

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.

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2 85th General Assembly
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4

As Engrossed: S3/10/05

A Bill

SENATE BILL 1061

5 By: Senators Wooldridge, Wilkinson, Altes, Baker, Faris, Holt, Horn, G. Jeffress, J. Jeffress, B. Johnson,
6 Miller, J. Taylor, Whitaker
7
8

For An Act To Be Entitled

10 AN ACT TO CREATE THE TRANSDERMAL ALCOHOL
11 MONITORING PROGRAM IN THE OFFICE OF DRIVER
12 SERVICES OF THE REVENUE DIVISION OF THE
13 DEPARTMENT OF FINANCE AND ADMINISTRATION; TO
14 ALLOW A PERSON WHO IS ARRESTED FOR DRIVING WHILE
15 INTOXICATED OR FOR REFUSING TO SUBMIT TO CHEMICAL
16 TESTING FOR ALCOHOL TO PARTICIPATE IN THE
17 TRANSDERMAL ALCOHOL MONITORING PROGRAM; TO
18 PROVIDE AN ALTERNATIVE SENTENCE FOR A PERSON WHO
19 IS FOUND GUILTY, PLEADS GUILTY, OR PLEADS NOLO
20 CONTENDERE TO THE OFFENSE OF DRIVING WHILE
21 INTOXICATED FOR ELECTRONIC MONITORING AND
22 PARTICIPATION IN A TRANSDERMAL ALCOHOL MONITORING
23 PROGRAM; AND FOR OTHER PURPOSES.
24

Subtitle

25 TO CREATE THE TRANSDERMAL ALCOHOL
26 MONITORING PROGRAM IN THE OFFICE OF
27 DRIVER SERVICES OF THE REVENUE DIVISION
28 OF THE DEPARTMENT OF FINANCE AND
29 ADMINISTRATION.
30
31
32

33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
34

35 SECTION 1. Arkansas Code Title 5, Chapter 65 is amended to add an
36 additional subchapter to read as follows:



1 Subchapter 5.

2 Transdermal Alcohol Monitoring.

3 5-65-501. Transdermal alcohol monitoring program – Creation.

4 (a)(1) There is created in the Office of Driver Services of the
5 Revenue Division of the Department of Finance and Administration a
6 transdermal alcohol monitoring program.

7 (2) The transdermal alcohol monitoring program shall be designed
8 to provide continuous alcohol monitoring using a transdermal alcohol
9 monitoring device before a person is issued an ignition interlock restricted
10 license to establish his or her sobriety and willingness to refrain from
11 driving while intoxicated.

12 (b) The Office of Driver Services shall allow a person to participate
13 in the transdermal alcohol monitoring program under this subchapter if the
14 person:

15 (1) Has been arrested:

16 (A) For operating or being in actual physical control of a
17 motor vehicle while intoxicated and with an alcohol concentration of eight-
18 hundredths (0.08) or more under § 5-65-103; or

19 (B) For refusing to submit to testing for alcohol if the
20 person is operating or in actual physical control of a motor vehicle under §
21 5-65-205;

22 (2) Is financially able to afford a transdermal alcohol
23 monitoring device and to participate in a transdermal alcohol monitoring
24 program; and

25 (3) Agrees to follow the rules, procedures, and terms of the
26 transdermal alcohol monitoring program.

27 (c)(1) The Office of Driver Services shall require a person to
28 participate in the transdermal alcohol monitoring program for at least ninety
29 (90) consecutive days to measure alcohol abstinence compliance.

30 (2) The driver's license of a participant shall continue to be
31 suspended until the person completes the transdermal alcohol monitoring
32 program as provided under subdivision (d)(1) of this section.

33 (d)(1) The Office of Driver Services shall find a person who completes
34 the transdermal alcohol monitoring program to be immediately eligible for the
35 issuance of an ignition interlock restricted license as provided under this
36 chapter if the person completes the program without the detection of:

1 (A) The presence of alcohol in the person's blood as
2 determined by a transdermal alcohol monitoring device; and

3 (B) Blocking, obstructing, or tampering with the
4 transdermal alcohol monitoring device.

5 (2) A person who is arrested for his or her first offense for
6 driving under the influence of alcohol with an alcohol concentration of at
7 least eight-hundredths (0.08) shall be allowed to participate in the
8 transdermal alcohol monitoring program no more than one (1) time during the
9 period of mandatory suspension of his or her driver's license.

10 (3) A person who is arrested for his or her first offense for
11 driving under the influence of alcohol with an alcohol concentration of at
12 least fifteen-hundredths (0.15) shall be allowed to participate in the
13 transdermal alcohol monitoring program no more than two (2) times during the
14 period of mandatory suspension of his or her driver's license.

15 (4) A person who is arrested for his or her second or subsequent
16 offense for driving under the influence of alcohol within five (5) years of
17 the first offense shall be allowed to participate in the transdermal alcohol
18 monitoring program no more than six (6) times during the period of mandatory
19 suspension of his or her driver's license.

