

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

A Bill

HOUSE BILL 1762

4
5 By: Representatives Jeffress, Wooldridge, Allison, Hausam, Wood, Hendren, Miller, and Bryant

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE OMNIBUS DWI ACT
10 AND THE UNDERAGE DUI LAW TO MAKE IT UNLAWFUL FOR ANY
11 PERSON TO OPERATE A MOTOR VEHICLE IF AT THE TIME THE
12 ALCOHOL CONCENTRATION IN THE PERSON'S BLOOD IS EIGHT
13 HUNDREDTHS OF ONE PERCENT (0.08%) OR GREATER; AND FOR
14 OTHER PURPOSES."

Subtitle

16 "TO AMEND VARIOUS SECTIONS OF THE
17 OMNIBUS DWI ACT AND THE UNDERAGE DUI
18 LAW."

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

23 SECTION 1. Arkansas Code 5-65-103 is amended to read as follows:

24 "5-65-103. Unlawful acts.

25 (a) It is unlawful and punishable as provided in this act for any
26 person who is intoxicated to operate or be in actual physical control of a
27 motor vehicle.

28 (b) It is unlawful and punishable as provided in this act for any
29 person to operate or be in actual physical control of a motor vehicle if at
30 that time there was ~~one-tenth of one percent (0.10%)~~ eight hundredths of one
31 percent (0.08%) or more by weight of alcohol in the person's blood as
32 determined by a chemical test of the person's blood, urine, breath, or other
33 bodily substance."

35 SECTION 2. Arkansas Code Annotated § 5-65-104 is amended to read as
36 follows:

1 "5-65-104. Seizure, suspension, and revocation of license - Temporary
2 permits.

3 (a)(1) At the time of arrest for operating or being in actual physical
4 control of a motor vehicle while intoxicated or while there was ~~one-tenth of~~
5 ~~one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight
6 of alcohol in the person's blood, § 5-65-103, or refusing to submit to a
7 chemical test of blood, breath, or urine for the purpose of determining the
8 alcohol or controlled substance contents of the person's blood, § 5-65-202,
9 the arrested person shall immediately surrender his license, permit, or other
10 evidence of driving privilege to the arresting law enforcement officer. The
11 officer shall seize the license, permit, or other evidence of driving
12 privilege surrendered by the arrested person or found on the arrested person
13 during a search.

14 (2) If the license, permit, or other evidence of driving
15 privilege seized by the officer has not expired and otherwise appears valid to
16 the officer, the officer shall issue to the arrested person a dated receipt
17 for that license, permit, or other evidence of driving privilege on a form
18 prescribed by the Department of Finance and Administration or its designee.
19 This receipt shall be recognized as a license and shall authorize the arrested
20 person to operate a motor vehicle for a period not to exceed thirty (30) days.
21 The receipt form shall contain and shall constitute a notice of suspension or
22 revocation of driving privileges by the Office of Driver Services of the
23 Revenue Division of the Department of Finance and Administration, effective in
24 thirty (30) days, notice of the right to a hearing within twenty (20) days,
25 and as notice that, if a hearing is to be requested, the hearing request is
26 required to be made within seven (7) calendar days of the notice being given.
27 The receipt shall also contain details and phone numbers of the Office of
28 Driver Services telling how to request the hearing. If the Office of Driver
29 Services is unable to conduct a hearing within the twenty-day period, a
30 temporary permit shall be issued and shall be valid until the date of the
31 hearing. The seized license, permit, or other evidence of driving privilege
32 and a copy of the receipt form issued to the arrested person shall be attached
33 to the sworn report of the arresting officer and shall be submitted by mail or
34 in person to the Director of the Department of Finance and Administration or
35 his designated representative within seven (7) days of the issuance of the
36 receipt. The failure of the arresting officer to timely file this report shall

1 not affect the authority of the Office of Driver Services to suspend or revoke
 2 the driving privilege of the arrested person.

3 (3) Any notices from the Office of Driver Services required under
 4 this act which are not personally delivered shall be sent by certified mail
 5 and shall be deemed to have been delivered on the date when postmarked and
 6 shall be sent to the last known address on file with the Office of Driver
 7 Services. Refusal of the addressee to accept delivery or attempted delivery of
 8 the notice at the address obtained by the arresting law enforcement officer or
 9 on file with the Office of Driver Services shall not constitute nonreceipt of
 10 notice. For all notices which are personally delivered, the person shall be
 11 asked to sign a receipt acknowledging he received the required notice.

