

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

As Engrossed: H3/15/17

# A Bill

HOUSE BILL 2248

5 By: Representative Gazaway  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE IMPLIED CONSENT LAW IN RELATION  
9 TO THE OFFENSE OF DRIVING OR BOATING WHILE  
10 INTOXICATED; AND FOR OTHER PURPOSES.  
11

### Subtitle

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14 TO AMEND THE IMPLIED CONSENT LAW IN  
15 RELATION TO THE OFFENSE OF DRIVING OR  
16 BOATING WHILE INTOXICATED.  
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18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 *SECTION 1. Arkansas Code § 5-65-202 is amended to read as follows:*

22 *5-65-202. Implied consent.*

23 *(a) A person who operates a motorboat on the waters of this state or a*  
24 *motor vehicle or is in actual physical control of a motorboat on the waters*  
25 *of this state or a motor vehicle is deemed to have given consent, subject to*  
26 *§ 5-65-203, to one (1) or more chemical tests of his or her ~~blood~~, breath,*  
27 *saliva, or urine for the purpose of determining the alcohol concentration or*  
28 *controlled substance content of his or her breath or blood if:*

29 *(1) The person is arrested for any offense arising out of an act*  
30 *alleged to have been committed while the person was driving or boating while*  
31 *intoxicated or driving or boating while there was an alcohol concentration of*  
32 *eight hundredths (0.08) or more in the person's breath or blood;*

33 *(2) The person is involved in an accident while operating or in*  
34 *actual physical control of a motorboat on the waters of this state or a motor*  
35 *vehicle; or*

36 *(3) At the time the person is arrested for driving or boating*



1 while intoxicated, the law enforcement officer has reasonable cause to  
2 believe that the person, while operating or in actual physical control of a  
3 motorboat on the waters of this state or a motor vehicle, is intoxicated or  
4 has an alcohol concentration of eight hundredths (0.08) or more in the  
5 person's breath or blood.

6 (b) A person who is dead, unconscious, or otherwise in a condition  
7 rendering him or her incapable of refusal is deemed not to have withdrawn the  
8 consent provided by subsection (a) of this section, and one (1) or more  
9 chemical tests may be administered subject to § 5-65-203.

10 (c) A test of a person's blood under this section to determine the  
11 person's alcohol concentration, controlled substance content, or other  
12 intoxicating substance content in his or her blood requires a warrant based  
13 on probable cause that the person was operating or in actual physical control  
14 of a motorboat on the waters of this state or a motor vehicle while  
15 intoxicated.

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17 SECTION 2. Arkansas Code § 5-65-204(c), concerning a blood test under  
18 the implied consent law, is amended to read as follows:

19 (c)(1) When a person submits to a blood test at the request of a law  
20 enforcement officer under a provision of this section or because a warrant  
21 has been issued to take a sample of the person's blood, blood may be drawn by  
22 a physician or a person acting under the direction and supervision of a  
23 physician.

24 (2) The limitation in subdivision (c)(1) of this section does  
25 not apply to the taking of a breath, saliva, or urine specimen.

26 (3)(A) No person, institution, or office in this state that  
27 withdraws blood for the purpose of determining alcohol or controlled  
28 substance content of the blood at the request of a law enforcement officer  
29 under a provision of this chapter shall be held liable for violating any  
30 criminal law of this state in connection with the withdrawing of the blood.

31 (B) No physician, institution, or person acting under the  
32 direction or supervision of a physician shall be held liable in tort for the  
33 withdrawal of the blood unless the person is negligent in connection with the  
34 withdrawal of the blood or the blood is taken over the objections of the  
35 subject.

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1           SECTION 3. Arkansas Code § 5-65-204(e), concerning a chemical test  
2 under the implied consent law, is amended to read as follows:

3           (e) Upon the request of the person who submits to a chemical test at  
4 the request of a law enforcement officer or because a warrant has been issued  
5 to take a sample of the person's blood, full information concerning the  
6 chemical test shall be made available to the person or to his or her  
7 attorney.

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9           SECTION 4. Arkansas Code § 5-65-205(b), concerning the offense of  
10 refusal to submit to a chemical test, is amended to read as follows:

11           (b)(1) The Office of Driver Services shall suspend or revoke the  
12 driving privilege of an arrested person who refuses to submit to a chemical  
13 test under this subchapter.

14           (2)(A) A person who refuses to submit to a chemical test of his  
15 or her ~~blood~~, breath, saliva, or urine for the purpose of determining the  
16 alcohol or controlled substance content of the person's blood or breath shall  
17 have his or her driving privileges:

18                           (i) Suspended for one hundred eighty (180) days for  
19 a first offense;

20                           (ii) Suspended for two (2) years for a second  
21 offense occurring within five (5) years of the first offense;

22                           (iii) Revoked for three (3) years for a third  
23 offense occurring within five (5) years of the first offense; and

24                           (iv) Revoked for his or her lifetime for a fourth  
25 offense occurring within five (5) years of the first offense.

26           (B) The office may issue an ignition interlock restricted  
27 license under § 5-65-118 immediately, but only:

28                           (i) To a person who is arrested for a first offense  
29 under this section; and

30                           (ii) When the person is arrested for operating or  
31 being in actual physical control of a motor vehicle or motorboat while  
32 intoxicated by the ingestion of alcohol.

