

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Mike Wilson**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO  
9 LOWER THE ALCOHOL CONTENT LEVEL REQUIREMENT FOR DWI AND  
10 NEGLIGENT HOMICIDE TO EIGHT-HUNDREDTHS OF ONE PERCENT  
11 (0.08%); TO INCREASE THE TIME REQUIREMENT IN DETERMINING  
12 PRIOR OFFENSES TO FIVE (5) YEARS; TO CHANGE MINIMUM  
13 PENALTIES; TO PROVIDE FOR ADMINISTRATIVE REVOCATION AND  
14 SUSPENSION OF DRIVERS' LICENSES; AND FOR OTHER PURPOSES."

15

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

17

18 SECTION 1. Arkansas Code Annotated §5-10-105 is amended to read as  
19 follows:

20 "5-10-105. Negligent homicide.

21 (a) (1) A person commits negligent homicide if he negligently causes the  
22 death of another person, not constituting murder or manslaughter, as a result  
23 of operating or being in the actual physical control of a vehicle, an  
24 aircraft, or a watercraft:

25 (A) While intoxicated or impaired; or

26 (B) If at that time there is eight-hundredths of one  
27 percent (0.08%) or more by weight of alcohol in the person's blood as  
28 determined by a chemical test of the person's blood, urine, breath, or other  
29 bodily substance.

30 (2) A person who violates subdivision (a) (1) of this subsection  
31 is guilty of a Class D felony.

32 (b) (1) A person commits negligent homicide if he negligently causes the  
33 death of another person.

34 (2) A person who violates subdivision (b) (1) of this subsection  
35 is guilty of a Class A misdemeanor.

1 (c) For the purpose of this section, 'intoxicated' means influenced or  
2 affected by the ingestion of alcohol, a controlled substance, any intoxicant,  
3 or any combination thereof to such a degree that the driver's reactions, motor  
4 skills, and judgment are substantially altered and the driver, therefore,  
5 constitutes a clear and substantial danger of physical injury or death to  
6 himself and other motorists or pedestrians.

7 (d) For purposes of this section, 'impaired' means influenced or  
8 affected by the ingestion of alcohol, a controlled substance, or a combination  
9 thereof to such a degree that the driver's reaction, motor skills, and  
10 judgment are reduced or lessened and the driver constitutes a threat of  
11 physical injury or death to himself or other motorists or pedestrians."  
12

13 SECTION 2. Arkansas Code Annotated §5-65-101 is amended to read as  
14 follows:

15 "5-65-101. Omnibus DWI Act - Application.

16 (a) This act shall be known as the "Omnibus DWI Act."

17 (b) The provisions of this act shall govern the prosecution and  
18 administrative proceedings for offenses defined by this act and committed  
19 after March 21, 1983.

20 (c) The provisions of this act do not apply to offenses committed prior  
21 to March 21, 1983. Those offenses shall be construed and punished in  
22 accordance with the law existing at the time of the commission of the offense.  
23 However, all pleas of guilty and nolo contendere and all findings of guilty  
24 of driving while intoxicated within five (5) years prior to March 21, 1983,  
25 shall be counted in determining the number of prior offenses for the purposes  
26 of enhancing the penalties provided by this act for violating 5-65-103."  
27

28 SECTION 3. Arkansas Code Annotated §5-65-102 is amended to add a new  
29 subsection as follows:

30 "(4) 'Offense' means an arrest for operating or being in actual physical  
31 control of a motor vehicle while intoxicated or while there was eight-  
32 hundredths of one percent (0.08%) or more by weight of alcohol in the person's  
33 blood (§5-65-103) or refusing to submit to a chemical test of blood, breath or  
34 urine for the purpose of determining the alcohol or controlled substance  
35 contents of the person's blood (§5-65-202)."

1

2 SECTION 4. Arkansas Code §5-65-103 is hereby amended to read as  
3 follows:

4 "5-65-103. Unlawful acts.

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

8 (b) It is unlawful and punishable as provided in this act for any  
9 person to operate or be in actual physical control of a motor vehicle if at  
10 that time there was eight-hundredths of one percent (0.08%) or more by weight  
11 of alcohol in the person's blood as determined by a chemical test of the  
12 person's blood, urine, breath, or other bodily substance."