12 (4) The Office of Driver Services of the Revenue Division of the
 13 Department of Finance and Administration or its designated official shall
 14 suspend or revoke the driving privilege of an arrested person or shall suspend
 15 any nonresident driving privilege of an arrested person when it receives a
 16 sworn report from the law enforcement officer that he had reasonable grounds
 17 to believe the arrested person had been operating or was in actual physical
 18 control of a motor vehicle while intoxicated or while there was ~~one-tenth of~~
 19 ~~one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight
 20 of alcohol in the person's blood, § 5-65-103, which is accompanied by a
 21 written chemical test report reflecting that the arrested person was
 22 intoxicated or had an alcohol concentration of ~~one-tenth of one percent (0.1%)~~
 23 eight hundredths of one percent (0.08%) or more, or is accompanied by a sworn
 24 report that the arrested person refused to submit to a chemical test of blood,
 25 breath, or urine for the purpose of determining the alcohol or controlled
 26 substance contents of the person's blood, as provided in § 5-65-202. The
 27 suspension or revocation shall be based on the number of previous offenses as
 28 follows:

29 (A)(i) Suspension for one hundred twenty (120) days for the
 30 first offense of operating or being in actual physical control of a motor
 31 vehicle while intoxicated or while there was ~~one-tenth of one percent (0.1%)~~
 32 eight hundredths of one percent (0.08%) or more by weight of alcohol in the
 33 person's blood, § 5-65-103;

34 (ii) Suspension for six (6) months for the first
 35 offense of operating or being in actual physical control of a motor vehicle
 36 while intoxicated by the ingestion of or by the use of a controlled substance;

1 (iii) Suspension for one hundred eighty (180) days
2 for the first offense of refusing to submit to a chemical test of blood,
3 breath, or urine for the purpose of determining the alcohol or controlled
4 substance contents of the person's blood, § 5-65-202;

5 (B)(i) Suspension for sixteen (16) months, during which no
6 restricted permits may be issued, for a second offense of operating or being
7 in actual physical control of a motor vehicle while intoxicated or while there
8 was ~~one-tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or
9 more by weight of alcohol in the person's blood, § 5-65-103, within three (3)
10 years of the first offense;

11 (ii) Suspension for two (2) years, during which no
12 restricted permits may be issued, for a second offense of refusing to submit
13 to a chemical test of blood, breath, or urine for the purposes of determining
14 the alcohol or controlled substance contents of the person's blood,
15 § 5-65-202, within three (3) years of the first offense;

16 (C)(i) Suspension for thirty (30) months, during which no
17 restricted permits may be issued, for the third offense of operating or being
18 in actual physical control of a motor vehicle while intoxicated or while there
19 was ~~one-tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or
20 more by weight of alcohol in the person's blood, § 5-65-103, within three (3)
21 years of the first offense;

22 (ii) Revocation for three (3) years, during which no
23 restricted permits may be issued, for the third offense of refusing to submit
24 to a chemical test of blood, breath, or urine for the purpose of determining
25 the alcohol or controlled substance contents of the person's blood,
26 § 5-65-202, within three (3) years of the first offense;

27 (D)(i) Revocation for four (4) years, during which no
28 restricted permits may be issued, for the fourth or subsequent offense of
29 operating or being in actual physical control of a motor vehicle while
30 intoxicated or while there was ~~one-tenth of one percent (0.1%)~~ eight
31 hundredths of one percent (0.08%) or more by weight of alcohol in the person's
32 blood, § 5-65-103, within a three-year period of the first offense.

33 (ii) Lifetime revocation, during which no restricted
34 permit may be issued, for the fourth or subsequent offense of refusing to
35 submit to a chemical test of blood, breath, or urine for the purpose of
36 determining the alcohol or controlled substance contents of the person's

1 blood, § 5-65-202, within three (3) years of the first offense; and

2 (5) If the person is a resident without a license or permit to
3 operate a motor vehicle in this state, the Office of Driver Services shall, in
4 addition to any other penalties provided for in this act, deny to that person
5 the issuance of a license or permit for a period of six (6) months for a first
6 offense. For a second or subsequent offense by a resident without a license or
7 permit to operate a motor vehicle, the Office of Driver Services shall, in
8 addition to any other penalties provided for in this act, deny to that person
9 the issuance of a license or permit for a period of one (1) year.

