle while intoxicated or while there was ~~at least one tenth of one percent~~
7 ~~(0.1%) but less than eighteen hundredths of one percent (0.18%) by weight of~~
8 ~~alcohol in the person's~~ an alcohol concentration of eight-hundredths (0.08) or
9 more in the person's breath or blood, § 5-65-103;

10 (ii) Suspension for six (6) months for the first
11 offense of operating or being in actual physical control of a motor vehicle
12 while intoxicated by the ingestion of or by the use of a controlled substance;

13 (iii) Suspension for one hundred eighty (180) days
14 for the first offense of refusing to submit to a chemical test of blood,
15 breath, or urine for the purpose of determining the alcohol or controlled
16 substance contents of the person's breath or blood, § 5-65-202. Provided,
17 however, that if the court orders issuance of an ignition interlock restricted
18 license under § 5-65-118, the suspension period for which no restricted
19 license shall be available shall be a minimum of ninety (90) days;

20 (iv) Suspension for one hundred eighty (180) days for
21 the first offense of operating or being in actual physical control of a motor
22 vehicle while intoxicated and while there was eighteen one hundredths of one
23 percent (0.18%) or more by weight of alcohol in the person's breath or blood.
24 Provided, however, that if the court orders issuance of an ignition interlock
25 restricted license under § 5-65-118, the suspension period for which no
26 restricted license shall be available shall be a minimum of thirty (30) days;

27 (B)(i) Suspension for sixteen (16) months for a second
28 offense of operating or being in actual physical control of a motor vehicle
29 while intoxicated or while there was ~~one tenth of one percent (0.1%) or more~~
30 ~~by weight of alcohol in the person's~~ an alcohol concentration of eight-
31 hundredths (0.08) or more in the person's breath or blood, § 5-65-103, within
32 five (5) years of the first offense. Provided, however, that if the court
33 orders issuance of an ignition interlock restricted license under § 5-65-118,
34 the suspension period for which no restricted license shall be available shall
35 be a minimum of one (1) year;

36 (ii) Suspension for two (2) years, during which no

1 restricted permits may be issued, for a second offense of refusing to submit
2 to a chemical test of blood, breath, or urine for the purposes of determining
3 the alcohol or controlled substance contents of the person's breath or blood,
4 § 5-65-202, within five (5) years of the first offense;

5 (C)(i) Suspension for thirty (30) months for the third
6 offense of operating or being in actual physical control of a motor vehicle
7 while intoxicated or while there was ~~one-tenth of one percent (0.1%) or more~~
8 ~~by weight of alcohol in the person's~~ an alcohol concentration of eight-
9 hundredths (0.08) or more in the person's breath or blood, § 5-65-103, within
10 five (5) years of the first offense. Provided, however, that if the court
11 orders issuance of an ignition interlock restricted license under § 5-65-118,
12 the suspension period for which no restricted license shall be available shall
13 be a minimum of one (1) year.

14 (ii) Revocation for three (3) years, during which no
15 restricted permits may be issued, for the third offense of refusing to submit
16 to a chemical test of blood, breath, or urine for the purpose of determining
17 the alcohol or controlled substance contents of the person's breath or blood,
18 § 5-65-202, within five (5) years of the first offense; and

19 (D)(i) Revocation for four (4) years, during which no
20 restricted permits may be issued, for the fourth or subsequent offense of
21 operating or being in actual physical control of a motor vehicle while
22 intoxicated or while there was ~~one-tenth of one percent (0.1%) or more by~~
23 ~~weight of alcohol in the person's~~ an alcohol concentration of eight-hundredths
24 (0.08) or more in the person's breath or blood, § 5-65-103, within five (5)
25 years of the first offense.

26 (ii) Lifetime revocation, during which no restricted
27 permit may be issued, for the fourth or subsequent offense of refusing to
28 submit to a chemical test of blood, breath, or urine for the purpose of
29 determining the alcohol or controlled substance contents of the person's
30 breath or blood, § 5-65-202, within five (5) years of the first offense.

