

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1897

5 By: Representative Bryant
6 By: Senator B. Ballinger
7

For An Act To Be Entitled

9 AN ACT CONCERNING VENOUS BLOOD DRAWS IN CONNECTION
10 WITH A CRIMINAL OFFENSE; TO AMEND § 5-65-204; AND FOR
11 OTHER PURPOSES.
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Subtitle

15 CONCERNING VENOUS BLOOD DRAWS IN
16 CONNECTION WITH A CRIMINAL OFFENSE; AND
17 TO AMEND § 5-65-204.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 5-65-204 is amended to read as follows:
23 5-65-204. Validity – Approved methods.

24 (a)(1) As used in this chapter, § 5-10-105, § 5-75-101 et seq., and §
25 5-76-101 et seq. [repealed], “alcohol concentration” means either:

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

28 (B) Grams of alcohol per two hundred ten liters (210 l) of
29 breath.

30 (2) The alcohol concentration of urine, saliva, or other bodily
31 substance is based upon grams of alcohol per one hundred milliliters (100 ml)
32 or one hundred cubic centimeters (100 cc) of blood, the same being percent
33 weight per volume or percent alcohol concentration.

34 (b)(1)(A) A chemical test made to determine the presence and amount of
35 alcohol in a person’s blood, urine, saliva, or breath to be considered valid
36 under this chapter shall be performed according to a method approved by the



1 Department of Health and State Board of Health or by an individual possessing
 2 a valid certificate issued by the department for this purpose.

3 (B) The department may:

4 (i) Approve satisfactory techniques or methods for
 5 the chemical test;

6 (ii) Ascertain the qualifications and competence of
 7 an individual to conduct the chemical test; and

8 (iii) Issue a certificate that is subject to
 9 termination or revocation at the discretion of the department.

10 (C)(i) An auxiliary law enforcement officer appointed as a
 11 reserve law enforcement officer and certified by the department in the
 12 operation of an instrument used to determine the alcohol content of the
 13 breath may operate an instrument used to determine the alcohol content of the
 14 breath under this chapter.

15 (ii) The department shall promulgate rules to
 16 implement subdivision (b)(1)(C)(i) of this section.

17 (2) However, a method of chemical analysis of a person's blood,
 18 urine, saliva, or other bodily substance made by the State Crime Laboratory
 19 for determining the presence of one (1) or more controlled substances or any
 20 intoxicant is exempt from approval by the department or the board.

21 ~~(c)(1) When a person submits to a blood test at the request of a law~~
 22 ~~enforcement officer under a provision of this section or because a warrant~~
 23 ~~has been issued to take a sample of the person's blood, blood may be drawn by~~
 24 ~~a physician or a person acting under the direction and supervision of a~~
 25 ~~physician~~ Blood may be drawn by a person who is licensed, certified, or
 26 otherwise authorized by law to perform venous blood draws when a person
 27 consents to the procedure or when a warrant or court order has been issued to
 28 take a sample of the person's blood.

29 (2) When a blood sample is taken at the request of a law
 30 enforcement officer based on exigent circumstances, the blood may only be
 31 drawn by a physician or a licensed nurse.

32 ~~(2)(3)~~ The limitation in subdivision limitations under
 33 subdivisions (c)(1) and (2) of this section does do not apply to the taking
 34 of a breath, saliva, or urine specimen.

35 ~~(3)(A) No person, institution, or office in this state that~~
 36 ~~withdraws blood for the purpose of determining alcohol or controlled~~

1 ~~substance content of the blood at the request of a law enforcement officer~~
2 ~~under a provision of this chapter shall be held liable for violating any~~
3 ~~criminal law of this state in connection with the withdrawing of the blood.~~

4 ~~(B) No physician, institution, or person acting under the~~
5 ~~direction or supervision of a physician shall be held liable in tort for the~~
6 ~~withdrawal of the blood unless the person is negligent in connection with the~~
7 ~~withdrawal of the blood or the blood is taken over the objections of the~~
8 ~~subject.~~

9 (d)(1) The person tested may have a physician or a qualified
10 technician, registered nurse, or other qualified person of his or her own
11 choice administer a complete chemical test in addition to any chemical test
12 administered at the direction of a law enforcement officer.

13 (2) The law enforcement officer shall advise the person in
14 writing of the right provided in subdivision (d)(1) of this section and that
15 if the person chooses to have an additional chemical test and the person is
16 found not guilty, the arresting law enforcement agency shall reimburse the
17 person for the cost of the additional chemical test.

18 (3) The refusal or failure of a law enforcement officer to
19 advise a person of the right provided in subdivision (d)(1) of this section
20 and to permit and assist the person to obtain a chemical test under
21 subdivision (d)(1) of this section precludes the admission of evidence
22 relating to a chemical test taken at the direction of a law enforcement
23 officer.

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

29 (f)(1) A person who is licensed, certified, or otherwise authorized by
30 law to perform a venous blood draw and any institution or entity employing or
31 using the services of the person is not liable for violating a criminal law
32 of this state in connection with withdrawing blood at the request of a law
33 enforcement officer under this chapter.

34 (2) A person who is licensed, certified, or otherwise authorized
35 by law to perform a venous blood draw, and any institution or entity
36 employing or using the services of the person is immune from civil and

1 regulatory liability in connection with withdrawing blood at the request of a
2 law enforcement officer under this chapter, unless the person is negligent in
3 connection with the withdrawal of the blood.

4 (3) The immunity granted under this subsection is not
5 conditioned upon the existence of express consent, probable cause, a search
6 warrant, or a court order.

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9 **APPROVED: 4/28/21**
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