10 (6)(A) If the person is a nonresident, such person's privilege to
11 operate a motor vehicle in Arkansas shall be suspended in the same manner as
12 that of a resident. The Office of Driver Services shall notify the office that
13 issued the nonresident's motor vehicle license of the action taken by the
14 Office of Driver Services.

15 (B) When the person is a nonresident without a license or
16 permit to operate a motor vehicle, the Office of Driver Services shall notify
17 the office of issuance for that person's state of residence of action taken by
18 the Office of Driver Services.

19 (7) Upon the written request of a person whose privilege to drive
20 has been revoked, denied, or suspended, or who has received a notice of
21 revocation, suspension, or denial by the arresting officer, the Office of
22 Driver Services shall grant the person an opportunity to be heard provided the
23 request is received by the Office of Driver Services within seven (7) calendar
24 days after the notice of the revocation, suspension, or denial is given in
25 accordance with this section or as otherwise provided in this act. Such a
26 request shall not operate to stay the revocation, suspension, or denial by the
27 Office of Driver Services until the disposition of said hearing.

28 (8)(A) The hearing shall be before the Office of Driver Services
29 or its authorized agent, in the office of the Revenue Division of the
30 Department of Finance and Administration nearest the county wherein the
31 alleged events occurred for which the person was arrested, unless the Office
32 of Driver Services or its authorized agent and the arrested person agree
33 otherwise to the hearing being held in some other county or the Office of
34 Driver Services or its authorized agent may schedule the hearing or any part
35 thereof by telephone and conduct the hearing by telephone conference call. The
36 hearing shall not be recorded. The scope of the hearing shall cover the issues

1 of whether the officer had reasonable grounds to believe the person had been
 2 operating or was in actual physical control of a vehicle while intoxicated or
 3 while there was ~~one-tenth of one percent (0.1%)~~ eight hundredths of one
 4 percent (0.08%) or more by weight of alcohol in the person's blood or refused
 5 to submit to a chemical test of the blood, breath, or urine for the purpose of
 6 determining the alcohol or controlled substance contents of the person's blood
 7 and whether the person was placed under arrest. At the hearing, the burden of
 8 proof shall be on the state, and the decision shall be based on a
 9 preponderance of the evidence.

10 (B) If the revocation, suspension, or denial is based upon
 11 a chemical test result indicating that the person was intoxicated or there was
 12 ~~one-tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or
 13 more by weight of alcohol in the person's blood, as provided in § 5-65-103,
 14 and a sworn report from a law enforcement officer, the scope of the hearing
 15 shall also cover the issues as to whether:

16 (i) The person was advised that his privilege to
 17 drive would be revoked, suspended, or denied if the test result reflected an
 18 alcohol concentration of ~~one-tenth of one percent (0.1%)~~ eight hundredths of
 19 one percent (0.08%) or more or the presence of other intoxicating substances
 20 or combination of intoxicating substances;

21 (ii) The breath, blood, or urine specimen was
 22 obtained from the person within the established and certified criteria of the
 23 Department of Health;

24 (iii) The testing procedures used were in accordance
 25 with existing rules; and

26 (iv) The test result in fact reflects an alcohol
 27 concentration, presence of other intoxicating substances, or a combination
 28 thereof.

29 (C) If the revocation, suspension, or denial is based upon
 30 the refusal of the person to submit to a chemical test as provided in
 31 § 5-65-202, reflected in a sworn report by a law enforcement officer, the
 32 scope of the hearing shall also include whether:

33 (i) The person refused to submit to the test or
 34 tests; and

35 (ii) The person was informed that his privilege to
 36 drive would be revoked, suspended, or denied if the person refused to submit

1 to the test or tests.