31
32 SECTION 5. Arkansas Code 5-65-104(a)(8) and (9) are amended to read as
33 follows:

34 (8)(A) The hearing shall be before the Office of Driver Services
35 or its authorized agent in the office of the Revenue Division of the
36 Department of Finance and Administration nearest the county wherein the

1 alleged events occurred for which the person was arrested, unless the Office
2 of Driver Services or its authorized agent and the arrested person agree
3 otherwise to the hearing being held in some other county, or the Office of
4 Driver Services or its authorized agent may schedule the hearing or any part
5 thereof by telephone and conduct the hearing by telephone conference call. The
6 hearing shall not be recorded. The scope of the hearing shall cover the issues
7 of whether the officer had reasonable grounds to believe the person had been
8 operating or was in actual physical control of a vehicle while intoxicated or
9 while there was ~~one-tenth of one percent (0.1%) or more by weight of alcohol~~
10 in the person's an alcohol concentration of eight-hundredths (0.08) or more in
11 the person's breath or blood or refused to submit to a chemical test of the
12 blood, breath, or urine for the purpose of determining the alcohol or
13 controlled substance contents of the person's breath or blood, and whether the
14 person was placed under arrest. At the hearing, the burden of proof shall be
15 on the state, and the decision shall be based on a preponderance of the
16 evidence.

17 (B) If the revocation, suspension, or denial is based upon
18 a chemical test result indicating that the person was intoxicated or there was
19 ~~one-tenth of one percent (0.1%) or more by weight of alcohol in the person's~~
20 an alcohol concentration of eight-hundredths (0.08) or more in the person's
21 breath or blood, as provided in § 5-65-103, and a sworn report from a law
22 enforcement officer, the scope of the hearing shall also cover the issues as
23 to whether:

24 (i) The person was advised that his privilege to
25 drive would be revoked, suspended, or denied if the test result reflected an
26 alcohol concentration of ~~one-tenth of one percent (0.1%)~~ eight-hundredths
27 (0.08) or more or the presence of other intoxicating substances or combination
28 of intoxicating substances;

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

32 (iii) The testing procedures used were in accordance
33 with existing rules; and

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

1 (C) If the revocation, suspension, or denial is based upon
2 the refusal of the person to submit to a chemical test as provided in § 5-65-
3 202, reflected in a sworn report by a law enforcement officer, the scope of
4 the hearing shall also include whether:

5 (i) The person refused to submit to the test or
6 tests; and

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

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

13 (A) Any convictions for offenses of operating or being in
14 actual physical control of a motor vehicle while intoxicated or while there is
15 ~~one-tenth of one percent (0.1%) or more by weight of alcohol in the person's~~
16 an alcohol concentration of eight-hundredths (0.08) or more in the person's
17 breath or blood under § 5-65-103 or refusing to submit to a chemical test
18 under § 5-65-202 which occurred prior to July 1, 1996; and

19 (B) Any suspension or revocation of driving privileges for
20 arrests for operating or being in actual physical control of a motor vehicle
21 while intoxicated or while there is ~~one-tenth of one percent (0.1%) or more by~~
22 ~~weight of alcohol in the person's~~ an alcohol concentration of eight-hundredths
23 (0.08) or more in the person's breath or blood under § 5-65-103 or refusing to
24 submit to a chemical test under § 5-65-202 occurring on or after July 1, 1996,
25 where the person was not subsequently acquitted of the criminal charges.

26
27 SECTION 6. Arkansas Code 5-65-119 is amended to read as follows:

28 5-65-119. Distribution of fee.

