

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995

## A Bill

SENATE BILL 127

4 By: Senators Canada, Scott, Hoofman, Fitch, Jeffries, Ross, Gwatney, Bookout,  
5 Smith, Gordon, Webb, Keet, Russ, Walters, Boozman, Brown  
6 By: Representatives Mullinix, Lynn, Allen and T. Smtih

### For An Act To Be Entitled

9 "AN ACT TO PROHIBIT THE OPERATION OF A *MOTORBOAT* OR  
10 CERTAIN OTHER MARINE DEVICES WHILE UNDER THE INFLUENCE OF  
11 ALCOHOL OR CONTROLLED SUBSTANCES; AND FOR OTHER PURPOSES."

### Subtitle

14 "TO PROHIBIT OPERATION OF A *MOTORBOAT* OR  
15 CERTAIN OTHER MARINE DEVICES WHILE UNDER  
16 THE INFLUENCE OF ALCOHOL OR CONTROLLED  
17 SUBSTANCES."

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

21 SECTION 1. As used in this act:

22 (1) "Controlled substance" means a drug, substance, or immediate  
23 precursor in Schedules I through VI of the Uniform Controlled Substance Act.

24 (2) "Intoxicated" means influenced or affected by the ingestion of  
25 alcohol, a controlled substance, any intoxicant, or any combination thereof,  
26 to such a degree that the operator's reactions, motor skills and judgement  
27 are substantially altered and the operator, therefore, constitutes a clear  
28 and substantial danger of physical injury or death to himself or others.

29 (3) "*Motorboat*" means any vessel operated upon water and which is  
30 propelled by machinery, whether or not the machinery is the principal source  
31 of propulsion.

32 (4) "*Operator*" means a person who is controlling the speed and  
33 direction of a motorboat or a person who is in direct physical control of the  
34 motorboat.

35 (5) "Waters" means any public waters within the territorial limits of

1 the State of Arkansas.

2

3         *SECTION 2. No person shall operate any motorboat on the waters of this*  
4 *state, while:*

5                 (1) Intoxicated; or

6                 (2) There is one-tenth of one percent (0.10%) or more by weight  
7 of alcohol in the person\_s blood, as determined by a chemical test of the  
8 person\_s blood, urine, breath, or other bodily substance.

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10         *SECTION 3. In the case of a motorboat or device, only where the*  
11 *certified law enforcement officer has probable cause to believe that the*  
12 *operator of the motorboat is operating while intoxicated or operating while*  
13 *there is one-tenth of one percent (0.10%) or more, by weight, of alcohol in*  
14 *the person's blood, the law enforcement officer is authorized to administer*  
15 *and may test the operator, at the scene, by using a field breathalyzer or*  
16 *other approved method to determine if the operator may be operating a*  
17 *motorboat or device in violation of this act. The consumption of alcohol or*  
18 *the possession of open containers aboard a vessel shall not in and of itself*  
19 *constitute probable cause.*

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21         SECTION 4. (a) For first offense, a person violating this Act shall  
22 be punished by imprisonment in the county or municipal jail for not more than  
23 one (1) year or by fine of not less than two hundred fifty dollars (\$250) nor  
24 more than one thousand dollars (\$1,000) or both fine and imprisonment. In  
25 addition, the court shall order the person not to operate a *motorboat* for a  
26 period of ninety (90) days. Neither reckless operation of a *motorboat* nor  
27 any other boating or water safety infraction is a lesser included offense  
28 under a charge in violation of this Act.

29         (b) For a second offense within a *three (3)* year period, the person  
30 who violates this Act shall be punished by a fine of not less than five  
31 hundred dollars (\$500) nor more than two thousand five hundred dollars  
32 (\$2,500) and by imprisonment in the county or municipal jail for not more  
33 than one (1) year. The sentence shall include a mandatory sentence which is  
34 not subject to suspension or probation of imprisonment in the county or  
35 municipal jail for not less than forty-eight (48) consecutive hours or

1 community service for not less than twenty (20) days. In addition, the court  
2 shall order the person not to operate a *motorboat* for a period of one (1)  
3 year.

4 (c) For a third or subsequent offense within a *three (3)* year period,  
5 the person who violates this Act shall be punished by a fine of not less than  
6 one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000)  
7 and by imprisonment in the county or municipal jail for not less than sixty  
8 (60) days nor more than one (1) year, to include a minimum of sixty (60) days  
9 which shall be served in the county or municipal jail and which cannot be  
10 probated or suspended. In addition, the court shall order the person not to  
11 operate a *motorboat* for a period of three (3) years.

12 (d) A person who has been arrested for violating this Act shall not be  
13 released from jail under bond or otherwise, until there is less than one-  
14 tenth of one percent (0.10%) by weight of alcohol in the person\_s blood and  
15 the person is no longer intoxicated.

