

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

As Engrossed: H2/8/99

A Bill

HOUSE BILL 1041

4
5 By: Representatives Rodgers, Davis, Wilkins, Duggar, Womack, Bledsoe, Hausam, Files, Ferrell, T.
6 Thomas, M. Smith, Oglesby, Dees
7 By: Senators Brown, Webb

For An Act To Be Entitled

11 "AN ACT TO CHANGE THE DWI THRESHOLD FROM .10% TO 0.08;
12 AND FOR OTHER PURPOSES."

Subtitle

15 "AN ACT TO CHANGE THE DWI THRESHOLD FROM
16 .10 TO 0.08."

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

20 SECTION 1. Arkansas Code 5-10-105(a) is amended to read as follows:

21 "(a)(1) A person commits negligent homicide if he negligently causes
22 the death of another person, not constituting murder or manslaughter, as a
23 result of operating a vehicle, an aircraft, or a watercraft:

24 (A) While intoxicated; or

25 (B) If at that time there is ~~one-tenth of one percent (0.10%) or more~~
26 ~~by weight of alcohol in the person's blood~~ an alcohol concentration of 0.08 or
27 more in the person's breath or blood based upon the definition of breath,
28 blood and urine concentration in § 5-65-204 as determined by a chemical test
29 of the person's blood as determined by a chemical test of the person's blood,
30 urine, breath, or other bodily substance.

31 (2) A person who violates subdivisions (a)(1) of this section is guilty
32 of a Class D felony."

34 SECTION 2. Arkansas Code 5-65-103(b) is amended to read as follows:

35 "(b) It is unlawful and punishable as provided in this act for any
36 person to operate or be in actual physical control of a motor vehicle if at

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1 that time ~~there was one-tenth of one percent (0.10%) or more by weight of~~
2 ~~alcohol in the person's blood as determined by a chemical test of the person's~~
3 ~~blood, urine, breath, or other bodily substance~~ the alcohol concentration in
4 the person's breath or blood was 0.08 or more based upon the definition of
5 breath, blood and urine concentration in § 5-65-204."

6
7 SECTION 3. Arkansas Code 5-65-104(a)(1) is amended to read as follows:

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

19
20 SECTION 4. Arkansas Code 5-65-104(a)(4) is amended to read as follows:

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

1 number of previous offenses as follows:

2 (A)(i) Suspension for one hundred twenty (120) days for the first
3 offense of operating or being in actual physical control of a motor vehicle
4 while intoxicated or while there was ~~one-tenth of one percent (0.1%) or more~~
5 ~~by weight of alcohol in the person's~~ an alcohol concentration of 0.08 or more
6 in the person's breath or blood, § 5-65-103;

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

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

14 (B)(i) Suspension for sixteen (16) months, during which no restricted
15 permits may be issued, for a second offense of operating or being in actual
16 physical control of a motor vehicle while intoxicated or while there was ~~one-~~
17 ~~tenth of one percent (0.1%) or more by weight of alcohol in the person's~~ an
18 alcohol concentration of 0.08 or more in the person's breath or blood, § 5-65-
19 103, within three (3) years of the first offense;

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

25 (C)(i) Suspension for thirty (30) months, during which no restricted
26 permits may be issued, for the third offense of operating or being in actual
27 physical control of a motor vehicle while intoxicated or while there was ~~one-~~
28 ~~tenth of one percent (0.1%) or more by weight of alcohol in the person's~~ an
29 alcohol concentration of 0.08 or more in the person's breath or blood, § 5-65-
30 103, within three (3) years of the first offense;

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

36 (D)(i) Revocation for four (4) years, during which no restricted

1 permits may be issued, for the fourth or subsequent offense of operating or
2 being in actual physical control of a motor vehicle while intoxicated or while
3 there was ~~one-tenth of one percent (0.1%) or more by weight of alcohol in the~~
4 ~~person's~~ an alcohol concentration of 0.08 or more in the person's breath or
5 blood, § 5-65-103, within a three-year period of the first offense.