13

14 SECTION 5. Arkansas Code Annotated §5-65-104 is amended to read as  
15 follows:

16 "5-65-104. Seizure, suspension, and revocation of license - Temporary  
17 permits.

18 (a)(1) At the time of arrest for operating or being in actual physical  
19 control of a motor vehicle while intoxicated or while there was eight-  
20 hundredths of one percent (0.08%) or more by weight of alcohol in the person's  
21 blood (§5-65-103) or refusing to submit to a chemical test of blood, breath or  
22 urine for the purpose of determining the alcohol or controlled substance  
23 contents of the person's blood (§5-65-202) the arrested person shall  
24 immediately surrender his license, permit or other evidence of driving  
25 privilege to the arresting law enforcement officer. This officer shall seize  
26 any such license, permit or other evidence of driving privilege surrendered by  
27 the arrested person or found on the arrested person during a search.

28 (2) If the license, permit or other evidence of driving privilege  
29 seized by the officer has not expired and otherwise appears valid to the  
30 officer, the officer shall issue to the arrested person a dated receipt for  
31 that license, permit or other evidence of driving privilege on a form  
32 prescribed by the Department of Finance and Administration or its designee.  
33 This receipt shall be recognized as a license and shall authorize the arrested  
34 person to operate a motor vehicle for a period not to exceed thirty (30) days.  
35 The receipt form shall contain and constitute a notice of suspension or

1 revocation of driving privileges by the Department of Finance and  
2 Administration, Revenue Division, Office of Driver Services, effective in  
3 thirty (30) days and of the right to a hearing within twenty (20) days. The  
4 seized license, permit or other evidence of driving privilege and a copy of  
5 the receipt form issued to the arrested person shall be attached to the sworn  
6 report of the arresting officer and shall be submitted by mail or in person to  
7 the Commissioner of Revenue or his designated representative within seventy-  
8 two (72) hours of the issuance of the receipt. The failure of the arresting  
9 officer to timely file this report shall not affect the authority of the  
10 Office of Driver Services to suspend or revoke the driving privilege of the  
11 arrested person.

12           (3) Any notices required under this Act which are not personally  
13 served shall be sent by mail and shall be deemed to have been served on the  
14 third day after mailing. Refusal of the addressee to accept delivery or  
15 attempted delivery of the notice at the address obtained by the arresting law  
16 enforcement officer or on file with the Office of Driver Services will not  
17 constitute non-receipt of notice.

18           (4) Upon receipt of a written chemical test report reflecting  
19 that the arrested person had an alcohol concentration of eight-hundredths of  
20 one percent (0.08%) or more, accompanied by a sworn report from the law  
21 enforcement officer that he had reasonable grounds to believe the arrested  
22 person had been operating or was in actual physical control of a motor vehicle  
23 while intoxicated or while there was eight-hundredths of one percent (0.08%)  
24 or more by weight of alcohol in the person's blood (§5-65-103), or the  
25 arrested person refused to submit to a chemical test of blood, breath or urine  
26 for the purpose of determining the alcohol or controlled substance contents of  
27 the person's blood (as provided in §5-65-202), the designated official of the  
28 Office of Driver Services, Department of Finance and Administration, Revenue  
29 Division, shall suspend or revoke the license to drive of the arrested person  
30 or any nonresident operating privilege on the basis of the number of previous  
31 offenses as follows:

32                   (A) (i) (I) Suspension for not less than ninety (90) days for  
33 the first offense of operating or being in actual physical control of a motor  
34 vehicle while intoxicated or while there was eight-hundredths of one percent  
35 (0.08%) or more by weight of alcohol in the person's blood (§5-65-103) (during

1 the first thirty (30) days of which no restricted permits may be issued).

2 (II) Upon a finding of guilt for first offense  
3 of operating or being in actual physical control of a motor vehicle while  
4 intoxicated or while there was eight-hundredths of one percent (0.08%) or more  
5 by weight of alcohol in the person's blood (§5-65-103) by the court of record,  
6 the judge may order the Office of Driver Services to continue the suspension  
7 for not less than an additional thirty (30) days or more than an additional  
8 ninety (90) days.

