

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senators Todd and Walters**

A Bill

SENATE BILL

For An Act To Be Entitled

"AN ACT TO MAKE IT UNLAWFUL TO OPERATE, NAVIGATE OR BE IN
ACTUAL PHYSICAL CONTROL OF ANY AIRCRAFT WHILE INTOXICATED;
AND FOR OTHER PURPOSES."

Subtitle

"AN ACT TO MAKE IT UNLAWFUL TO OPERATE, NAVIGATE OR BE IN
ACTUAL PHYSICAL CONTROL OF ANY AIRCRAFT WHILE
INTOXICATED."

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

SECTION 1. Definitions.

As used in this act, unless the context otherwise requires:

(1) "Intoxicated" means influenced or affected by the ingestion of
alcohol, a controlled substance, any intoxicant, or any combination thereof,
to such a degree that the operator_s or navigator_s reactions, motor skills,
and judgment are substantially altered and the operator or navigator,
therefore, constitutes a clear and substantial danger of physical injury or
death to himself and other persons;

(2) "Controlled substance" means a drug, substance, or immediate
precursor in Schedules I through VI. The fact that any person charged with a
violation of this act is or has been entitled to use that drug or controlled
substance under the laws of this state shall not constitute a defense against
any charge of violating this act;

(3) "Aircraft" means any contrivance invented, used, or designed for
the navigation of or flight in the air and which is required to be registered
under the laws of the United States.

1 SECTION 2. Unlawful acts.

2 (a) It is unlawful and punishable as provided in this act for any
3 person who is intoxicated to operate, navigate or be in actual physical
4 control of any aircraft.

5 (b) It is unlawful and punishable as provided in this act for any
6 person to operate, navigate or be in actual physical control of any aircraft
7 if at that time there was four-hundredths of one percent (0.04%) or more by
8 weight of alcohol in the person's blood as determined by a chemical test of
9 the person's blood, urine, breath, or other bodily substance.

10 (c) (1) Any person who pleads guilty, nolo contendere, or is found
11 guilty of violating subsection (a) or (b) of this section shall be guilty of a
12 Class A misdemeanor.

13 (2) For a second offense occurring within one (1) year, any
14 person who pleads guilty, nolo contendere, or is found guilty of violating
15 subsection (a) or (b) of this section shall be guilty of a Class D felony.

16 (d) (1) If a person under arrest for violating subsection (a) or (b)
17 of this section refuses upon the request of a law enforcement officer to
18 submit to a chemical test as provided in Section 3 of this act, none shall be
19 given, however, any person who refuses to submit to a chemical test as
20 provided for in Section 3 of this act shall be guilty of a Class A
21 misdemeanor.

22 (2) For a second offense occurring within one (1) year, any
23 person who refuses to submit to a chemical test as provided for in Section 3
24 of this act shall be guilty of a Class D felony.

25 (e) A complete report of all arrests and convictions made under the
26 provisions of this act shall be forwarded to the Federal Aviation
27 Administration or any other agency responsible for the licensing of pilots or
28 navigators.

29

30 SECTION 3. Implied consent.

31 (a) Any person who operates or navigates any aircraft or is in actual
32 physical control of any aircraft in this state shall be deemed to have given
33 consent, subject to the provisions of Section 4 of this act, to a chemical
34 test or tests of his or her blood, breath, or urine for the purpose of
35 determining the alcohol or controlled substance content of his or her blood

1 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 four-hundredth of one percent (0.04%) or more of
6 alcohol in the person's 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 in
11 actual physical control of any aircraft, is intoxicated or has four-hundredths
12 of one percent (0.04%) or more of alcohol in his or her blood.

13 (b) Any person who is dead, unconscious, or otherwise in a condition
14 rendering him incapable of refusal shall be deemed not to have withdrawn the
15 consent provided by subsection (a) of this section, and the tests may be
16 administered subject to the provisions of Section 4 of this act.