29 The Office of Driver Services shall charge a fee of seventy-five dollars
30 (\$75.00) for reinstating a driving privilege suspended or revoked because of
31 an arrest for operating or being in actual physical control of a motor vehicle
32 while intoxicated or while there was ~~one-tenth of one percent (0.1%) or more~~
33 ~~by weight of alcohol in the person's~~ an alcohol concentration of eight-
34 hundredths (0.08) or more in the person's breath or blood, § 5-65-103, or
35 refusing to submit to a chemical test of blood, breath, or urine, for the
36 purpose of determining the alcohol or controlled substance contents of the

1 person's blood or breath, § 5-65-202, which shall be distributed as follows:

2 (1) Fourteen percent (14%) of the revenues derived from this fee shall
3 be deposited in the State Treasury as special revenues and credited to the
4 Public Health Fund to be used exclusively for the Department of Health's ~~Blood~~
5 ~~Alcohol Program~~ Office of Alcohol Testing;

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

13 (3) Twenty percent (20%) of the revenues derived from this fee shall be
14 deposited in the State Treasury, and the Treasurer of State shall credit them
15 as general revenues to the various funds in the respective amounts to each and
16 to be used for the purposes as provided in the Revenue Stabilization Law, §
17 19-5-101 et seq.

18

19 SECTION 7. Arkansas Code 5-65-202(a) is amended to read as follows:

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

25 (1) The driver is arrested for any offense arising out of acts
26 alleged to have been committed while the person was driving while intoxicated
27 or driving while there was ~~one-tenth of one percent (0.10%)~~ an alcohol
28 concentration of eight-hundredths (0.08) or more ~~of alcohol~~ in the person's
29 breath or blood; or

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

32 (3) At the time the person is arrested for driving while
33 intoxicated, the law enforcement officer has reasonable cause to believe that
34 the person, while operating or in actual physical control of a motor vehicle,
35 is intoxicated or has ~~one-tenth of one percent (0.10%)~~ an alcohol
36 concentration of eight-hundredths (0.08) or more ~~of alcohol~~ in his or her the

1 person's breath or blood.
2

3 SECTION 8. Arkansas Code 5-65-203(a) & (b) are amended to read as
4 follows:

5 (a) The chemical test or tests shall be administered at the direction
6 of a law enforcement officer having reasonable cause to believe the person to
7 have been operating or in actual physical control of a motor vehicle while
8 intoxicated or while there was ~~one-tenth of one percent (0.10%)~~ an alcohol
9 concentration of eight-hundredths (0.08) or more ~~of alcohol~~ in the person's
10 breath or blood.

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

14 (1) *If the person tested requests that additional tests be made,*
15 *as authorized in § 5-65-204(e), the cost of the additional tests shall be*
16 *borne by the person tested unless the person is found not guilty, in which*
17 *case the arresting law enforcement agency shall reimburse the person for the*
18 *cost of the additional tests.*

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

22
23 SECTION 9. Arkansas Code 5-65-204(c) is amended to read as follows:

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

28 SECTION 10. Arkansas Code 5-65-204(e) is amended to read as follows:

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

33 (1) *The law enforcement officer shall advise the person, in*
34 *writing, of this right and that if the person chooses to have an additional*
35 *test and the person is found not guilty, the arresting law enforcement agency*
36 *will reimburse the person for the cost of the additional test.*

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

5 SECTION 11. Arkansas Code 5-65-206(a) is amended to read as follows:

6 (a) In any criminal prosecution of a person charged with the offense of
 7 driving while intoxicated, the amount of alcohol in the defendant's breath or
 8 blood at the time or within four (4) 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 (1) If there was at that time an alcohol concentration of one-
 12 twentieth of one percent (0.05%) four-hundredths (0.04) or less ~~by weight of~~
 13 ~~alcohol~~ in the defendant's blood, urine, breath, or other bodily substance, it
 14 shall be presumed that the defendant was not under the influence of
 15 intoxicating liquor;

16 (2) If there was at the time an alcohol concentration in excess
 17 of ~~one twentieth of one percent (0.05%) four-hundredths (0.04)~~ but less than
 18 ~~one tenth of one percent (0.10%) eight-hundredths (0.08)~~ by weight of alcohol
 19 in the defendant's blood, urine, breath, or other bodily substance, such fact
 20 shall not give rise to any presumption that the defendant was or was not under
 21 the influence of intoxicating liquor, but this fact may be considered with
 22 other competent evidence in determining the guilt or innocence of the
 23 defendant.