20 (e)(1) If a participant is found to have blocked, obstructed, or
21 tampered with the transdermal alcohol monitoring device for the first time or
22 if alcohol is detected by a transdermal alcohol monitoring device in a
23 participant's bodily fluids for the first time, then the participant may
24 choose to continue the transdermal alcohol monitoring program but only if the
25 participant agrees to ninety (90) consecutive days of sobriety beginning on
26 his or her first day of participation in the second transdermal alcohol
27 monitoring program.

28 (2) If a participant is found to have blocked, obstructed, or
29 tampered with the transdermal alcohol monitoring device for the second time
30 or if alcohol is detected by a transdermal alcohol monitoring device in a
31 participant's bodily fluids for the second time, then the participant may
32 choose to continue the transdermal alcohol monitoring program but only if the
33 participant agrees to one hundred eighty (180) consecutive days of sobriety
34 beginning on his or her first day of participation in the third transdermal
35 alcohol monitoring program.

36 (3)(A) If a participant is found to have blocked, obstructed, or

1 tampered with the transdermal alcohol monitoring device for the third or
2 subsequent time or if alcohol is detected by a transdermal alcohol monitoring
3 device in a participant's bodily fluids for the third or subsequent time,
4 then the participant shall be removed from the transdermal alcohol monitoring
5 program.

6 (B) If the person is eligible to participate in the
7 transdermal alcohol monitoring program more than one (1) time during the
8 period of his or her driver's license suspension as provided under subsection
9 (d) of this section, then the person shall only be allowed to reenter the
10 transdermal alcohol program if he or she:

11 (i) Establishes the completion of an alcohol
12 treatment or education program as prescribed and approved by the National
13 Highway Traffic Safety Administration of the Department of Transportation
14 after the date that alcohol was detected in the participant's bodily fluids;
15 and

16 (ii) Was removed from the transdermal alcohol
17 monitoring program for a period of at least thirty (30) days.

18
19 5-65-502. Requirements -- Penalties.

20 (a) A participant in the transdermal alcohol monitoring program who is
21 seeking eligibility for the issuance of an ignition interlock restricted
22 license shall not operate a motor vehicle.

23 (b)(1) Except as provided under subdivision (b)(3) of this section, a
24 person who is found guilty of, pleads guilty to, or pleads nolo contendere to
25 violating one (1) or more provisions of this section is guilty of a Class A
26 misdemeanor.

27 (2) If the Office of Driver Services finds that a person has
28 violated one (1) or more of the provisions of this section, then the office
29 shall:

30 (A) Remove the person from the transdermal alcohol
31 monitoring program; and

32 (B)(i) Reinstate the person's driver's license suspension
33 for the term of the original license suspension or revocation.

34 (ii) The term of the reinstated suspension or
35 revocation shall begin on the date of the reinstatement of the suspension or
36 revocation under this subsection.

1 (3) The penalties under subdivision (c)(1) or (2) of this
2 section shall not apply if the person establishes:

3 (A) The transdermal alcohol monitoring device
4 malfunctioned;

5 (B) A medical emergency necessitated the removal of the
6 transdermal alcohol monitoring device; or

7 (C) A reason that the court or the Office of Driver
8 Services finds to be compelling to explain the violation.

9
10 5-65-503. Costs.

11 A participant in the transdermal alcohol monitoring program shall pay
12 the reasonable costs:

13 (1) Of participating in the transdermal alcohol monitoring
14 program; and

15 (2) Associated with leasing or maintaining the transdermal
16 alcohol monitoring device.

17
18 5-65-504. Circumvention or improper use.

19 (a)(1) If a court finds that a participant in the transdermal alcohol
20 monitoring program has violated the conditions under this subchapter related
21 to the proper use, circumvention, maintenance, or monitoring of a transdermal
22 alcohol monitoring device, then the court shall order:

23 (A) The person to withdraw from the transdermal alcohol
24 monitoring program; and

25 (B) The Office of Driver Services of the Revenue Division
26 of the Department of Finance and Administration to reinstate a license
27 suspension for the term of the original license suspension or revocation.

28 (2) The term of the reinstated suspension shall begin on the
29 date of the court-ordered reinstatement of the suspension or revocation under
30 this subsection.

31 (b)(1) If the Office of Driver Services of the Revenue Division of the
32 Department of Finance and Administration finds that a participant in the
33 transdermal alcohol monitoring program has violated the conditions under this
34 subchapter related to the proper use, circumvention, maintenance, or
35 monitoring of a transdermal alcohol monitoring device, then the office shall:

36 (A) Remove the person from the transdermal alcohol

1 monitoring program; and

2 (B) Reinstate the person's driver's license suspension for
3 the term of the original license suspension.

4 (2) The term of the reinstated suspension shall begin on the
5 date of the reinstatement of the suspension under this subsection.

6
7 5-65-505. Duties of the Office of Driver Services regarding the
8 transdermal alcohol monitoring program.