17

18 SECTION 4. Administration.

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

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

27 (1) If the person tested requests that additional tests be made,
28 as authorized in Section 5 of this act, the cost of the additional tests shall
29 be borne by the person tested.

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

33

34 SECTION 5. Validity - Approved methods.

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

1 (A) Grams of alcohol per one hundred (100) milliliters, or
2 cubic centimeters, of blood; or

3 (B) Grams of alcohol per two hundred ten (210) liters of
4 breath.

5 (2) The alcohol concentration of other bodily substances shall be
6 based upon grams of alcohol per one hundred (100) milliliters, or cubic
7 centimeters, of blood, the same being percent weight per volume or percent
8 alcohol concentration.

9 (b) Chemical analyses of the person's blood, urine, or breath to be
10 considered valid under the provisions of this act shall have been performed
11 according to methods approved by the Arkansas State Department of Health or by
12 an individual possessing a valid permit issued by the State Department of
13 Health for this purpose. The State Department of Health is authorized to
14 approve satisfactory techniques or methods, to ascertain the qualifications
15 and competence of individuals to conduct such analyses, and to issue permits
16 which shall be subject to termination or revocation at the discretion of the
17 State Department 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, to be
20 considered valid under the provisions of this section, shall have been
21 performed according to methods approved by the Arkansas State Board of Health.

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

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

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

1 subject.

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

6 (1) The law enforcement officer shall advise the person of this
7 right.

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

12 (f) Upon the request of the person who shall submit to a chemical test
13 or tests at the request of a law enforcement officer, full information
14 concerning the test shall be made available to him or his attorney.

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16 SECTION 6. Evidence in prosecution.

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

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

26 (2) If there was at the time four-hundredths of one percent
27 (0.04%) or more by weight of alcohol in the defendant's blood, urine, breath,
28 or other bodily substance, such fact shall not give rise to any presumption
29 that the defendant was or was not under the influence of intoxicating liquor,
30 but this fact may be considered with other competent evidence in determining
31 the guilt or innocence of the defendant.

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

35 (c) The chemical analysis referred to in this section shall be made by

1 a method approved by the State Board of Health.

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

10 (1) However, the machine performing the chemical analysis shall
11 have been duly certified at least once in the last three (3) months preceding
12 arrest and the operator thereof shall have been properly trained and
13 certified.

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

20 (3) The testimony of the appropriate analyst or official may be
21 compelled by the issuance of a proper subpoena, in which case, the records and
22 reports shall be admissible through the analyst or official, who shall be
23 subject to cross-examination by the defendant or his counsel.

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25 SECTION 7. Blood alcohol testing devices.

26 (a) Every machine or instrument used to determine the alcohol content
27 of the breath or blood of any person by analysis of the breath of the person
28 for the purpose of determining if the person was operating or navigating any
29 aircraft while intoxicated or with a blood alcohol content of four-hundredths
30 of one percent (0.04%) or more shall be so constructed that the analysis is
31 made automatically when a sample of the person's breath is placed in the
32 machine or instrument, and without any adjustment or other action of the
33 person administering the analysis, and the machine shall be so constructed
34 that the blood alcohol content is shown by visible digital display on the
35 machine and on an automatic readout.

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

4 (c) The State Board of Health is authorized to adopt appropriate rules
5 and regulations to carry out the intent and purposes of this section, and only
6 machines or instruments approved by the board as meeting the requirements of
7 this section and regulations of the board shall be used for making the breath
8 analysis for determining blood alcohol content. The State Department of
9 Health is specifically authorized to limit by its rules the types or models of
10 testing devices which may be approved for use in Arkansas for the purposes set
11 forth in this section. The approved types or models will be specified by
12 manufacturer's name and model.

13 (d) All law enforcement agencies which conduct blood alcohol testing
14 shall be in full compliance with the provisions of this act by July 1, 1993.

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16 SECTION 8. All provisions of this act of a general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.

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20 SECTION 9. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

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26 SECTION 10. All laws and parts of laws in conflict with this act are
27 hereby repealed.

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