2 (9) In order to determine the number of previous offenses to
3 consider when suspending or revoking the arrested person's driving privileges,
4 the Office of Driver Services shall consider as a previous offense:

5 (A) Any convictions for offenses of operating or being in
6 actual physical control of a motor vehicle while intoxicated or while there is
7 ~~one-tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or
8 more by weight of alcohol in the person's blood under § 5-65-103 or refusing
9 to submit to a chemical test under § 5-65-202 which occurred prior to July 1,
10 1996; and

11 (B) Any suspension or revocation of driving privileges for
12 arrests for operating or being in actual physical control of a motor vehicle
13 while intoxicated or while there is ~~one-tenth of one percent (0.1%)~~ eight
14 hundredths of one percent (0.08%) or more by weight of alcohol in the person's
15 blood under § 5-65-103 or refusing to submit to a chemical test under
16 § 5-65-202 occurring on or after July 1, 1996, where the person was not
17 subsequently acquitted of the criminal charges.

18 (b) After the hearing, the Office of Driver Services or its authorized
19 agent shall order the revocation, suspension, or denial to be rescinded or
20 sustained and shall then advise any person whose license is revoked,
21 suspended, or denied that he or she may request a restricted permit as
22 otherwise provided for by this act.

23 (c) A person adversely affected by the hearing disposition order of the
24 Office of Driver Services of the Revenue Division of the Department of Finance
25 and Administration or its authorized agent may file a de novo petition for
26 review within thirty (30) days in the circuit court in the county in which the
27 offense took place. The filing of a petition for review will not stay or place
28 in abeyance the decision of the Office of Driver Services or its authorized
29 agent. The administrative hearings held pursuant to this section shall be
30 exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq. On
31 review, the circuit court shall hear the case de novo in order to determine
32 whether, based on a preponderance of the evidence, grounds exist for
33 revocation, suspension, or denial of the person's privilege to drive.

34 (d)(1) Any decision rendered at an administrative hearing held under
35 this section shall have no effect on any criminal case arising from any
36 violation of § 5-65-103 or § 5-65-202.

1 (2) Any decision rendered by a court of law for a criminal case
 2 arising from any violation of § 5-65-103 or § 5-65-202 shall affect the
 3 administrative suspensions or revocation of the driver's license as follows:

4 (A) A plea of guilty or nolo contendere or a finding of
 5 guilt by the court will have no effect on any administrative hearing held
 6 under this section;

7 (B) An acquittal on the charges or a dismissal of charges
 8 will serve to reverse the suspension or revocation of the driver's license
 9 suspended or revoked under this section.

10 (3) If a person is acquitted of the charges of violating
 11 § 5-65-103 or § 5-65-202, or if the charges are dismissed, the Office of
 12 Driver Services shall reinstate the person's driver license at no cost to the
 13 person, and the charges shall not be used to determine the number of previous
 14 offenses when administratively suspending or revoking the driving privilege of
 15 any arrested person in the future.

16 (e) Any person whose privilege to drive has been denied, suspended, or
 17 revoked shall remain under such denial, suspension or revocation, until such
 18 time that person applies to and is granted by the Office of Driver Services
 19 for reinstatement of such privilege to drive, and remains subject to penalties
 20 as provided in § 5-65-105 or until he is acquitted of violating § 5-65-103.

21 (f) The administrative suspension or revocation of a driver's license
 22 as provided for by this section shall be supplementary to and in addition to
 23 the suspensions or revocations of driver licenses which are ordered by a court
 24 of competent jurisdiction for offenses under §§ 5-64-710, 5-65-116, and
 25 27-16-914, or any other traffic or criminal offense wherein a suspension or
 26 revocation of the driver's license is a penalty for the violation.

27 (g) For all arrests or offenses occurring before July 1, 1996, but
 28 which have not reached a final disposition as to judgment in court, the
 29 offenses shall be decided under the law in effect at the time the offense
 30 occurred, and any defendant shall be subject to the penalty provisions in
 31 effect at that time and not under the provisions of this section.

32 (h) Any person whose license is suspended or revoked pursuant to this
 33 section shall be required to complete an alcohol education program as
 34 prescribed and approved by the Arkansas Highway Safety Program or an alcohol
 35 education program as approved by the Bureau of Alcohol and Drug Abuse
 36 Prevention of the Department of Health. Such alcohol education program may

1 collect a program fee of up to fifty dollars (\$50.00) per enrollee to offset
 2 program costs. A person required to complete an alcohol education program
 3 under this section may be required to pay, in addition to the costs collected
 4 for education, a fee of up to twenty-five dollars (\$25.00) to the alcohol
 5 education program, to offset the additional costs associated with reporting
 6 requirements under this subchapter. The alcohol education program shall
 7 report semiannually to the Arkansas Highway Safety Program all revenue derived
 8 from this fee.