9 (ii)(I) Suspension for not less than one hundred  
10 eighty (180) days for the first offense of refusing to submit to a chemical  
11 test of blood, breath or urine for the purpose of determining the alcohol or  
12 controlled substance contents of the person's blood (§5-65-202) (during which  
13 no restricted permits may be issued).

14 (II) Upon a finding of guilt by the court, the  
15 judge may order the Office of Driver Services to continue the suspension for  
16 first offense of refusing to submit to a chemical test of blood, breath or  
17 urine for the purpose of determining the alcohol or controlled substance  
18 contents of the person's blood (§5-65-202) for not less than an additional  
19 ninety (90) days or more than an additional one hundred eighty (180) days.

20 (B)(i)(I) Suspension for not less than one (1) year (during  
21 which no restricted permits may be issued) for a second offense of operating  
22 or being in actual physical control of a motor vehicle while intoxicated or  
23 while there was eight-hundredths of one percent (0.08%) or more by weight of  
24 alcohol in the person's blood (§5-65-103) within five (5) years of the first  
25 offense license suspension.

26 (II) Upon a finding of guilt by the court, the  
27 judge may order the Office of Driver Services to continue the suspension for  
28 second offense of operating or being in actual physical control of a motor  
29 vehicle while intoxicated or while there was eight-hundredths of one percent  
30 (0.08%) or more by weight of alcohol in the person's blood (§5-65-103) within  
31 five (5) years of the first offense license suspension for not less than an  
32 additional sixty (60) days or more than an additional one hundred eighty (180)  
33 days.

34 (ii)(I) Suspension for not less than two (2) years  
35 (during which no restricted permits may be issued) for second offense of

1 refusing to submit to a chemical test of blood, breath or urine for the  
2 purposes of determining the alcohol or controlled substance contents of the  
3 person's blood (§5-65-202) within five (5) years of the first offense license  
4 suspension.

5 (II) Upon a finding of guilt by the court, the  
6 judge may order the Office of Driver Services to continue the suspension for  
7 second offense of refusing to submit to a chemical test of blood, breath or  
8 urine for the purpose of determining the alcohol or controlled substance  
9 contents of the person's blood (§5-65-202) within five (5) years of the first  
10 offense license suspension for not less than an additional one hundred twenty  
11 (120) days or more than an additional six (6) months.

12 (C) (i) (I) Suspension for not less than two (2) years  
13 (during which no restricted permits may be issued) for the third offense of  
14 operating or being in actual physical control of a motor vehicle while  
15 intoxicated or while there was eight-hundredths of one percent (0.08%) or more  
16 by weight of alcohol in the person's blood (§5-65-103) within five (5) years  
17 of the first offense license suspension.

18 (II) Upon a finding of guilt by the court, the  
19 judge may order the Office of Driver Services to continue the suspension for  
20 third offense of operating or being in actual physical control of a motor  
21 vehicle while intoxicated or while there was eight-hundredths of one percent  
22 (0.08%) or more by weight of alcohol in the person's blood (§5-65-103) within  
23 five (5) years of the first offense license suspension for not less than an  
24 additional six (6) months or more than an additional one (1) year.

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

31 (II) Upon a finding of guilt by the court, the  
32 judge may order the Office of Driver Services to continue the revocation for  
33 third offense of refusing to submit to a chemical test of blood, breath or  
34 urine for the purpose of determining the alcohol or controlled substance  
35 contents of the person's blood (§5-65-202) within five (5) years of the first

1 offense license suspension for not less than an additional one (1) year or  
2 more than an additional two (2) years.

3 (D) (i) (I) Revocation for the fourth or subsequent offense  
4 of operating or being in actual physical control of a motor vehicle while  
5 intoxicated or while there was eight-hundredths of one percent (0.08%) or more  
6 by weight of alcohol in the person's blood (§5-65-103) within a five-year  
7 period of the first offense license suspension. Revocation of driving  
8 privileges (during which no restricted permit may be issued) shall continue  
9 for a period of four (4) years.