24
 25 SECTION 12. Arkansas Code 5-65-206(d) is amended to read as follows:

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

34 (B) These documents shall be 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 who performs the calibration test or check on the instrument, the operator of
6 the ~~machine instrument~~, or any person performing work in the ~~blood alcohol~~
7 ~~program~~ a representative of the Office of Alcohol Testing of the Department of
8 ~~Health, who shall be made available by the state if notice of intention to~~
9 ~~cross examine is given ten (10) days prior to the date of hearing or trial.~~

10 (4) The testimony of the appropriate analyst or official may be
11 compelled by the issuance of a proper *subpoena* given ten (10) days prior to
12 the date of hearing or trial, in
13 which case the records and reports shall be admissible through the analyst or
14 official, who shall be subject to cross-examination by the defendant or his
15 counsel.

16

17 SECTION 13. Arkansas Code 5-65-207 is amended to read as follows:

18 5-65-207. ~~Blood alcohol~~ Alcohol testing devices.

19 (a) Every ~~machine or~~ instrument used to determine the alcohol content
20 of the breath ~~or blood of any person by analysis of the breath of the person~~
21 for the purpose of determining if the person was operating a motor vehicle
22 while intoxicated or with ~~a blood alcohol content of one-tenth of one percent~~
23 ~~(0.10%)~~ an alcohol concentration of eight-hundredths (0.08) or more shall be
24 so constructed that the analysis is made automatically when a sample of the
25 person's breath is placed in the ~~machine or~~ instrument, and without any
26 adjustment or other action of the person administering the analysis, and the
27 ~~machine instrument~~ shall be so constructed that the ~~blood~~ alcohol content is
28 shown by visible digital display on the ~~machine instrument~~ and on an automatic
29 readout.

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

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

1 analysis for determining ~~blood alcohol content~~ concentration. The Department
2 of Health is specifically authorized to limit by its rules the types or models
3 of testing devices which may be approved for use in Arkansas for the purposes
4 set forth in this section. The approved types or models will be specified by
5 manufacturer's name and model.

6 (d) All law enforcement agencies which conduct ~~blood~~ alcohol testing
7 shall be in full compliance with the provisions of this section by June 28,
8 1989.

9
10 SECTION 14. Arkansas Code 5-65-303(b) is amended to read as follows:

11 (b) It is unlawful and punishable as provided in this subchapter for
12 any underage person to operate or be in actual physical control of a motor
13 vehicle if at that time there was ~~one-fiftieth of one percent (0.02%) but less~~
14 ~~than one-tenth of one percent (0.10%) by weight of alcohol in the person's~~ an
15 alcohol concentration of two-hundredths (0.02) but less than eight-hundredths
16 (0.08) in the person's breath or blood as determined by a chemical test of the
17 person's blood or breath or other bodily substance.

18
19 SECTION 15. Arkansas Code 5-65-309(a) is amended to read as follows:

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

25 (1) The driver is arrested for any offense arising out of acts
26 alleged to have been committed while the underage person was driving while
27 under the influence or driving while there was ~~one-fiftieth of one percent~~
28 ~~(0.02%) but less than one-tenth of one percent (0.10%) of alcohol in the~~
29 ~~person's~~ an alcohol concentration of two-hundredths (0.02) but less than
30 eight-hundredths (0.08) in his or her breath or blood; or

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

33 (3) The underage person is stopped by a law enforcement officer
34 who has reasonable cause to believe that the person, while operating or in
35 actual physical control of a motor vehicle, is under the influence or has ~~one-~~
36 ~~fiftieth of one percent (0.02%) but less than one-tenth of one percent (0.10%)~~

1 ~~of alcohol~~ an alcohol concentration of two-hundredths (0.02) but less than
2 eight-hundredths (0.08) in his or her breath or blood.

3
4 SECTION 16. Arkansas Code 5-65-311(b) - (d) are amended to read as
5 follows:

6 (b) For the purposes of this subchapter, there is no presumption, as
7 there is found in § 5-65-206, that a person is not under the influence of an
8 intoxicating substance, such as alcohol or a similar intoxicant, if the
9 person's ~~blood~~ alcohol concentration is ~~five hundredths (0.05) of one percent~~
10 four hundredths (0.04) of one percent or less.