9 (i) A person whose license is suspended or revoked pursuant to this
 10 section shall furnish proof of attendance at, and completion of, the
 11 alcoholism treatment or education program before reinstatement of his or her
 12 suspended or revoked drivers license.

13 (j) Notwithstanding the fact that a person adversely affected by a
 14 hearing or disposition order has filed a de novo petition for review pursuant
 15 to subsection (c) of this section, the person shall be entitled to
 16 reinstatement of driving privileges upon complying with subsections (h) and
 17 (i) only once for each administrative suspension or revocation received
 18 pursuant to this section and shall not be required to postpone reinstatement
 19 until the disposition of the de novo review in circuit court has occurred."

20
 21 SECTION 3. Arkansas Code Annotated § 5-65-119 is amended to read as
 22 follows:

23 "5-65-119. Distribution of fee.

24 The Office of Driver Services shall charge a fee of seventy-five dollars
 25 (\$75.00) for reinstating a driving privilege suspended or revoked because of
 26 an arrest for operating or being in actual physical control of a motor vehicle
 27 while intoxicated or while there was ~~one-tenth of one percent (0.1%)~~ eight
 28 hundredths of one percent (0.08%) or more by weight of alcohol in the person's
 29 blood, § 5-65-103, or refusing to submit to a chemical test of blood, breath,
 30 or urine, for the purpose of determining the alcohol or controlled substance
 31 contents of the person's blood, § 5-65-202, which shall be distributed as
 32 follows:

33 (1) Fourteen percent (14%) of the revenues derived from this fee shall
 34 be deposited in the State Treasury as special revenues and credited to the
 35 Public Health Fund to be used exclusively for the Department of Health's Blood
 36 Alcohol Program;

1 (2) Sixty-six percent (66%) of the revenues derived from this fee shall
 2 be deposited as special revenues in the State Treasury into the Constitutional
 3 Officers Fund and the State Central Services Fund as a direct revenue to be
 4 used by the Office of Driver Services of the Revenue Division of the
 5 Department of Finance and Administration for use in supporting the
 6 administrative driver's licensing revocation and sanctions programs provided
 7 for in this subchapter; and

8 (3) Twenty percent (20%) of the revenues derived from this fee shall be
 9 deposited in the State Treasury, and the Treasurer of State shall credit them
 10 as general revenues to the various funds in the respective amounts to each and
 11 to be used for the purposes as provided in the Revenue Stabilization Law,
 12 § 19-5-101 et seq."

13

14 SECTION 4. Arkansas Code Annotated § 5-65-202 is amended to read as
 15 follows:

16 "5-65-202. Implied consent.

17 (a) Any person who operates a motor vehicle or is in actual physical
 18 control of a motor vehicle in this state shall be deemed to have given
 19 consent, subject to the provisions of § 5-65-203, to a chemical test or tests
 20 of his or her blood, breath, or urine for the purpose of determining the
 21 alcohol or controlled substance content of his or her blood if:

22 (1) The driver is arrested for any offense arising out of acts
 23 alleged to have been committed while the person was driving while intoxicated
 24 or driving while there was ~~one-tenth of one percent (0.10%)~~ eight hundredths
 25 of one percent (0.08%) or more of alcohol in the person's blood; or

26 (2) The person is involved in an accident while operating or in
 27 actual physical control of a motor vehicle; or

28 (3) At the time the person is arrested for driving while
 29 intoxicated, the law enforcement officer has reasonable cause to believe that
 30 the person, while operating or in actual physical control of a motor vehicle,
 31 is intoxicated or has ~~one-tenth of one percent (0.10%)~~ eight hundredths of one
 32 percent (0.08%) or more of alcohol in his or her blood.

33 (b) Any person who is dead, unconscious, or otherwise in a condition
 34 rendering him incapable of refusal shall be deemed not to have withdrawn the
 35 consent provided by subsection (a) of this section, and the tests may be
 36 administered subject to the provisions of § 5-65-203."

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SECTION 5. Arkansas Code Annotated § 5-65-203 is amended to read as follows:

"5-65-203. Administration.

(a) The chemical test or tests shall be administered at the direction of a law enforcement officer having reasonable cause to believe the person to have been operating or in actual physical control of a motor vehicle while intoxicated or while there was ~~one-tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) or more of alcohol in the person's blood.