33           (C) The restricted driving permit provision of § 5-65-120  
34 does not apply to a suspension for a first offense under this section.

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36           SECTION 5. Arkansas Code § 5-65-208 is amended to read as follows:

1           5-65-208. Motor vehicle and motorboat accidents – Testing required.

2           (a) When the driver of a motor vehicle or operator of a motorboat on  
3 the waters of this state is involved in an accident resulting in loss of  
4 human life or when there is reason to believe death may result, a chemical  
5 test of the driver's or operator's ~~blood~~, breath, saliva, or urine shall be  
6 administered to the driver or operator, even if he or she is fatally injured,  
7 to determine the presence of and percentage of alcohol concentration or the  
8 presence of a controlled substance, or both, in the driver's or operator's  
9 body.

10           (b)(1) A chemical test under this section shall be ordered as soon as  
11 practicable by one (1) of the following persons or agencies:

12                   (A) The law enforcement agency investigating the accident;

13                   (B) The physician in attendance; or

14                   (C) Other person designated by state law.

15           (2)(A) The person who conducts the chemical test of the driver's  
16 or operator's ~~blood~~, breath, saliva, or urine under this section shall  
17 forward the results of the chemical test to the Department of Arkansas State  
18 Police, and the department shall establish and maintain the results of the  
19 chemical tests required by subsection (a) of this section in a database.

20           (B) The information in the database shall reflect the  
21 number of fatal motor vehicle accidents in which:

22                   (i) Alcohol was found to be a factor, including the  
23 percentage of alcohol concentration involved;

24                   (ii) Controlled substances were found to be a  
25 factor, including a list of the controlled substances found, the specific  
26 class of the controlled substance, and the amount; and

27                   (iii) Both alcohol and a controlled substance were  
28 found to be factors, including the percentage of alcohol concentration  
29 involved, as well as a list of the controlled substances found and the  
30 amount.

31           (c) The result of a chemical test required by this section shall be  
32 reported to the department and may be used by state and local officials for:

33                   (1) Statistical purposes that do not reveal the identity of the  
34 deceased person; or

35                   (2) Any law enforcement purpose, including prosecution for the  
36 violation of any law.

1 (d) A test of a person's blood under this section to determine the  
2 person's alcohol concentration, controlled substance content, or other  
3 intoxicating substance content in his or her blood requires a warrant based  
4 on probable cause that the person was operating or in actual physical control  
5 of a motorboat on the waters of this state or a motor vehicle while  
6 intoxicated.

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8 SECTION 6. Arkansas Code § 5-65-309 is amended to read as follows:  
9 5-65-309. Implied consent.

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

16 (1) The underage person is arrested for any offense arising out  
17 of an act alleged to have been committed while the underage person was  
18 driving or boating while under the influence or driving or boating while  
19 there was an alcohol concentration of two hundredths (0.02) but less than  
20 eight hundredths (0.08) in his or her breath, blood, saliva, or urine;

21 (2) The underage person is involved in an accident while  
22 operating or in actual physical control of a motorboat on the waters of this  
23 state or a motor vehicle; or

24 (3) The underage person is stopped by a law enforcement officer  
25 who has reasonable cause to believe that the underage person, while operating  
26 or in actual physical control of a motorboat on the waters of this state or a  
27 motor vehicle, is under the influence or has an alcohol concentration of two  
28 hundredths (0.02) but less than eight hundredths (0.08) in his or her breath  
29 or blood.

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

34 (c) A test of a person's blood under this section to determine the  
35 person's alcohol concentration, controlled substance content, or other  
36 intoxicating substance content in his or her blood requires a warrant based

1 on probable cause that the person was operating or in actual physical control  
2 of a motorboat on the waters of this state or a motor vehicle while  
3 intoxicated.

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5 SECTION 7. Arkansas Code § 5-65-402(a)(4)(A)(iii), concerning an  
6 administrative driver's license suspension for a person charged with refusing  
7 to submit to a chemical test, is amended to read as follows:

8 (iii) Had been operating or was in actual physical  
9 control of a motorboat on the waters of this state or a motor vehicle in  
10 violation of § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2)  
11 and the sworn report is accompanied by:

12 (a) A written chemical test report or a sworn  
13 report that the arrested person was operating or in actual physical control  
14 of a motorboat on the waters of this state or motor vehicle in violation of §  
15 5-65-103, § 5-65-303, or § 27-23-114; or

16 (b) A sworn report that the arrested person  
17 refused to submit to a chemical test of ~~blood~~, breath, saliva, or urine for  
18 the purpose of determining the alcohol concentration or controlled substance  
19 content of the arrested person's breath or blood in violation of § 5-65-205,  
20 § 5-65-310, or § 27-23-114(a)(5).

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22 SECTION 8. Arkansas Code § 5-65-402(a)(8)(D)(ii), concerning a hearing  
23 for an administrative driver's license suspension for a person charged with  
24 refusing to submit to a chemical test, is amended to read as follows:

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

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30 /s/Gazaway

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33 **APPROVED: 04/06/2017**