6 (ii) Lifetime revocation, during which no restricted permit may be
7 issued, for the fourth or subsequent offense of refusing to submit to a
8 chemical test of blood, breath, or urine for the purpose of determining the
9 alcohol or controlled substance contents of the person's breath or blood, § 5-
10 65-202, within three (3) years of the first offense; and"

11
12 SECTION 5. Arkansas Code 5-65-104(a)(8) and (9) are amended to read as
13 follow:

14 "(8)(A) The hearing shall be before the Office of Driver Services or
15 its authorized agent, in the office of the Revenue Division of the Department
16 of Finance and Administration nearest the county wherein the alleged events
17 occurred for which the person was arrested, unless the Office of Driver
18 Services or its authorized agent and the arrested person agree otherwise to
19 the hearing being held in some other county or the Office of Driver Services
20 or its authorized agent may schedule the hearing or any part thereof by
21 telephone and conduct the hearing by telephone conference call. The hearing
22 shall not be recorded. The scope of the hearing shall cover the issues of
23 whether the officer had reasonable grounds to believe the person had been
24 operating or was in actual physical control of a vehicle while intoxicated or
25 while there was ~~one-tenth of one percent (0.1%) or more by weight of alcohol~~
26 ~~in the person's~~ an alcohol concentration of 0.08 or more in the person's
27 breath or blood or refused to submit to a chemical test of the blood, breath,
28 or urine for the purpose of determining the alcohol or controlled substance
29 contents of the person's blood or breath and whether the person was placed
30 under arrest. At the hearing, the burden of proof shall be on the state, and
31 the decision shall be based on a preponderance of the evidence.

32 (B) If the revocation, suspension, or denial is based upon a chemical
33 test result indicating that the person was intoxicated or there was ~~one-tenth~~
34 ~~of one percent (0.1%) or more by weight of alcohol in the person's~~ an alcohol
35 concentration of 0.08 or more in the person's breath or blood, as provided in
36 § 5-65-103, and a sworn report from a law enforcement officer, the scope of

1 the hearing shall also cover the issues as to whether:

2 (i) The person was advised that his privilege to drive would be
3 revoked, suspended, or denied if the test result reflected an alcohol
4 concentration of ~~one-tenth of one percent (0.1%)~~ 0.08 or more or the presence
5 of other intoxicating substances or combination of intoxicating substances;

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

8 (iii) The testing procedures used were in accordance with existing
9 rules; and

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

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

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

17 (ii) The person was informed that his privilege to drive would be
18 revoked, suspended, or denied if the person refused to submit to the test or
19 tests.

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

23 (A) Any convictions for offenses of operating or being in actual
24 physical control of a motor vehicle while intoxicated or while there is ~~one-~~
25 ~~tenth of one percent (0.1%) or more by weight of alcohol in the person's~~ an
26 alcohol concentration of 0.08 or more in the person's breath or blood under §
27 5-65-103 or refusing to submit to a chemical test under § 5-65-202 which
28 occurred prior to July 1, 1996; and

29 (B) Any suspension or revocation of driving privileges for arrests for
30 operating or being in actual physical control of a motor vehicle while
31 intoxicated or while there is ~~one-tenth of one percent (0.1%) or more by~~
32 ~~weight of alcohol in the person's~~ an alcohol concentration of 0.08 or more in
33 the person's breath or blood under § 5-65-103 or refusing to submit to a
34 chemical test under § 5-65-202 occurring on or after July 1, 1996, where the
35 person was not subsequently acquitted of the criminal charges."

36

1 SECTION 6. Arkansas Code 5-65-119 is amended to read as follows:

2 "5-65-119. Distribution of fee.

3 The Office of Driver Services shall charge a fee of seventy-five dollars
4 (\$75.00) for reinstating a driving privilege suspended or revoked because of
5 an arrest for operating or being in actual physical control of a motor vehicle
6 while intoxicated or while there was ~~one-tenth of one percent (0.1%) or more~~
7 ~~by weight of alcohol in the person's~~ an alcohol concentration of 0.08 or more
8 in the person's breath or blood, § 5-65-103, or refusing to submit to a
9 chemical test of blood, breath, or urine, for the purpose of determining the
10 alcohol or controlled substance contents of the person's blood or breath, § 5-
11 65-202, which shall be distributed as follows:

12 (1) Fourteen percent (14%) of the revenues derived from this fee shall be
13 deposited in the State Treasury as special revenues and credited to the Public
14 Health Fund to be used exclusively for the Department of Health's ~~Blood~~
15 ~~Alcohol Program~~ Office of Alcohol Testing;

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

23 (3) Twenty percent (20%) of the revenues derived from this fee shall be
24 deposited in the State Treasury, and the Treasurer of State shall credit them
25 as general revenues to the various funds in the respective amounts to each and
26 to be used for the purposes as provided in the Revenue Stabilization Law, §
27 19-5-101 et seq."

