

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.
Act 886 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 2325

5 By: Representatives D. Johnson, Thomason
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For An Act To Be Entitled

9 AN ACT TO PROVIDE THAT A METHOD OF ANALYSIS USED
10 BY THE STATE CRIME LABORATORY TO DETERMINE THE
11 PRESENCE OF CONTROLLED SUBSTANCES OR INTOXICANTS
12 IS EXEMPT FROM APPROVAL BY THE DEPARTMENT OF
13 HEALTH OR THE STATE BOARD OF HEALTH; TO ADD
14 PROVISIONS CONCERNING ADMISSIBILITY OF RECORDS OF
15 THE STATE CRIME LABORATORY; AND FOR OTHER
16 PURPOSES.
17

Subtitle

18 AN ACT TO EXEMPT CERTAIN TESTING BY THE
19 STATE CRIME LABORATORY FROM APPROVAL BY
20 THE DEPARTMENT OF HEALTH OR THE STATE
21 BOARD OF HEALTH AND TO ADD PROVISIONS
22 CONCERNING ADMISSIBILITY OF RECORDS OF
23 THE STATE CRIME LABORATORY.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code § 5-65-204 is amended to read as follows:
30 5-65-204. Validity - Approved methods.

31 (a)(1) Alcohol concentration shall mean either:

32 (A) Grams of alcohol per one hundred milliliters (100 ml)
33 or one hundred cubic centimeters (100 cc) of blood; or

34 (B) Grams of alcohol per two hundred ten liters (210 l) of
35 breath.



1 (2) The alcohol concentration of other bodily substances shall
 2 be based upon grams of alcohol per one hundred milliliters (100 ml), or one
 3 hundred cubic centimeters (100 cc) of blood, the same being percent weight
 4 per volume or percent alcohol concentration.

5 (b)(1) Chemical analyses made to determine the presence and amount of
 6 alcohol of ~~the~~ a person's blood, urine, or breath to be considered valid
 7 under the provisions of this act shall have been performed according to
 8 methods approved by the Department of Health or by an individual possessing a
 9 valid permit issued by the Department of Health for this purpose. The
 10 Department of Health is authorized to approve satisfactory techniques or
 11 methods, to ascertain the qualifications and competence of individuals to
 12 conduct such analyses, and to issue permits which shall be subject to
 13 termination or revocation at the discretion of the Department of Health.

14 (2) However, a method of analysis of a person's blood, urine, or
 15 other bodily substance made by the State Crime Laboratory for determining the
 16 presence of one (1) or more controlled substances or any intoxicant shall be
 17 exempt from approval by the Department of Health or State Board of Health.

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

22 (d)(1) When a person shall submit to a blood test at the request of a
 23 law enforcement officer under the provisions of this section, blood may be
 24 drawn by a physician or a person acting under the direction and supervision
 25 of a physician.

26 (2) This limitation shall not apply to the taking of breath or
 27 urine specimens.

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

1 (e)(1) The person tested may have a physician or a qualified
 2 technician, registered nurse, or other qualified person of his own choice
 3 administer a complete chemical test in addition to any test administered at
 4 the direction of a law enforcement officer.

5 (2) The law enforcement officer shall advise the person in
 6 writing of this right and that if the person chooses to have an additional
 7 test and the person is found not guilty, the arresting law enforcement agency
 8 will reimburse the person for the cost of the additional test.

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

13 (f) Upon the request of the person who shall submit to a chemical test
 14 or tests at the request of a law enforcement officer, full information
 15 concerning the test shall be made available to him or his attorney.
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17 SECTION 2. Arkansas Code § 5-65-206 is amended to read as follows:

18 5-65-206. Evidence in prosecution.

19 (a) In any criminal prosecution of a person charged with the offense
 20 of driving while intoxicated, the amount of alcohol in the defendant's breath
 21 or blood at the time or within four (4) hours of the alleged offense, as
 22 shown by chemical analysis of the defendant's blood, urine, breath, or other
 23 bodily substance shall give rise to the following:

24 (1) If there was at that time an alcohol concentration of four-
 25 hundredths (0.04) or less in the defendant's blood, urine, breath, or other
 26 bodily substance, it shall be presumed that the defendant was not under the
 27 influence of intoxicating liquor;

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

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

1 or not the defendant was intoxicated.

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

4 (d)(1)(A) Except as provided in subsection (e) of this section, The
 5 the records and reports of certifications, rules, evidence analysis, or other
 6 documents pertaining to work performed by the Office of Alcohol Testing of
 7 the Department of Health under the authority of this chapter shall be
 8 received as competent evidence as to the matters contained in them in the
 9 courts of this state, subject to the applicable rules of criminal procedure
 10 when duly attested to by the program director or his or her assistant, in the
 11 form of an original signature or by certification of a copy.

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

13 (2) However, the instrument performing the chemical analysis
 14 shall have been duly certified at least one (1) time in the last three (3)
 15 months preceding arrest, and the operator of the instrument shall have been
 16 properly trained and certified.

17 (3) Nothing in this section shall be deemed to abrogate a
 18 defendant's right of cross-examination of the person who performs the
 19 calibration test or check on the instrument, the operator of the instrument,
 20 or a representative of the Office of Alcohol Testing.

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

26 (e) When a chemical analysis of a defendant's blood, urine, or other
 27 bodily substance is made by the State Crime Laboratory for the purpose of
 28 ascertaining the presence of one (1) or more controlled substances or any
 29 intoxicant, other than alcohol, in any criminal prosecution under § 5-65-103,
 30 § 5-65-303, or § 5-10-105, the provisions of § 12-12-313 shall govern the
 31 admissibility of the analysis into evidence rather than the provisions of
 32 this section.

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 34 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 35 General Assembly of the State of Arkansas that confusion exists regarding the
 36 admissibility of drug analyses made by the State Crime Laboratory in certain

1 cases due to a recent decision by the Arkansas Court of Appeals; that a
2 standard of admissibility of analyses made by the State Crime Laboratory must
3 be established; and that this act is immediately necessary in order to
4 prosecute pending cases and cases filed in the future. Therefore, an
5 emergency is declared to exist and this act being immediately necessary for
6 the preservation of the public peace, health, and safety shall become
7 effective on:

8 (1) The date of its approval by the Governor;

9 (2) If the bill is neither approved nor vetoed by the Governor,
10 the expiration of the period of time during which the Governor may veto the
11 bill; or

12 (3) If the bill is vetoed by the Governor and the veto is
13 overridden, the date the last house overrides the veto.

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16 APPROVED: 3/16/2005
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