10 (II) Upon a finding of guilt by the court, the  
11 judge may order lifetime revocation of driving privilege for the fourth or  
12 subsequent offense of operating or being in actual physical control of a motor  
13 vehicle while intoxicated or while there was eight-hundredths of one percent  
14 (0.08%) or more by weight of alcohol in the person's blood (§5-65-103) within  
15 a five (5) year period of the first offense license suspension.

16 (ii) Lifetime revocation (during which no restricted  
17 permit may be issued) for the fourth or subsequent offense of refusing to  
18 submit to a chemical test of blood, breath or urine for the purpose of  
19 determining the alcohol or controlled substance contents of the person's blood  
20 (§5-65-202) within a five (5) year period of the first offense license  
21 suspension.

22 (E) (i) If the person is a resident without a license or  
23 permit to operate a motor vehicle in this state, the Office of Driver Services  
24 shall deny to that person the issuance of a license or permit for a period of  
25 six (6) months after the date of arrest. For second or subsequent offenses,  
26 the Office of Driver Services shall deny to that person the issuance of a  
27 license or permit for a period of one (1) year after the date of arrest. In  
28 addition, a fine of not less than two hundred fifty dollars (\$250) and not  
29 more than five hundred dollars (\$500) shall be imposed and collected by the  
30 court with fifty dollars (\$50) retained by the municipal court. The remaining  
31 moneys will be remitted at least quarterly to the Department of Finance and  
32 Administration, Revenue Division, Office of Driver Services or its authorized  
33 agent for use in supporting the administrative operator's licensing sanctions  
34 programs of the same. Failure to pay the fine assigned by the court will  
35 result in ten (10) days imprisonment and denial of license or permit issuance

1 until such time proof of payment on a form prescribed by the Department of  
2 Finance and Administration, Revenue Division is presented. Suspension and/or  
3 revocation of the license of the arrested person shall become effective thirty  
4 (30) days after the arrested person is given written notice thereof by the  
5 arresting officer or by the Office of Driver Services.

6 (ii) If the person is a nonresident, such person's  
7 privilege to operate a motor vehicle in Arkansas shall be suspended in the  
8 same manner as that of a resident. The Office of Driver Services shall notify  
9 the office of issuance of such person's motor vehicle license of action taken  
10 by the Arkansas Office of Driver Services.

11 (iii) When the person is a nonresident without a  
12 license or permit to operate a motor vehicle, the Office of Driver Services  
13 shall notify the office of issuance for that person's state of residence of  
14 action taken by the Arkansas Office of Driver Services.

15 (5) Upon the written request of a person whose privilege to drive  
16 has been revoked, denied, suspended or who has received a notice of  
17 revocation, suspension or denial by the arresting officer, the Office of  
18 Driver Services shall grant the person an opportunity to be heard provided the  
19 request is received by the Office of Driver Services within seven (7) calendar  
20 days after the notice of the revocation, suspension or denial is given in  
21 accordance with this section or as otherwise provided in this Act. Such a  
22 request shall not operate to stay the revocation, suspension or denial by the  
23 Office of Driver Services until the disposition of said hearing. A temporary  
24 driving permit shall not be issued prior to final disposition of the hearing.

25 (6) The hearing shall be before the Office of Driver Services or  
26 its authorized agent, in the office of the Revenue Division of Finance and  
27 Administration Department nearest the county wherein the alleged events  
28 occurred for which the person was arrested, unless the Office of Driver  
29 Services or its authorized agent directs the hearing be held in some other  
30 county; or, the Office of Driver Services or its authorized agent may, with  
31 the consent of the person requesting the hearing, schedule the hearing by  
32 telephone and conduct the hearing by telephone conference call. The hearing  
33 shall be recorded and its scope shall cover the issues of whether the officer  
34 had reasonable grounds to believe the person had been driving or was in actual  
35 physical control of a vehicle upon the public roads, highways, streets,



1 turnpikes or other public places of this state while under the influence of  
2 alcohol, any other intoxicating substance, or the combined influences of any  
3 other intoxicating substances, and whether the person was placed under arrest.