11 (c) The administration of the chemical tests for breath or blood
12 alcohol, the ~~machines and~~ instruments used to administer those tests, the
13 procedures used to calibrate and maintain those ~~machines and~~ instruments, and
14 the use of the test results as evidence shall be the same as for those tests
15 ~~and machines~~ and instruments used for testing breath or blood alcohol
16 concentrations under the Omnibus DWI Act, § 5-65-101 et seq.

17 (d) If there is evidence of ~~more than one twentieth of one percent~~
18 ~~(0.05%) but less than one tenth of one percent (0.10%) by weight of alcohol~~ an
19 alcohol concentration of more than four-hundredths (0.04) but less than eight-
20 hundredths (0.08) in a person's blood, breath, or other bodily substances,
21 this fact shall not preclude a person under twenty-one (21) years of age from
22 being prosecuted for driving while intoxicated under § 5-65-101 et seq.

23
24 SECTION 17. Arkansas Code 5-75-102(b) is amended to read as follows:

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

31
32 SECTION 18. Arkansas Code 5-75-103(a) is amended to read as follows:

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

1 alcohol or controlled substance content of his or her breath or blood, if:

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

14
15 SECTION 19. Arkansas Code 5-75-104(a) is amended to read as follows:

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

22
23 SECTION 20. Arkansas Code 5-75-105(c) is amended to read as follows:

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

28
29 SECTION 27. Arkansas Code 5-75-106(a) is amended to read as follows:

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

35 (1) If there was at that time an alcohol concentration less than
36 four-hundredths ~~of one percent (0.04%)~~ (0.04) ~~by weight of alcohol~~ in the

1 defendant's blood, urine, breath, or other bodily substance, it shall be
2 presumed that the defendant was not under the influence of intoxicating
3 liquor; and

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

10

11 SECTION 22. Arkansas Code 5-75-106(d) is amended to read as follows:

12 (d)(1) The records and reports of certifications, rules, evidence,
13 analysis, or other documents pertaining to work performed by the ~~blood alcohol~~
14 ~~program~~ Office of Alcohol Testing of the Department of Health under the
15 authority of this chapter shall be received as competent evidence as to the
16 matters contained therein in the courts of this state, subject to the
17 applicable rules of criminal procedure, when duly attested to by the ~~program~~
18 director of the Office of Alcohol Testing or ~~his~~ an assistant, in the form of
19 an original signature or by certification of a copy. These documents shall be
20 self-authenticating.

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

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

32 (4) The testimony of the appropriate analyst or official may be
33 compelled by the issuance of a proper subpoena ten (10) days prior to the date
34 of the hearing or trial, in
35 which case, the records and reports shall be admissible through the analyst or
36 official, who shall be subject to cross-examination by the defendant or his

1 counsel.

2

3 SECTION 23. Arkansas Code 5-75-107(a) is amended to read as follows:

4 (a) Every ~~machine or~~ instrument used to determine the alcohol content
5 of the breath ~~or blood~~ of any person by analysis of the breath of the person
6 for the purpose of determining if the person was operating or navigating any
7 aircraft while intoxicated or with ~~a blood alcohol content~~ an alcohol
8 concentration of four-hundredths ~~of one percent (0.04%)~~ (0.04) or more shall
9 be so constructed that the analysis is made automatically when a sample of the
10 person's breath is placed in the ~~machine or~~ instrument, and without any
11 adjustment or other action of the person administering the analysis, and the
12 ~~machine~~ instrument shall be so constructed that the ~~blood~~ breath alcohol
13 content is shown by visible digital display on the ~~machine~~ instrument and on
14 an automatic readout.

15

16 SECTION 24. Arkansas Code 5-75-107(c)(1) is amended to read as follows:

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

23

24 SECTION 25. Arkansas Code 5-76-102(a) is amended to read as follows:

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

27 (1) Intoxicated; or

28 (2) There is ~~one tenth of one percent (0.10%) or more, by weight,~~
29 ~~of alcohol in the person's blood, as determined by a chemical test of the~~
30 ~~person's blood, urine, breath, or other bodily substance~~ an alcohol
31 concentration in the person's breath or blood of eight-hundredths (0.08) or
32 more based upon the definition of breath, blood and urine concentration in §5-
33 65-204.