28
29 SECTION 7. Arkansas Code 5-65-202(a) is amended to read as follows:

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

35 (1) The driver is arrested for any offense arising out of acts alleged
36 to have been committed while the person was driving while intoxicated or

1 driving while there was ~~one-tenth of one percent (0.10%)~~ an alcohol
 2 concentration of 0.08 or more of alcohol in the person's breath or blood; or

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

5 (3) At the time the person is arrested for driving while intoxicated,
 6 the law enforcement officer has reasonable cause to believe that the person,
 7 while operating or in actual physical control of a motor vehicle, is
 8 intoxicated or has ~~one-tenth of one percent (0.10%)~~ an alcohol concentration
 9 of 0.08 or more of alcohol in ~~his or her~~ the person's breath or blood."

10
 11 SECTION 8. Arkansas Code 5-65-203(a) is amended to read as follows:

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

17
 18 SECTION 9. Arkansas Code 5-65-204(c) is amended to read as follows:

19 "(c) Chemical analyses of the person's blood, urine, breath, or other
 20 bodily substance for determining the alcohol content of the blood or breath,
 21 to be considered valid under the provisions of this section, shall have been
 22 performed according to methods approved by the Arkansas State Board of
 23 Health."

24
 25 SECTION 10. Arkansas Code 5-65-206(a) is amended to read as follows:

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

31 (1) If there was at that time an alcohol concentration of one-twentieth
 32 of one percent (0.05%) 0.04 or less by weight of alcohol in the defendant's
 33 blood, urine, breath, or other bodily substance, it shall be presumed that the
 34 defendant was not under the influence of intoxicating liquor;

35 (2) If there was at the time an alcohol concentration in excess of ~~one-~~
 36 ~~twentieth of one percent (0.05%)~~ 0.04 but less than ~~one-tenth of one percent~~

1 ~~(0-10%)~~ 0.08 by weight of alcohol in the defendant's blood, urine, breath, or
2 other bodily substance, such fact shall not give rise to any presumption that
3 the defendant was or was not under the influence of intoxicating liquor, but
4 this fact may be considered with other competent evidence in determining the
5 guilt or innocence of the defendant."
6

7 SECTION 11. Arkansas Code 5-65-206(d) is amended to read as follows:

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~~ Office of Alcohol Testing of the Department of Health under the
11 authority of this chapter shall be received as competent evidence as to the
12 matters contained therein in the courts of this state subject to the
13 applicable rules of criminal procedure when duly attested to by the program
14 director or his assistant, in the form of an original signature or by
15 certification of a copy. These documents shall be self-authenticating.

16 (1) However, the ~~machine~~ instrument performing the chemical analysis
17 shall have been duly certified at least once in the last three (3) months
18 preceding 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 defendant's
21 right of cross-examination of the person ~~calibrating the machine~~ who performs
22 the calibration test or check on the instrument, the operator of the ~~machine~~
23 instrument, or ~~any person performing work in the blood alcohol program~~ a
24 representative of the Office of Alcohol Testing of the Department of Health,
25 who shall be made available by the state if notice of intention to cross-
26 examine is given ten (10) days prior to the date of hearing or trial.

27 (3) The testimony of the appropriate analyst or official may be compelled
28 by the issuance of a proper subpoena, in which case, the records and reports
29 shall be admissible through the analyst or official, who shall be subject to
30 cross-examination by the defendant or his counsel."
31

32 SECTION 12. Arkansas Code 5-65-207 is amended to read as 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%)~~ an alcohol concentration of 0.08 or more shall be so constructed that
3 the analysis is made automatically when a sample of the person's breath is
4 placed in the ~~machine or~~ instrument, and without any adjustment or other
5 action of the person administering the analysis, and the ~~machine~~ instrument
6 shall be so constructed that the ~~blood~~ alcohol content is shown by visible
7 digital display on the ~~machine~~ instrument and on an automatic readout.