4 (b) If the revocation, suspension or denial is based upon a chemical  
5 test result or refusal to submit to a chemical test as provided in §5-65-202  
6 and a sworn report from a law enforcement officer, the scope of the hearing  
7 shall also cover the issues as to whether:

8 (1) the testing procedures used were in accordance with existent  
9 rules;

10 (2) the person was advised that his privilege to drive would be  
11 revoked, suspended or denied if the test result reflected an alcohol  
12 concentration of eight-hundredths of one percent (0.08%) or more or the  
13 presence of other intoxicating substances or combination of intoxicating  
14 substances;

15 (3) the test result in fact reflects such alcohol concentration,  
16 presence of other intoxicating substances or combination thereof; and

17 (4) the breath, blood or urine specimen was obtained from the  
18 person within the established criteria for such as certified by the Arkansas  
19 Department of Health.

20 (c) If the revocation, suspension or denial is based upon the refusal  
21 of the person to submit to a chemical test, reflected in a sworn report by a  
22 law enforcement officer, the scope of the hearing shall also include whether:

23 (1) the person refused to submit to the test or tests; and

24 (2) the person was informed that his privilege to drive would be  
25 revoked, suspended or denied if the person refused to submit to the test or  
26 tests.

27 (d) After the hearing, the Office of Driver Services or its authorized  
28 agent shall order the revocation, suspension or denial rescinded or sustained  
29 and shall advise any person whose license is revoked, suspended or denied that  
30 he or she may request a restricted permit as provided in Section 2(a)(4)(A)  
31 and Section 3 and shall advise the person of the date and place for making  
32 such a request. The hearing thereon shall be conducted within ten (10) days  
33 after the receipt of such a request. Such order and notice shall be given by  
34 mailing the notice to the last known address of the person whose operator's  
35 license is suspended or denied.

1 (e) A person adversely affected by the hearing disposition order of the  
2 Office of Driver Services, Revenue Division of the Department of Finance and  
3 Administration or its authorized agent may seek review within thirty (30) days  
4 in the circuit court in the county in which the offense for which the person  
5 was arrested took place. The request for the review will not stay or place in  
6 abeyance the decision of the Office of Driver Services or its authorized  
7 agent. The circuit court, upon thirty (30) days' written notice to the Office  
8 of Driver Services, shall hear the case. On review, it is for the court to  
9 determine only whether reasonable grounds exist for revocation, suspension or  
10 denial of the person's privilege to drive based on the record of the  
11 administrative proceeding.

12 (f) (1) Any person whose privilege to drive has been denied, suspended  
13 or revoked shall remain under such denial, suspension or revocation until such  
14 time that person applies to and is granted by the Office of Driver Services  
15 reinstatement of such privilege to drive and remains subject to penalties as  
16 provided in §5-65-105.

17 (2) (A) Any person whose privilege to drive has been denied,  
18 suspended or revoked shall present to the Office of Driver Services at the  
19 time of application for reinstatement of such privileges proof of completion  
20 of court orders resultant from the conviction of operating or being in actual  
21 physical control of a motor vehicle while intoxicated or while there was  
22 eight-hundredths of one percent (0.08%) or more by weight of alcohol in the  
23 person's blood (§5-65-103) and/or of refusing to submit to a chemical test of  
24 blood, breath or urine for the purpose of determining the alcohol or  
25 controlled substance contents of the person's blood (§5-65-202) including, but  
26 not limited to, court costs and fines, prison terms, education and/or  
27 treatment, or other orders issued by the court and proof of compliance with  
28 all existent driver's licensing requirements. Proof shall be submitted on  
29 forms prescribed by the Department of Finance and Administration, Revenue  
30 Division, Office of Driver Services or its authorized agent.

31 (B) Upon application for reinstatement, the Office of  
32 Driver Services may, upon notification by the court, on forms prescribed by  
33 the Department of Finance and Administration, Revenue Division, Office of  
34 Driver Services or its authorized agent, grant a permit for driving privileges  
35 not to exceed ninety (90) days when a finding has not been issued by the court

1 through no fault of the person whose driving privilege has been denied,  
2 suspended or revoked.