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

(1) If the person tested requests that additional tests be made, as authorized in § 5-65-204(e), the cost of the additional tests shall be borne by the person tested.

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

SECTION 6. Arkansas Code Annotated § 5-65-206 is amended to read as follows:

"5-65-206. Evidence in prosecution.

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

(1) If there was at that time one-twentieth of one percent (0.05%) or less by weight of alcohol in the defendant's blood, urine, breath, or other bodily substance, it shall be presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at the time in excess of one-twentieth of one percent (0.05%) but less than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) by weight of alcohol in the defendant's blood, urine, breath, or other bodily substance, such fact shall not give rise to any presumption that the defendant was or was not under the influence of

1 intoxicating liquor, but this fact may be considered with other competent
 2 evidence in determining the guilt or innocence of the defendant.

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

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

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

16 (1) However, the machine performing the chemical analysis shall
 17 have been duly certified at least once in the last three (3) months preceding
 18 arrest and the operator thereof shall have been properly trained and
 19 certified.

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

26 (3) The testimony of the appropriate analyst or official may be
 27 compelled by the issuance of a proper subpoena, in which case, the records and
 28 reports shall be admissible through the analyst or official, who shall be
 29 subject to cross-examination by the defendant or his counsel."
 30

31 SECTION 7. Arkansas Code Annotated § 5-65-207 is amended to read as
 32 follows:

33 "5-65-207. Blood alcohol testing devices.

34 (a) Every machine or instrument used to determine the alcohol content
 35 of the breath or blood of any person by analysis of the breath of the person
 36 for the purpose of determining if the person was operating a motor vehicle

1 while intoxicated or with a blood alcohol content of ~~one-tenth of one percent~~
 2 ~~(0.10%)~~ eight hundredths of one percent (0.08%) or more shall be so
 3 constructed that the analysis is made automatically when a sample of the
 4 person's breath is placed in the machine or instrument, and without any
 5 adjustment or other action of the person administering the analysis, and the
 6 machine shall be so constructed that the blood alcohol content is shown by
 7 visible digital display on the machine and on an automatic readout.

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

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

20 (d) All law enforcement agencies which conduct blood alcohol testing
 21 shall be in full compliance with the provisions of this section by June 28,
 22 1989."

23

24 SECTION 8. Arkansas Code Annotated § 5-65-303 is amended to read as
 25 follows:

26 "5-65-303. Conduct proscribed.

27 (a) It is unlawful and punishable as provided in this subchapter for
 28 any underage person to operate or be in actual physical control of a motor
 29 vehicle while under the influence of an alcoholic beverage or similar
 30 intoxicant.

31 (b) It is unlawful and punishable as provided in this subchapter for
 32 any underage person to operate or be in actual physical control of a motor
 33 vehicle if at that time there was one-fiftieth of one percent (0.02%) but less
 34 than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%)
 35 by weight of alcohol in the person's blood as determined by a chemical test of
 36 the person's blood or breath or other bodily substance."

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2 SECTION 9. Arkansas Code Annotated § 5-65-309 is amended to read as
3 follows:

4 "5-65-309. Implied consent.

5 (a) Any underage person who operates a motor vehicle or is in actual
6 physical control of a motor vehicle in this state shall be deemed to have
7 given consent, subject to the provisions of § 5-65-203, to a chemical test or
8 tests of his or her blood, breath, or urine for the purpose of determining the
9 alcohol or controlled substance content of his or her blood if:

10 (1) The driver is arrested for any offense arising out of acts
11 alleged to have been committed while the underage person was driving while
12 under the influence or driving while there was one-fiftieth of one percent
13 (0.02%) but less than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one
14 percent (0.08%) of alcohol in the person's blood; or

15 (2) The underage person is involved in an accident while
16 operating or in actual physical control of a motor vehicle; or

17 (3) The underage person is stopped by a law enforcement officer
18 who has reasonable cause to believe that the person, while operating or in
19 actual physical control of a motor vehicle, is under the influence or has
20 one-fiftieth of one percent (0.02%) but less than ~~one-tenth of one percent~~
21 ~~(0.10%)~~ eight hundredths of one percent (0.08%) of alcohol in his or her
22 blood.