8 (b) Any such breath analysis made by or through the use of a ~~machine or~~
9 an instrument that does not conform to the requirements prescribed herein
10 shall 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~~ concentration. The Department
16 of Health is specifically authorized to limit by its rules the types or models
17 of testing devices which may be approved for use in Arkansas for the purposes
18 set forth 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 13. Arkansas Code 5-65-303(b) is amended to read as follows:

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

32
33 SECTION 14. Arkansas Code 5-65-309(a) is amended to read as follows:

34 "(a) Any underage person who operates a motor vehicle or is in actual
35 physical control of a motor vehicle in this state shall be deemed to have
36 given consent, subject to the provisions of § 5-65-203, to a chemical test or

1 tests of his or her blood, breath, or urine for the purpose of determining the
2 alcohol or controlled substance content of his or her breath or blood if:

3 (1) The driver is arrested for any offense arising out of acts alleged to
4 have been committed while the underage person was driving while under the
5 influence or driving while there was ~~one-fiftieth of one percent (0.02%) but~~
6 ~~less than one-tenth of one percent (0.10%) of alcohol in the person's~~ an
7 alcohol concentration of 0.02 but less than 0.08 in his or her breath or
8 blood; or

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

11 (3) The underage person is stopped by a law enforcement officer who has
12 reasonable cause to believe that the person, while operating or in actual
13 physical control of a motor vehicle, is under the influence or has ~~one-~~
14 ~~fiftieth of one percent (0.02%) but less than one-tenth of one percent (0.10%)~~
15 ~~of alcohol~~ an alcohol concentration of 0.02 but less than 0.08 in his or her
16 breath or blood."

17
18 SECTION 15. Arkansas Code 5-65-310(c) is amended to read as follows:

19 "(c) If the judge determines that the law enforcement officer had
20 reasonable cause to believe the arrested underage person had been driving
21 under the influence or while there was ~~one-fiftieth of one percent (0.02%) but~~
22 ~~less than one-tenth of one percent (0.10%) of alcohol~~ an alcohol concentration
23 of 0.02 but less than 0.08 in the person's breath or blood, and the underage
24 person refused to submit to the test upon the request of the law enforcement
25 officer, the judge shall order the Office of Driver Services to suspend the
26 person's driver's license as follows:

27 (1) Suspension for not less than ninety (90) days nor more than one
28 hundred eighty (180) days if the underage person had not previously refused
29 the test while underage and if the underage person had not been convicted of
30 driving while under the influence or driving while there was ~~one-fiftieth of~~
31 ~~one percent (0.02%) but less than one-tenth of one percent (0.10%) of alcohol~~
32 an alcohol concentration of 0.02 but less 0.08 in the person's breath or blood
33 while underage;

34 (2) Suspension for not less than one (1) year nor more than eighteen (18)
35 months if the underage person had previously refused the test while underage
36 or if the underage person had been convicted of driving while under the

1 influence or driving while there was ~~one-fiftieth of one (0.02%) but less than~~
 2 ~~one-tenth of one percent (0.10%) of alcohol~~ an alcohol concentration of 0.02
 3 but less 0.08 in the person's breath or blood while underage."

4
 5 SECTION 16. Arkansas Code 5-65-311(b) - (d) are amended to read as
 6 follows:

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

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

18 (d) If there is evidence of ~~more than one-twentieth of one percent~~
 19 ~~(0.05%) but less than one-tenth of one percent (0.10%) by weight of alcohol~~ an
 20 alcohol concentration of more than 0.04 but less than 0.08 in a person's
 21 blood, breath, or other bodily substances, this fact shall not preclude a
 22 person under twenty-one (21) years of age from being prosecuted for driving
 23 while intoxicated under § 5-65-101 et seq."

24
 25 SECTION 17. Arkansas Code 5-75-102(b) is amended to read as follows:

26 "(b) It is unlawful and punishable as provided in this chapter for any
 27 person to operate, navigate, or be in actual physical control of any aircraft
 28 if at that time there was an alcohol concentration of four-hundredths of one
 29 percent (0.04%) 0.04 or more ~~by weight of alcohol~~ in the person's breath or
 30 blood as determined by a chemical test of the person's blood, urine, breath,
 31 or other bodily substance."