3                   (C) The person who has been granted temporary driving  
4 privileges by the Office of Driver Services under subsection (f)(2)(B) of this  
5 section shall apply for renewal of these driving privileges under the  
6 conditions provided under subsection (f)(2)(B) of this section until such time  
7 license reinstatement conditions are met. Any person whose privilege to drive  
8 has been denied, suspended or revoked remains subject to being imprisoned for  
9 ten (10) days (penalties provided under §5-65-105) until the temporary driving  
10 privilege permit has been applied for and granted by the office of Driver  
11 Services.

12           (g) The Office of Driver Services shall charge a fee of twenty-five  
13 dollars (\$25.00) for reinstating an operator's license suspended for operating  
14 or being in actual physical control of a motor vehicle while intoxicated or  
15 while there was eight-hundredths of one percent (0.08%) or more by weight of  
16 alcohol in the person's blood (§5-65-103) or refusing to submit to a chemical  
17 test of blood, breath or urine for the purpose of determining the alcohol or  
18 controlled substance contents of the person's blood (§5-65-202). Forty  
19 percent (40%) of the revenues derived from this fee shall be deposited in the  
20 State Treasury as special revenues and credited to the Public Health Fund to  
21 be used exclusively for the Department Health-Blood Alcohol Program."  
22

23           SECTION 6. Arkansas Code Annotated §5-65-111 is amended to read as  
24 follows:

25           "5-65-111. Prison terms - Exception.

26           (a) Any person who pleads guilty, nolo contendere, or is found guilty  
27 of violating 5-65-103 may, for a first offense, be imprisoned for no less than  
28 forty-eight (48) hours and no more than one (1) year, except that the court  
29 may order a minimum of ten (10) days of public service in lieu of jail, and,  
30 in such instance, the court shall include the reasons therefor in its written  
31 order or judgment.

32           (b) Any person who pleads guilty, nolo contendere, or is found guilty  
33 of violating 5-65-103 shall be imprisoned:

34                   (1) For no less than seven (7) days, forty-eight (48) hours of  
35 which must be served consecutively, and no more than one (1) year for the

1 second offense occurring within five (5) years of the first offense;

2 (2) For no less than ninety (90) days nor more than one (1) year  
3 for the third offense occurring within five (5) years of the first offense;

4 (3) For at least one (1) year but no more than six (6) years for  
5 the fourth or subsequent offense occurring within five (5) years of the first  
6 offense and shall be guilty of a felony."

7

8 SECTION 7. Arkansas Code §5-65-202 is hereby amended to read as  
9 follows:

10 "5-65-202. Implied consent.

11 (a) Any person who operates a motor vehicle or is in actual physical  
12 control of a motor vehicle in this state shall be deemed to have given  
13 consent, subject to the provisions of §5-65-203, to a chemical test or tests  
14 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 if:

16 (1) The driver is arrested for any offense arising out of acts  
17 alleged to have been committed while the person was driving while intoxicated  
18 or driving while there was eight-hundredths of one percent (0.08%) or more of  
19 alcohol in the person's blood; or

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

22 (3) The person is stopped by a law enforcement officer who has  
23 reasonable cause to believe that the person, while operating or in actual  
24 physical control of a motor vehicle, is intoxicated or has eight-hundredths of  
25 one percent (0.08%) or more of alcohol in his or her blood.

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

30

31 SECTION 8. Arkansas Code §5-65-203 is hereby amended to read as  
32 follows:

33 "5-65-203. Administration.

34 (a) The chemical test or tests shall be administered at the direction  
35 of a law enforcement officer having reasonable cause to believe the person to

1 have been operating or in actual physical control of a motor vehicle while  
2 intoxicated or while there was eight-hundredths of one percent (0.08%) or more  
3 of alcohol in the person's blood.

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

7  
8 (1) If the person tested requests that additional tests be made,  
9 as authorized in §5-65-204(e), the cost of the additional tests shall be borne  
10 by the person tested.

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

14  
15 SECTION 9. Arkansas Code §5-65-205 is hereby amended to read as  
16 follows:

17 "5-65-205. Refusal to submit.