23 (b) Any underage person who is dead, unconscious, or otherwise in
24 a condition rendering him incapable of refusal shall be deemed not to have
25 withdrawn the consent provided by subsection (a) of this section, and the
26 tests may be administered subject to the provisions of § 5-65-203."

27

28 SECTION 10. Arkansas Code Annotated § 5-65-310 is amended to read as
29 follows:

30 "5-65-310. Refusal to submit.

31 (a) If an underage person under arrest refuses upon the request of a
32 law enforcement officer to submit to a chemical test designated by the law
33 enforcement agency, as provided in § 5-65-309, none shall be given, and the
34 person's driver's license shall be seized by the law enforcement officer, and
35 the officer shall immediately deliver to the person from whom the license was
36 seized a temporary driving permit which shall expire on the date of

1 arraignment.

2 (b) The arresting officer shall remit the seized driver's license to
3 the court, and, upon an arraignment, the judge shall issue that person a
4 temporary permit to expire on the date of trial.

5 (c) If the judge determines that the law enforcement officer had
6 reasonable cause to believe the arrested underage person had been driving
7 under the influence or while there was one-fiftieth of one percent (0.02%) but
8 less than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one percent
9 (0.08%) of alcohol in the person's blood, and the underage person refused to
10 submit to the test upon the request of the law enforcement officer, the judge
11 shall order the Office of Driver Services to suspend the person's driver's
12 license as follows:

13 (1) Suspension for not less than ninety (90) days nor more than
14 one hundred eighty (180) days if the underage person had not previously
15 refused the test while underage and if the underage person had not been
16 convicted of driving while under the influence or driving while there was
17 one-fiftieth of one percent (0.02%) but less than ~~one-tenth of one percent~~
18 ~~(0.10%)~~ eight hundredths of one percent (0.08%) of alcohol in the person's
19 blood while underage;

20 (2) Suspension for not less than one (1) year nor more than
21 eighteen (18) months if the underage person had previously refused the test
22 while underage or if the underage person had been convicted of driving while
23 under the influence or driving while there was one-fiftieth of one percent
24 (0.02%) but less than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one
25 percent (0.08%) of alcohol in the person's blood while underage.

26 (d) If the underage person is a resident without a license or permit to
27 operate a motor vehicle in this state, the Office of Driver Services shall
28 deny to the person the issuance of a license or permit for a period of two (2)
29 years after the date of the arrest.

30 (e)(1) If the person is a nonresident, that person's privilege of
31 operating a motor vehicle in Arkansas shall be suspended for not less than six
32 (6) months.

33 (2) When a nonresident's privilege to operate a motor vehicle in
34 this state has been suspended, the Office of Driver Services shall notify the
35 office of issuance of that person's nonresident motor vehicle license of
36 action taken by the Office of Driver Services."

1

2 SECTION 11. Arkansas Code Annotated § 5-65-311 is amended to read as
3 follows:

4 "5-65-311. Relationship to other laws.

5 (a) Penalties prescribed in this subchapter for underage driving under
6 the influence shall be in addition to all other penalties prescribed by law
7 for the offenses under other laws of the State of Arkansas.

8 (b) For the purposes of this subchapter, there is no presumption, as
9 there is found in § 5-65-206, that a person is not under the influence of an
10 intoxicating substance, such as alcohol or a similar intoxicant, if the
11 person's blood alcohol concentration is five hundredths of one percent (0.05%)
12 or less.

13 (c) The administration of the chemical tests for blood alcohol, the
14 machines and instruments used to administer those tests, the procedures used
15 to calibrate and maintain those machines and instruments, and the use of the
16 test results as evidence shall be the same as for those tests and machines and
17 instruments used for testing blood alcohol concentrations under the Omnibus
18 DWI Act, § 5-65-101 et seq.

19 (d) If there is evidence of more than one-twentieth of one percent
20 (0.05%) but less than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one
21 percent (0.08%) by weight of alcohol in a person's blood, breath, or other
22 bodily substances, this fact shall not preclude a person under twenty-one (21)
23 years of age from being prosecuted for driving while intoxicated under
24 § 5-65-101 et seq."

25

26 SECTION 12. All provisions of this act of a general and permanent
27 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
28 Code Revision Commission shall incorporate the same in the Code.

29

30 SECTION 13. If any provision of this act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 act are declared to be severable.

35

36 SECTION 14. All laws and parts of laws in conflict with this act are

1 hereby repealed.