

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

# A Bill

HOUSE BILL 2325

5 By: Representatives D. Johnson, Thomason  
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## For An Act To Be Entitled

9 AN ACT TO PROVIDE THAT A METHOD OF ANALYSIS USED  
10 BY THE STATE CRIME LABORATORY TO DETERMINE THE  
11 PRESENCE OF CONTROLLED SUBSTANCES OR INTOXICANTS  
12 IS EXEMPT FROM APPROVAL BY THE DEPARTMENT OF  
13 HEALTH OR THE STATE BOARD OF HEALTH; TO ADD  
14 PROVISIONS CONCERNING ADMISSIBILITY OF RECORDS OF  
15 THE STATE CRIME LABORATORY; AND FOR OTHER  
16 PURPOSES.  
17

## Subtitle

18 AN ACT TO EXEMPT CERTAIN TESTING BY THE  
19 STATE CRIME LABORATORY FROM APPROVAL BY  
20 THE DEPARTMENT OF HEALTH OR THE STATE  
21 BOARD OF HEALTH AND TO ADD PROVISIONS  
22 CONCERNING ADMISSIBILITY OF RECORDS OF  
23 THE STATE CRIME LABORATORY.  
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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29 SECTION 1. Arkansas Code § 5-65-204 is amended to read as follows:  
30 5-65-204. Validity - Approved methods.

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

32 (A) Grams of alcohol per one hundred milliliters (100 ml)  
33 or one hundred cubic centimeters (100 cc) of blood; or

34 (B) Grams of alcohol per two hundred ten liters (210 l) of  
35 breath.

36 (2) The alcohol concentration of other bodily substances shall



1 be based upon grams of alcohol per one hundred milliliters (100 ml), or one  
 2 hundred cubic centimeters (100 cc) of blood, the same being percent weight  
 3 per volume or percent alcohol concentration.

4 (b)(1) Chemical analyses made to determine the presence and amount of  
 5 alcohol of the a person's blood, urine, or breath to be considered valid  
 6 under the provisions of this act shall have been performed according to  
 7 methods approved by the Department of Health or by an individual possessing a  
 8 valid permit issued by the Department of Health for this purpose. The  
 9 Department of Health is authorized to approve satisfactory techniques or  
 10 methods, to ascertain the qualifications and competence of individuals to  
 11 conduct such analyses, and to issue permits which shall be subject to  
 12 termination or revocation at the discretion of the Department of Health.

13 (2) However, a method of analysis of a person's blood, urine, or  
 14 other bodily substance made by the State Crime Laboratory for determining the  
 15 presence of one (1) or more controlled substances or any intoxicant shall be  
 16 exempt from approval by the Department of Health or State Board of Health.

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

21 (d)(1) When a person shall submit to a blood test at the request of a  
 22 law enforcement officer under the provisions of this section, blood may be  
 23 drawn by a physician or a person acting under the direction and supervision  
 24 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  
 28 withdraws blood for the purpose of determining alcohol or controlled  
 29 substance content thereof at the request of a law enforcement officer under  
 30 the provisions of this subchapter shall be held liable for violating any of  
 31 the criminal laws of this state in connection therewith, nor shall any  
 32 physician, institution, or person acting under the direction or supervision  
 33 of a physician be held liable in tort for the withdrawal of such blood unless  
 34 such persons are negligent in connection therewith, or the blood is taken  
 35 over the objections of the subject.

36 (e)(1) The person tested may have a physician or a qualified

1 technician, registered nurse, or other qualified person of his own choice  
 2 administer a complete chemical test in addition to any test administered at  
 3 the direction of a law enforcement officer.

4 (2) The law enforcement officer shall advise the person in  
 5 writing of this right and that if the person chooses to have an additional  
 6 test and the person is found not guilty, the arresting law enforcement agency  
 7 will reimburse the person for the cost of the additional test.

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

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

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 16 SECTION 2. Arkansas Code § 5-65-206 is amended to read as follows:  
 17 5-65-206. Evidence in prosecution.

18 (a) In any criminal prosecution of a person charged with the offense  
 19 of driving while intoxicated, the amount of alcohol in the defendant's breath  
 20 or blood at the time or within four (4) hours of the alleged offense, as  
 21 shown by chemical analysis of the defendant's blood, urine, breath, or other  
 22 bodily substance shall give rise to the following:

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

27 (2) If there was at the time an alcohol concentration in excess  
 28 of four-hundredths (0.04) but less than eight-hundredths (0.08) by weight of  
 29 alcohol in the defendant's blood, urine, breath, or other bodily substance,  
 30 this fact shall not give rise to any presumption that the defendant was or  
 31 was not under the influence of intoxicating liquor, but this fact may be  
 32 considered with other competent evidence in determining the guilt or  
 33 innocence of the defendant.

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

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

3 (d)(1)(A) Except as provided in subsection (e) of this section, The  
4 the records and reports of certifications, rules, evidence analysis, or other  
5 documents pertaining to work performed by the Office of Alcohol Testing of  
6 the Department of Health under the authority of this chapter shall be  
7 received as competent evidence as to the matters contained in them in the  
8 courts of this state, subject to the applicable rules of criminal procedure  
9 when duly attested to by the program director or his or her assistant, in the  
10 form of an original signature or by certification of a copy.

11 (B) These documents shall be self-authenticating.

12 (2) However, the instrument performing the chemical analysis  
13 shall have been duly certified at least one (1) time in the last three (3)  
14 months preceding arrest, and the operator of the instrument shall have been  
15 properly trained and certified.

16 (3) Nothing in this section shall be deemed to abrogate a  
17 defendant's right of cross-examination of the person who performs the  
18 calibration test or check on the instrument, the operator of the instrument,  
19 or a representative of the Office of Alcohol Testing.

20 (4) The testimony of the appropriate analyst or official may be  
21 compelled by the issuance of a proper subpoena given ten (10) days prior to  
22 the date of hearing or trial, in which case the records and reports shall be  
23 admissible through the analyst or official, who shall be subject to cross-  
24 examination by the defendant or his counsel.

25 (e) When a chemical analysis of a defendant's blood, urine, or other  
26 bodily substance is made by the State Crime Laboratory for the purpose of  
27 ascertaining the presence of one (1) or more controlled substances or any  
28 intoxicant, other than alcohol, in any criminal prosecution under § 5-65-103,  
29 § 5-65-303, or § 5-10-105, the provisions of § 12-12-313 shall govern the  
30 admissibility of the analysis into evidence rather than the provisions of  
31 this section.

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33 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
34 General Assembly of the State of Arkansas that confusion exists regarding the  
35 admissibility of drug analyses made by the State Crime Laboratory in certain  
36 cases due to a recent decision by the Arkansas Court of Appeals; that a

1 standard of admissibility of analyses made by the State Crime Laboratory must  
2 be established; and that this act is immediately necessary in order to  
3 prosecute pending cases and cases filed in the future. Therefore, an  
4 emergency is declared to exist and this act being immediately necessary for  
5 the preservation of the public peace, health, and safety shall become  
6 effective on:

7 (1) The date of its approval by the Governor;

8 (2) If the bill is neither approved nor vetoed by the Governor,  
9 the expiration of the period of time during which the Governor may veto the  
10 bill; or

11 (3) If the bill is vetoed by the Governor and the veto is  
12 overridden, the date the last house overrides the veto.

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