34

35 SECTION 26. Arkansas Code 5-76-102(b)(1) is amended to read as follows:

36 (b)(1) In the case of a motorboat or device, only where the certified

1 law enforcement officer has probable cause to believe that the operator of the
2 motorboat is operating while intoxicated or operating while there is ~~one-tenth~~
3 ~~of one percent (0.10%) or more, by weight, of alcohol~~ an alcohol concentration
4 of eight-hundredths (0.08) in the person's breath or blood, the law
5 enforcement officer is authorized to administer and may test the operator, at
6 the scene, by using a ~~field breathalyzer~~ portable breath testing instrument or
7 other approved method to determine if the operator may be operating a
8 motorboat or device in violation of this section.

9
10 SECTION 27. Arkansas Code 5-76-102(d) and (e) are amended to read as
11 follows:

12 (d) A person who has been arrested for violating this section shall not
13 be released from jail, under bond or otherwise, until ~~there is less than one-~~
14 ~~tenth of one percent (0.10%) by weight of alcohol~~ the alcohol concentration is
15 less than eight-hundredths (0.08) in the person's breath or blood and the
16 person is no longer intoxicated.

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

22 (A) If there was at that time ~~one-twentieth of one percent~~
23 ~~(0.05%) or less, by weight, of alcohol~~ an alcohol concentration of four-
24 hundredths (0.04) or less in the defendant's blood, urine, breath, or other
25 bodily substance, it shall be presumed that the defendant was not under the
26 influence of intoxicating liquor;

27 (B) If there was at that time ~~in excess of one-twentieth of~~
28 ~~one percent (0.05%) but less than one-tenth of one percent (0.10%) by weight,~~
29 ~~of alcohol~~ an alcohol concentration in excess of four-hundredths (0.04) but
30 less than eight-hundredths (0.08) in the defendant's blood, urine, breath, or
31 other bodily substance, such fact shall not give rise to any presumption that
32 the defendant was or was not under the influence of intoxicating liquor, but
33 this fact may be considered with other competent evidence in determining the
34 guilt or innocence of the defendant.

35 (2) The foregoing provisions shall not be construed as limiting
36 the introduction of any other relevant evidence bearing upon the question of

1 whether or not the defendant was intoxicated.

2 (3)(A) The records and reports of certifications, rules, evidence
3 analysis, or other documents pertaining to work performed by the ~~Blood Alcohol~~
4 ~~Program~~ Office of Alcohol Testing of the Arkansas Department of Health under
5 the authority of this chapter shall be received as competent evidence as to
6 the matters contained therein in the courts of this state, subject to the
7 applicable rules of criminal procedure, when duly attested to by the program
8 director or his assistant, in the form of an original signature or by
9 certification of a copy.

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

11

12 SECTION 28. Arkansas Code 5-76-104(a) is amended to read as follows:

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

19 (A) The operator is arrested for any offense arising out of
20 acts alleged to have been committed while the person was operating while
21 intoxicated or operating while there was ~~one-tenth of one percent (0.10%) or~~
22 ~~more, by weight, of alcohol~~ an alcohol concentration of at least eight-
23 hundredths (0.08) in the person's breath or blood; or

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

26 (C) At the time the person is arrested for operating while
27 intoxicated, the law enforcement officer has reasonable cause to believe that
28 the person, while operating a motorboat, is intoxicated or has ~~one-tenth of~~
29 ~~one percent (0.10%) or more, by weight, of alcohol~~ an alcohol concentration of
30 eight-hundredths (0.08) or more in his or her breath or blood.

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

36 (3) When a person operating a motorboat is involved in an

1 accident resulting in loss of human life, or where there is reason to believe
2 that death may result, a law enforcement officer shall request and the person
3 shall submit to a chemical test or tests of the person's blood, breath, or
4 urine for the purpose of determining the alcohol or controlled substance
5 content of his or her breath or blood. The law enforcement officer shall cause
6 the test or tests to be administered to the person, including a person fatally
7 injured.