18 (a) If a person under arrest refuses upon the request of a law  
19 enforcement officer to submit to a chemical test designated by the law  
20 enforcement agency, as provided in §5-65-202, none shall be given, and the  
21 person's motor vehicle operator's license shall be seized by the law  
22 enforcement officer, and the officer shall immediately deliver to the person  
23 from whom the license was seized a temporary driving permit which shall expire  
24 on the date of arraignment.

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

28 (c) If the judge determines that the law enforcement officer had  
29 reasonable cause to believe the arrested person had been driving while  
30 intoxicated or while there was eight-hundredths of one percent (0.08%) or more  
31 of alcohol in the person's blood, and the person refused to submit to the test  
32 upon the request of the law enforcement officer, the judge shall order the  
33 Office of Driver Services to:

34 (1) Suspend the motor vehicle operator's license for:

35 (A) A period of not less than six (6) months nor more than

1 one (1) year if the person had not previously refused the test within three  
2 (3) years of the refusal in question and if the person had not been convicted  
3 of driving while intoxicated or driving while there was eight-hundredths of  
4 one percent (0.08%) or more of alcohol in the person's blood within three (3)  
5 years of the refusal;

6 (B) A period of not less than one (1) year nor more than  
7 sixteen (16) months if the person had previously refused the test within three  
8 (3) years of the refusal in question or if the person had been convicted of  
9 driving while intoxicated or driving while there was eight-hundredths of one  
10 percent (0.08%) or more of alcohol in the person's blood within three (3)  
11 years of the refusal;

12 (C) A period of not less than two (2) years nor more than  
13 thirty (30) months if the person had previously refused the test two (2) times  
14 within three (3) years of the refusal in question or if the person had been  
15 convicted of the second offense of driving while intoxicated or driving while  
16 there was eight-hundredths of one percent (0.08%) or more of alcohol in the  
17 person's blood within three (3) years of the refusal; or

18 (2) Revoke the motor vehicle operator's license if the person had  
19 previously refused the test three (3) times within three (3) years of the  
20 refusal in question or if the person had been convicted of the third offense  
21 of driving while intoxicated or driving while there was eight-hundredths of  
22 one percent (0.08%) or more of alcohol in the person's blood within three (3)  
23 years of the refusal. The revocation shall continue for a period of three (3)  
24 years.

25 (d) If the person is a resident without a license or permit to operate  
26 a motor vehicle in this state, the Office of Driver Services shall deny to the  
27 person the issuance of a license or permit for a period of six (6) months  
28 after the date of the arrest.

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

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

1

2 SECTION 10. Arkansas Code §5-65-206 is hereby amended to read as  
3 follows:

4 "5-65-206. Evidence in prosecution.

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

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

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

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

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

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

34 (1) However, the machine performing the chemical analysis shall  
35 have been duly certified at least once in the last three (3) months preceding

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

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

9           (3) 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 11. Arkansas Code §5-65-207 is hereby amended to read as  
15 follows:

16           "5-65-207. Blood 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 a motor vehicle  
20 while intoxicated or with a blood alcohol content of eight-hundredths of one  
21 percent (0.08%) or more shall be so constructed that the analysis is made  
22 automatically when a sample of the person's breath is placed in the machine or  
23 instrument, and without any adjustment or other action of the person  
24 administering the analysis, and the machine shall be so constructed that the  
25 blood alcohol content is shown by visible digital display on the machine and  
26 on an automatic readout.

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

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



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

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

7

8 SECTION 12. Arkansas Code Annotated §12-41-701(6) is amended to read as  
9 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 eight-hundredths of one percent (0.08%), by  
29 weight, or more, of alcohol in the person's blood, as determined by a chemical  
30 test of the person's blood, urine, breath, or other bodily substance;"

31

32 SECTION 13. All provisions of this act of a general and permanent  
33 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
34 Code Revision Commission shall incorporate the same in the Code.

35

1           SECTION 14. If any provision of this act or the application thereof to  
2 any person or circumstance is held invalid, such invalidity shall not affect  
3 other provisions or applications of the act which can be given effect without  
4 the invalid provision or application, and to this end the provisions of this  
5 act are declared to be severable.

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7           SECTION 15. All laws and parts of laws in conflict with this act are  
8 hereby repealed.

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