32
 33 SECTION 18. Arkansas Code 5-75-103(a) is amended to read as follows:

34 (a) Any person who operates or navigates any aircraft or is in actual
 35 physical control of any aircraft in this state shall be deemed to have given
 36 consent, subject to the provisions of § 5-75-104, to a chemical test or tests

1 of his or her blood, breath, or urine for the purpose of determining the
2 alcohol or controlled substance content of his or her breath or blood, if:

3 (1) The operator or navigator is arrested for any offense arising out of
4 acts alleged to have been committed while the person was operating or
5 navigating any aircraft while intoxicated or operating or navigating any
6 aircraft while there was an alcohol concentration of four-hundredths of one
7 percent (0.04%) 0.04 or more ~~of alcohol~~ in the person's breath or blood; or

8 (2) The person is involved in an accident while operating, navigating, or
9 in actual physical control of any aircraft; or

10 (3) The person is stopped by a law enforcement officer who has reasonable
11 cause to believe that the person, while operating, navigating, or in actual
12 physical control of any aircraft, is intoxicated or has an alcohol
13 concentration of four-hundredths of one percent (0.04%) 0.04 or more ~~of~~
14 ~~alcohol~~ in his or her breath or blood."

15
16 SECTION 19. Arkansas Code 5-75-104(a) is amended to read as follows:

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

23
24 SECTION 20. Arkansas Code 5-75-105(c) is amended to read as follows:

25 "(c) Chemical analyses of the person's blood, urine, breath, or other
26 bodily substance for determining the alcohol content of the breath or blood,
27 to be considered valid under the provisions of this section, shall have been
28 performed according to methods approved by the State Board of Health."

29
30 SECTION 21. Arkansas Code 5-75-106(a) is amended to read as follows:

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

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

5 (2) If there was at the time an alcohol concentration of ~~four-hundredths~~
6 ~~of one percent (0.04%)~~ 0.04 or more ~~by weight of alcohol~~ in the defendant's
7 blood, urine, breath, or other bodily substance, such fact shall not give rise
8 to any presumption that the defendant was or was not under the influence of
9 intoxicating liquor, but this fact may be considered with other competent
10 evidence in determining the guilt or innocence of the defendant."
11

12 SECTION 22. Arkansas Code 5-75-106(d) is amended to read as follows:

13 "(d)(1) The records and reports of certifications, rules, evidence,
14 analysis, or other documents pertaining to work performed by the ~~blood alcohol~~
15 ~~program~~ Office of Alcohol Testing of the Department of Health under the
16 authority of this chapter shall be received as competent evidence as to the
17 matters contained therein in the courts of this state, subject to the
18 applicable rules of criminal procedure, when duly attested to by the ~~program~~
19 director of the Office of Alcohol Testing or ~~his~~ an assistant, in the form of
20 an original signature or by certification of a copy. These documents shall be
21 self-authenticating.

22 (2) However, the ~~machine~~ instrument performing the chemical analysis
23 shall have been duly certified at least once in the last three (3) months
24 preceding arrest, and the operator thereof shall have been properly trained
25 and certified.

26 (3) Nothing in this section shall be deemed to abrogate a defendant's
27 right of cross-examination of the person ~~calibrating the machine~~ who performs
28 the calibration test or check on the instrument, the operator of the ~~machine~~
29 instrument, or a representative of the Office of Alcohol Testing of the
30 Department of Health, who shall be made available by the state if notice of
31 intention to cross-examine is given ten (10) days prior to the date of hearing
32 or trial.

33 (4) The testimony of the appropriate analyst or official may be compelled
34 by the issuance of a proper subpoena, in which case, the records and reports
35 shall be admissible through the analyst or official, who shall be subject to
36 cross-examination by the defendant or his counsel."

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SECTION 23. Arkansas Code 5-75-107(a) is amended to read as follows:

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

SECTION 24. Arkansas Code 5-75-107(c)(1) is amended to read as follows:

"(c)(1) The State Board of Health is authorized to adopt appropriate rules and regulations to carry out the intent and purposes of this section, and only ~~machines or~~ instruments approved by the board as meeting the requirements of this section and the regulations of the board shall be used for making the breath analysis for determining ~~blood~~ breath alcohol ~~content~~ concentration."

