

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: S3/11/97

## A Bill

HOUSE BILL 1481

5 By: Representatives Terry Smith, Molinaro, Bryant, Dietz, Faris, Flanagan, Ingram, Lynn, Rodgers, Stalnaker, Wallis, Willems, and  
6 Wren  
7  
8

### For An Act To Be Entitled

9  
10 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED 5-76-104 TO  
11 REQUIRE THE OPERATOR OF A MOTOR BOAT TO HAVE A BLOOD  
12 ALCOHOL TEST WHEN INVOLVED IN AN ACCIDENT INVOLVING LOSS  
13 OF HUMAN LIFE; TO AMEND ARKANSAS CODE ANNOTATED 5-76-104  
14 TO RAISE THE PENALTY FOR REFUSAL TO SUBMIT TO A BLOOD  
15 ALCOHOL TEST; AND FOR OTHER PURPOSES."

### Subtitle

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18 "TO REQUIRE THE OPERATOR OF A MOTOR BOAT  
19 TO HAVE A BLOOD ALCOHOL TEST WHEN  
20 INVOLVED IN AN ACCIDENT INVOLVING LOSS  
21 OF HUMAN LIFE"  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code Annotated § 5-76-104 is amended to read as  
26 follows:

27 "§ 5-76-104. Implied consent.

28 (a)(1) Any person who operates a motorboat in this state shall be  
29 deemed to have given consent, subject to the provisions of subsection (c) of  
30 this section, to a chemical test or tests of his or her blood, breath, or  
31 urine for the purpose of determining the alcohol or controlled substance  
32 content of his or her blood if:

33 (A) The operator is arrested for any offense arising out of  
34 acts alleged to have been committed while the person was operating while  
35 intoxicated or operating while there was one-tenth of one percent (0.10%) or  
36 more, by weight, of alcohol in the persons blood; or

1 (B) The person is involved in an accident while operating a  
2 motorboat; or

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

7 (2) Any person who is dead, unconscious, or otherwise in a  
8 condition rendering the person incapable of refusal, shall be deemed not to  
9 have withdrawn the consent provided by subdivision (a) (1) of this section,  
10 and the test may be administered subject to the provisions of subsection (c)  
11 of this section.

12 (3) When a person operating a motorboat is involved in an  
13 accident resulting in loss of human life, or where there is reason to believe  
14 that death may result, a law enforcement officer shall request and the person  
15 shall submit to a chemical test or tests of the persons blood, breath, or  
16 urine for the purpose of determining the alcohol or controlled substance  
17 content of his or her blood. The law enforcement officer shall cause the test  
18 or tests to be administered to the person, including a person fatally injured.

19 (b)(1) If a court determines that a law enforcement officer had  
20 reasonable cause to believe an arrested person had been operating a motorboat  
21 in violation of § 5-76-102(a) and the person refused to submit to the test  
22 upon request of the law enforcement officer, the court shall levy a fine ~~not~~  
23 ~~to exceed five hundred dollars (\$500)~~ of not less than one thousand dollars  
24 (\$1,000) and not to exceed two thousand five hundred dollars (\$2,500) and  
25 suspend the operating privileges of the person for a period of six (6) months,  
26 in addition to any other suspension imposed for violating § 5-76-102(a).

27 (2) If a person operating a motorboat was involved in an accident  
28 resulting in loss of human life and the person refused to submit to a test  
29 upon the request of the law enforcement officer, the court shall levy a fine  
30 of not less than two thousand five hundred dollars (\$2,500) and not to exceed  
31 five thousand dollars (\$5,000) and suspend the operating privileges of the  
32 person for a period of two (2) years, in addition to any other suspension  
33 imposed for violating § 5-76-102(a).

34 (c)(1) The chemical test or tests shall be administered at the  
35 direction of a law enforcement officer having reasonable cause to believe the  
36 person to have been operating a motorboat while intoxicated or while there is

1 one-tenth of one percent (0.10%) or more, by weight, of alcohol in the  
2 persons blood.

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

7 (A) If a person tested requests that additional tests be  
8 made, as authorized in subsection (g) of this section, the cost of the  
9 additional tests shall be borne by the person tested.

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

13 (d)(1) Chemical analyses of a persons blood, urine, or breath, to be  
14 considered valid under the provisions of this chapter, must be performed  
15 according to methods approved by the State Board of Health or by an individual  
16 possessing a valid permit issued by the Department of Health for that purpose.

17 (2) The Department of Health is authorized to approve  
18 satisfactory techniques or methods, to ascertain the qualifications and  
19 competence of individuals to conduct such analyses, and to issue permits which  
20 shall be subject to termination or revocation at the discretion of the  
21 Department of Health.

22 (e)(1) When a person submits to a blood test at the request of a law  
23 enforcement officer, blood may be drawn by a physician or by a person acting  
24 under the direction and supervision of a physician.

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

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

35 (f) Upon the request of a person who submits to a chemical test or  
36 tests at the request of a law enforcement officer, full information concerning

1 the test shall be made available to him or his attorney.

2 (g)(1) A person tested may have a physician, 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 (2) The law enforcement officer shall advise the person of this  
7 right.

8 (3) 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."  
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13 SECTION 2. All provisions of this act of a general and permanent nature  
14 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
15 Revision Commission shall incorporate the same in the Code.  
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17 SECTION 3. If any provision of this act or the application thereof to  
18 any person or circumstance is held invalid, such invalidity shall not affect  
19 other provisions or applications of the act which can be given effect without  
20 the invalid provision or application, and to this end the provisions of this  
21 act are declared to be severable.  
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23 SECTION 4. All laws and parts of laws in conflict with this act are  
24 hereby repealed.

25 /s/Smith et al  
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