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17 SECTION 5. (a) Any person who pleads guilty or nolo contendere, or is  
18 found guilty of violating this Act, shall, in addition to other penalties  
19 provided herein, be required to complete an alcohol education program as  
20 prescribed and approved by the Arkansas Highway Safety Program or an  
21 alcoholism treatment program as approved by the Bureau of Alcohol and Drug  
22 Abuse Prevention of the Department of Health. Such alcoholism education  
23 program may collect a program fee of up to fifty dollars (\$50.00) per  
24 enrollee to offset program costs. A person ordered to complete an alcoholism  
25 treatment program under this section may be required to pay, in addition to  
26 the costs collected for treatment, a fee of up to twenty-five dollars  
27 (\$25.00) to offset the additional costs associated with reporting  
28 requirements under this Act. The alcoholism education program shall report  
29 semiannually to the Arkansas Highway Safety Program all revenue derived from  
30 this fee.

31 (b) Within six (6) months of the final adjudication of guilt, the  
32 operator shall furnish proof of attendance at and completion of the  
33 alcoholism treatment or education program. If such proof is not furnished,  
34 the operator shall be cited for contempt of court and assessed an additional  
35 court cost of two hundred dollars (\$200.00), with fifty dollars (\$50.00)

1 retained by the municipal court. The remaining moneys received from these  
2 additional court costs shall be remitted at least quarterly, by January 1,  
3 April 1, July 1, and October 1 to the Director of the Department of Finance  
4 and Administration. One-half (1/2) of the moneys so received by the director  
5 shall be deposited in the State Treasury to be credited to the Highway Safety  
6 Special Fund for use to support programs of the Arkansas Highway Safety  
7 Program. The remaining one-half (1/2) of such moneys received by the  
8 director shall be deposited in the State Treasury to be credited to the  
9 Alcohol and Drug Safety Fund to support alcoholism treatment programs of the  
10 Division of Alcohol and Drug Abuse Prevention.

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12 SECTION 6. Any person who operates a *motorboat* on the waters of this  
13 state in violation of court order, shall be imprisoned for ten (10) days.

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15 SECTION 7. (a) Any person who operates a *motorboat* in this state  
16 shall be deemed to have given consent, subject to the provisions of Section 7  
17 of this Act, to a chemical test or tests of his or her blood, breath, or  
18 urine for the purpose of determining the alcohol or controlled substance  
19 content of his or her blood if:

20 (1) The operator is arrested for any offense arising out of acts  
21 alleged to have been committed while the person was operating while  
22 intoxicated or operating while there was one-tenth of one percent (0.10%) or  
23 more, by weight, of alcohol in the person's blood; or

24 (2) The person is involved in an accident while operating a  
25 *motorboat*; or

26 (3) At the time the person is arrested for operating while  
27 intoxicated, the law enforcement officer has reasonable cause to believe that  
28 the person, while operating a *motorboat*, is intoxicated or has one-tenth of  
29 one percent (0.10%) or more, by weight, of alcohol in his or her blood.

30 (b) Any person who is dead, unconscious, or otherwise in a condition  
31 rendering the person incapable of refusal shall be deemed not to have  
32 withdrawn the consent provided by subsection (a) of this section, and the  
33 test may be administered subject to the provisions of Section 7.

34

35 SECTION 8. (a) The chemical test or tests shall be administered at

1 the direction of a law enforcement officer having reasonable cause to believe  
2 the person to have been operating a *motorboat* while intoxicated or while  
3 there is one-tenth of one percent (0.10%) or more, by weight, of alcohol in  
4 the person's blood.

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

9 (1) If the person tested requests that additional tests be made,  
10 as authorized in Section 8(d) of this Act, the cost of the additional tests  
11 shall be borne by the person tested.

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

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16 SECTION 9. (a) Chemical analyses of the person's blood, urine, or  
17 breath to be considered valid under the provisions of this Act must be  
18 performed according to methods approved by the Arkansas State Board of Health  
19 or by an individual possessing a valid permit issued by the Department of  
20 Health for this purpose. The Department of Health is authorized to approve  
21 satisfactory techniques or methods, to ascertain the qualifications and  
22 competence of individuals to conduct such analyses, and to issue permits  
23 which shall be subject to termination or revocation at the discretion of the  
24 Department of Health.

25 (b) When a person submits to a blood test at the request of a law  
26 enforcement officer, blood may be drawn by a physician or a person acting  
27 under the direction and supervision of a physician.

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

30 (2) No person, institution, or office in this state who  
31 withdraws blood for the purpose of determining alcohol or controlled  
32 substance content thereof at the request of a law enforcement officer shall  
33 be held liable for violating any of the criminal laws of this state in  
34 connection therewith, nor shall any physician, institution, or person acting  
35 under the direction or supervision of a physician be held liable in tort for

1 the withdrawal of such blood unless such persons are negligent in connection  
2 therewith, or the blood is taken over the objections of the subject.

3 (c) Upon the request of the person who submits to a chemical test or  
4 tests at the request of a law enforcement officer, full information  
5 concerning the test shall be made available to him or his attorney.

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

10 (1) The law enforcement officer shall advise the person of this  
11 right.

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

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17 SECTION 10. If the court determines that the law enforcement officer  
18 had reasonable cause to believe the arrested person had been operating a  
19 *motorboat* in violation of this Act and the person refused to submit to the  
20 test upon request of the law enforcement officer, the court shall *levy a fine*  
21 *not to exceed five hundred dollars (\$500) and* suspend the operating  
22 privileges of the person for a period of six (6) months, in addition to any  
23 other suspension imposed for violating this Act.