SECTION 25. Arkansas Code 5-76-102(a) is amended to read as follows:

"(a) No person shall operate any motorboat on the waters of this state while:

(1) Intoxicated; or

(2) There is ~~one-tenth of one percent (0.10%) or more, by weight, of alcohol in the person's blood, as determined by a chemical test of the person's blood, urine, breath, or other bodily substance~~ an alcohol concentration in the person's breath or blood of 0.08 or more based upon the definition of breath, blood and urine concentration in § 5-65-204."

SECTION 26. Arkansas Code 5-76-102(b)(1) is amended to read as follows:

"(b)(1) In the case of a motorboat or device, only where the certified law enforcement officer has probable cause to believe that the operator of the motorboat is operating while intoxicated or operating while there is ~~one-tenth~~

1 ~~of one percent (0.10%) or more, by weight, of alcohol~~ an alcohol concentration
2 of 0.08 in the person's breath or blood, the law enforcement officer is
3 authorized to administer and may test the operator, at the scene, by using a
4 ~~field breathalyzer~~ portable breath testing instrument or other approved method
5 to determine if the operator may be operating a motorboat or device in
6 violation of this section."

7
8 SECTION 27. Arkansas Code 5-76-102(d) and (e) are amended to read as
9 follows:

10 "(d) A person who has been arrested for violating this section shall
11 not be released from jail, under bond or otherwise, until ~~there is less than~~
12 ~~one-tenth of one percent (0.10%) by weight of alcohol~~ the alcohol
13 concentration is less than 0.08 in the person's breath or blood and the person
14 is no longer intoxicated.

15 (e)(1) In any criminal prosecution of a person charged with violating
16 subsection (a) of this section, the amount of alcohol in the defendant's blood
17 at the time of or within two (2) hours of the alleged offense, as shown by
18 chemical analysis of the defendant's blood, urine, breath, or other bodily
19 substance, shall give rise to the following:

20 (A) If there was at that time ~~one-twentieth of one percent (0.05%) or~~
21 ~~less, by weight, of alcohol~~ an alcohol concentration of 0.04 or less in the
22 defendant's blood, urine, breath, or other bodily substance, it shall be
23 presumed that the defendant was not under the influence of intoxicating
24 liquor;

25 (B) If there was at that time ~~in excess of one-twentieth of one percent~~
26 ~~(0.05%) but less than one-tenth of one percent (0.10%) by weight, of alcohol~~
27 an alcohol concentration in excess of 0.04 but less than 0.08 in the
28 defendant's blood, urine, breath, or other bodily substance, such fact shall
29 not give rise to any presumption that the defendant was or was not under the
30 influence of intoxicating liquor, but this fact may be considered with other
31 competent evidence in determining the guilt or innocence of the defendant.

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

35 (3)(A) The records and reports of certifications, rules, evidence
36 analysis, or other documents pertaining to work performed by the ~~Blood Alcohol~~

1 ~~Program~~ Office of Alcohol Testing of the Arkansas Department of Health under
2 the authority of this chapter shall be received as competent evidence as to
3 the matters contained therein in the courts of this state, subject to the
4 applicable rules of criminal procedure, when duly attested to by the program
5 director or his assistant, in the form of an original signature or by
6 certification of a copy.

7 (B) These documents shall be self-authenticating."
8

9 SECTION 28. Arkansas Code 5-76-104(a) is amended to read as follows:

10 "(a)(1) Any person who operates a motorboat or is in actual physical
11 control of a motorboat in this state shall be deemed to have given consent,
12 subject to the provisions of subsection (c) of this section, to a chemical
13 test or tests of his or her blood, breath, or urine for the purpose of
14 determining the alcohol or controlled substance content of his or her breath
15 or blood if:

16 (A) The operator is arrested for any offense arising out of acts
17 alleged to have been committed while the person was operating while
18 intoxicated or operating while there was ~~one-tenth of one percent (0.10%) or~~
19 ~~more, by weight, of alcohol~~ an alcohol concentration of 0.02 but less than
20 0.08 in the person's breath or blood; or

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

23 (C) At the time the person is arrested for operating while intoxicated,
24 the law enforcement officer has reasonable cause to believe that the person,
25 while operating a motorboat, is intoxicated or has ~~one-tenth of one percent~~
26 ~~(0.10%) or more, by weight, of alcohol~~ an alcohol concentration of 0.08 or
27 more in his or her breath or blood.