8
9 SECTION 29. Arkansas Code 5-76-104(c)(1) is amended to read as follows:

10 (c)(1) The chemical ~~test or~~ tests shall be administered at the
11 direction of a law enforcement officer having reasonable cause to believe the
12 person to have been operating a motorboat while intoxicated or while there is
13 ~~one tenth of one percent (0.10%) or more, by weight, of alcohol~~ an alcohol
14 concentration of eight-hundredths (0.08) or more in the person's breath or
15 blood.

16
17 SECTION 30. Arkansas Code 5-76-105(a)(1) is amended to read as follows:

18 (a)(1) Every ~~machine or~~ instrument used to determine the alcohol
19 content of the breath ~~or blood of any person by analysis of the breath of the~~
20 ~~person~~ for the purpose of determining if the person was operating a vessel,
21 etc., while intoxicated or with a ~~blood alcohol content of one tenth of one~~
22 ~~percent (0.10%) or more, by weight,~~ an alcohol concentration of eight-
23 hundredths (0.08) or more shall be so constructed that the analysis is made
24 automatically when a sample of the person's breath is placed in the ~~machine or~~
25 instrument and without any adjustment or other action of the person
26 administering the analysis, and the ~~machine~~ instrument shall be so constructed
27 that the ~~blood~~ alcohol content is shown by visible digital display on the
28 ~~machine~~ instrument and on an automatic readout.

29
30 SECTION 31. Arkansas Code 5-76-105(b) is amended to read as follows:

31 (b)(1) Nothing in this section shall be deemed to abrogate a
32 defendant's right of cross-examination of the person ~~calibrating the machine~~
33 who performs the calibration test or check on the instrument, the operator of
34 the ~~machine~~ instrument, or any person performing work in the Blood Alcohol
35 ~~Program~~ a representative of the Office of Alcohol Testing of the Arkansas
36 ~~Health, who shall be made available by the state if notice of intention to~~

1 ~~cross-examine is given at least ten (10) days prior to the date of hearing or~~
2 ~~trial.~~

3 (2) The testimony of the appropriate analyst or official may be compelled by
4 subpoena given ten (10) days prior to the date of hearing or trial, in which
5 case, the records and reports shall be admissible through the analyst or
6 official, who shall be subject to cross-examination by the defendant or his
7 counsel.

8 SECTION 32. Arkansas Code 12-41-701(6), regarding the definitions for
9 revenue funds for county and city jails, is amended to read as follows:

10 (6) "Fines" or "fines and penalties" means the fines or penalties
11 imposed by law collected by a county or a municipality for convictions arising
12 from each of the offenses listed below:

13 (A) Operating or being in actual physical control of a motor
14 vehicle while intoxicated; "intoxicated" meaning, for the purposes of this
15 subchapter, influenced or affected by the ingestion of alcohol, a controlled
16 substance, or a combination thereof to such a degree that the driver's
17 reactions, motor skills, and judgment are substantially altered and the
18 driver, therefore, constitutes a clear and substantial danger of physical
19 injury or death to himself or other motorists or pedestrians;

20 (B) Operating or being in actual physical control of a motor
21 vehicle while impaired by alcohol or drugs; the word "impaired" meaning, for
22 the purposes of this subchapter, influenced or affected by the ingestion of
23 alcohol, a controlled substance, or a combination thereof to such a degree
24 that the driver's reaction, motor skills, and judgment are reduced or lessened
25 and the driver constitutes a threat of physical injury or death to himself or
26 other motorists or pedestrians;

27 (C) Operating or being in actual physical control of a motor
28 vehicle if, at that time, there was ~~a one-tenth of one percent (0.10%) by~~
29 ~~weight, or more, of alcohol~~ an alcohol concentration of eight-hundredths
30 (0.08) or more in the person's breath or blood, as determined by a chemical
31 test of the person's blood, urine, breath, or other bodily substance;

32 /s/ Rodgers

33
34
35
36

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