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25 SECTION 11. The fact that any person charged with violating this Act  
26 is or has been legally entitled to use alcohol or a controlled substance  
27 shall not constitute a defense against any charge of violating this Act.

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29 SECTION 12. (a) In any criminal prosecution of a person charged with  
30 violating Section 2 of this Act, the amount of alcohol in the defendant's  
31 blood at the time or within two (2) hours of the alleged offense, as shown by  
32 chemical analysis of the defendant's blood, urine, breath, or other bodily  
33 substance shall give rise to the following:

34 (1) If there was at that time one-twentieth of one percent  
35 (0.05%) or less by weight of alcohol in the defendant's blood, urine, breath,

1 or other bodily substance, it shall be presumed that the defendant was not  
2 under the influence of intoxicating liquor.

3           (2) If there was at the time in excess of one-twentieth of one  
4 percent (0.05%) but less than one-tenth of one percent (0.10%) by weight of  
5 alcohol in the defendant's blood, urine, breath, or other bodily substance,  
6 such fact shall not give rise to any presumption that the defendant was or  
7 was not under the influence of intoxicating liquor, but this fact may be  
8 considered with other competent evidence in determining the guilt or  
9 innocence of the defendant.

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

13           (c) The records and reports of certifications, rules, evidence  
14 analysis, or other documents pertaining to work performed by the blood  
15 alcohol program of the Department of Health under the authority of this Act  
16 shall be received as competent evidence as to the matters contained therein  
17 in the courts of this state subject to the applicable rules of criminal  
18 procedure when attested to by the program director or his assistant, in the  
19 form of an original signature or by certification of a copy. These documents  
20 shall be self-authenticating.

21           (d) The machine performing the chemical analysis must have been  
22 certified at least once in the last three (3) months preceding arrest and the  
23 operator thereof must have been properly trained and certified.

24           (e) Nothing in this section shall be deemed to abrogate a defendant's  
25 right of cross-examination of the person calibrating the machine, the  
26 operator of the machine, or any person performing work in the blood alcohol  
27 program of the Department of Health, who shall be made available by the state  
28 if notice of intention to cross-examine is given at least ten (10) days prior  
29 to the date of hearing or trial.

30           (f) The testimony of the appropriate analyst or official may be  
31 compelled by subpoena, in which case, the records and reports shall be  
32 admissible through the analyst or official, who shall be subject to  
33 cross-examination by the defendant or his counsel.

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35           SECTION 13. (a) Every machine or instrument used to determine the

1 alcohol content of the breath or blood of any person by analysis of the  
2 breath of the person for the purpose of determining if the person was  
3 operating a vessel, etc. while intoxicated or with a blood alcohol content of  
4 one-tenth of one percent (0.10%) or more by weight shall be so constructed  
5 that the analysis is made automatically when a sample of the person's breath  
6 is placed in the machine or instrument, and without any adjustment or other  
7 action of the person administering the analysis, and the machine shall be so  
8 constructed that the blood alcohol content is shown by visible digital  
9 display on the machine and on an automatic readout.

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

13 (c) The State Board of Health is authorized to adopt appropriate  
14 regulations to carry out the intent and purposes of this Act, and only  
15 machines or instruments approved by the board as meeting the requirements of  
16 this section and regulations of the board shall be used for making the breath  
17 analysis for determining blood alcohol content. The State Board of Health is  
18 specifically authorized to limit by its regulations the types or models of  
19 testing devices which may be approved for use in Arkansas for the purposes  
20 set forth in this Act. The approved types or models shall be specified by  
21 manufacturer's name and model.

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23 SECTION 14. All fines for violations of this Act shall be remitted to  
24 the issuing law enforcement office to be used by that office for the  
25 administration and enforcement of this Act.

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27 SECTION 15. All provisions of this Act of a general and permanent  
28 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
29 Code Revision Commission shall incorporate the same in the Code.

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31 SECTION 16. If any provision of this Act or the application thereof to  
32 any person or circumstance is held invalid, such invalidity shall not affect  
33 other provisions or applications of the Act which can be given effect without  
34 the invalid provision or application, and to this end the provisions of this  
35 Act are declared to be severable.



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SECTION 17. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 18. EMERGENCY. It is hereby found and determined by the General Assembly that the act of operating a *motorboat* while under the influence of alcoholic beverages or drugs constitutes a serious and immediate threat to the safety of all citizens of this state; that increasing the penalty for this dangerous conduct may serve as a deterrent to such behavior; that increased income derived from the levying of such penalties can best be utilized to provide immediate alcohol and drug safety rehabilitation and treatment programs both to prevent an increase in the use of alcoholic beverages and drugs and to rehabilitate persons convicted of related offenses; and that this Act will increase the penalty for operating a *motorboat* under the influence of drugs and alcohol and provide alcohol and drug treatment programs to persons convicted of operating a *motorboat* under the influence of alcohol or drugs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after May 1, 1995.

*/s/Canada et al*

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