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

33 (3) When a person operating a motorboat is involved in an accident
34 resulting in loss of human life, or where there is reason to believe that
35 death may result, a law enforcement officer shall request and the person shall
36 submit to a chemical test or tests of the person's blood, breath, or urine for

1 the purpose of determining the alcohol or controlled substance content of his
2 or her breath or blood. The law enforcement officer shall cause the test or
3 tests to be administered to the person, including a person fatally injured.”
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5 SECTION 29. Arkansas Code 5-76-104(c)(1) is amended to read as follows:

6 “(c)(1) The chemical ~~test or tests~~ shall be administered at the
7 direction of a law enforcement officer having reasonable cause to believe the
8 person to have been operating a motorboat while intoxicated or while there is
9 ~~one-tenth of one percent (0.10%) or more, by weight, of alcohol~~ an alcohol
10 concentration of 0.08 or more in the person's breath or blood.”
11

12 SECTION 30. Arkansas Code 5-76-105(a)(1) is amended to read as follows:

13 “(a)(1) Every ~~machine or instrument~~ used to determine the alcohol
14 content of the breath ~~or blood of any person by analysis of the breath of the~~
15 ~~person~~ for the purpose of determining if the person was operating a vessel,
16 etc., while intoxicated or with a ~~blood alcohol content of one-tenth of one~~
17 ~~percent (0.10%) or more, by weight,~~ an alcohol concentration of 0.08 or more
18 shall be so constructed that the analysis is made automatically when a sample
19 of the person's breath is placed in the ~~machine or instrument~~ and without any
20 adjustment or other action of the person administering the analysis, and the
21 ~~machine instrument~~ shall be so constructed that the ~~blood~~ alcohol content is
22 shown by visible digital display on the ~~machine instrument~~ and on an automatic
23 readout.”
24

25 SECTION 31. Arkansas Code 5-76-105(b)(1) is amended to read as follows:

26 “(b)(1) Nothing in this section shall be deemed to abrogate a
27 defendant's right of cross-examination of the person ~~calibrating the machine~~
28 who performs the calibration test or check on the instrument, the operator of
29 the ~~machine instrument~~, or ~~any person performing work in the Blood Alcohol~~
30 ~~Program~~ a representative of the Office of Alcohol Testing of the Arkansas
31 Department of Health, who shall be made available by the state if notice of
32 ~~intention~~ intent to cross-examine is given at least ten (10) days prior to the
33 date of hearing or trial.”
34

35 SECTION 32. Arkansas Code 12-41-701(6) is amended to read as follows:

36 “(6) ‘Fines’ or ‘fines and penalties’ means the fines or penalties

1 imposed by law collected by a county or a municipality for convictions arising
2 from each of the offenses listed below:

3 (A) Operating or being in actual physical control of a motor vehicle
4 while intoxicated; 'intoxicated' meaning, for the purposes of this subchapter,
5 influenced or affected by the ingestion of alcohol, a controlled substance, or
6 a combination thereof to such a degree that the driver's reactions, motor
7 skills, and judgment are substantially altered and the driver, therefore,
8 constitutes a clear and substantial danger of physical injury or death to
9 himself or other motorists or pedestrians;

10 (B) Operating or being in actual physical control of a motor vehicle
11 while impaired by alcohol or drugs; the word 'impaired' meaning, for the
12 purposes of this subchapter, influenced or affected by the ingestion of
13 alcohol, a controlled substance, or a combination thereof to such a degree
14 that the driver's reaction, motor skills, and judgment are reduced or lessened
15 and the driver constitutes a threat of physical injury or death to himself or
16 other motorists or pedestrians;

17 (C) Operating or being in actual physical control of a motor vehicle
18 if, at that time, there was a ~~one-tenth of one percent (0.10%) by weight, or~~
19 ~~more, of alcohol~~ an alcohol concentration of 0.08 or more in the person's
20 breath or blood, as determined by a chemical test of the person's blood,
21 urine, breath, or other bodily substance;"

22

23 SECTION 33. All provisions of this act of a general and permanent
24 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
25 Code Revision Commission shall incorporate the same in the Code.

26

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

32

33 SECTION 35. All laws and parts of laws in conflict with this act are
34 hereby repealed.

35

/s/ Rodgers, et al

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