9 The Office of Driver Services of the Revenue Division of the Department
10 of Finance and Administration shall:

11 (1) Develop and implement the transdermal alcohol monitoring
12 program; and

13 (2) Promulgate the rules and forms necessary for the
14 implementation and administration of the transdermal alcohol monitoring
15 program.

16
17 5-65-506. Duties of the Department of Health regarding transdermal
18 alcohol monitoring devices.

19 (a) The Department of Health shall:

20 (1) Certify the transdermal alcohol monitoring devices for use
21 in this state;

22 (2) Approve the entities which monitor and maintain the
23 transdermal alcohol monitoring devices; and

24 (3) Adopt rules for the certification of the transdermal alcohol
25 monitoring devices.

26 (b) The rules shall require the transdermal alcohol monitoring device,
27 at a minimum, to:

28 (1) Not impede the safety of a person;

29 (2) Not impede the safe operation of a vehicle;

30 (3) Be designed so as to minimize the opportunities to be
31 bypassed or tampered;

32 (4) Work accurately and reliably in unsupervised environments;

33 (5) Properly and accurately measure the person's blood alcohol
34 levels;

35 (6) Detect any attempts to block, obstruct, or tamper with the
36 transdermal alcohol monitoring device;

1 (7) Be designed to minimize the inconvenience to a sober user;
2 and

3 (8) Be furnished by an entity that is responsible for user
4 training, servicing, maintenance, monitoring, and reporting the results of
5 the transdermal alcohol monitoring device to the Office of Driver Services of
6 the Revenue Division of the Department of Finance and Administration.

7 (c) The Department of Health shall develop a warning label to be
8 affixed to all transdermal alcohol monitoring devices used in the State of
9 Arkansas to warn any person of the possible penalties for tampering with or
10 attempting to circumvent the device.

11 (d) The Department of Health shall publish and update a list of
12 certified transdermal alcohol monitoring device dealers and the list shall be
13 provided periodically to each district and circuit court in this state.

14 (e) Only transdermal alcohol monitoring devices that are approved by
15 the State Board of Health as meeting the requirements of this chapter shall
16 be used for making transdermal alcohol measurements.

17
18 5-65-507. Transdermal alcohol monitoring devices.

19 (a) A transdermal alcohol monitoring device that is ordered to be worn
20 by a person under this chapter shall be constructed so that the alcohol
21 concentration analysis is made automatically when a transdermal alcohol
22 measurement is taken and the analysis is transmitted daily.

23 (b) The entity that is monitoring a person who is participating in a
24 transdermal alcohol monitoring program shall provide the following notice if
25 the transdermal alcohol monitoring device detects any alcohol in the person's
26 blood or if the transdermal alcohol monitoring device detects the blocking,
27 obstructing, or tampering with the transdermal alcohol monitoring device:

28 (1) A telephone call to the person who is participating in the
29 transdermal alcohol monitoring program and to the administrator of the
30 transdermal alcohol monitoring program; and

31 (2) Written notice and documentation to the person who is
32 participating in the transdermal alcohol monitoring program and to the
33 administrator of the transdermal alcohol monitoring program within five (5)
34 business days after the alcohol, blocking, obstructing, or tampering is
35 detected.

36

1 SECTION 2. Arkansas Code Title 5, Chapter 65, Subchapter 1 is amended
2 to add an additional section to read as follows:

3 5-65-121. Transdermal alcohol monitoring as an alternative punishment.

4 (a) If a court orders transdermal alcohol monitoring as an alternative
5 punishment under § 5-65-111(e), then the court shall establish in its order:

6 (1) The person is required to maintain total abstinence while
7 participating in the transdermal alcohol monitoring program;

8 (2) The period of time that the person shall be required to use
9 a transdermal alcohol monitoring device and participate in a transdermal
10 monitoring program as provided under § 5-65-111(e)(2); and

11 (3) The requirement that the alternative punishment is
12 contingent upon the person completing the alternative punishment and
13 otherwise following the rules, procedures, and terms related to the
14 alternative punishment.

15 (b)(1) Notwithstanding any other penalty provided by law and except as
16 provided in subsection (c) of this section, if a court finds that a person
17 has violated one (1) or more provisions of subsection (a) of this section,
18 then the court shall order:

19 (A) The person to withdraw from the transdermal alcohol
20 monitoring program; and

21 (B) The imposition of a punishment as provided under § 5-
22 65-111(a) and (b).

23 (2) The term of the punishment imposed due to a violation of
24 subsection (a) of this section shall begin on the date of the court-ordered
25 termination of the alternative punishment.

26 (c) The penalties under subsection (b) of this section shall not apply
27 if the person establishes:

28 (1) The transdermal alcohol monitoring device malfunctioned;

29 (2) A medical emergency necessitated the removal of the
30 transdermal alcohol monitoring device; or

31 (3) A reason that the court finds to be compelling to explain
32 the violation.

33 (d)(1) Upon ordering the use of a transdermal alcohol monitoring
34 device, the court shall require the person:

35 (A)(i) To pay the reasonable cost of participating in the
36 transdermal alcohol monitoring program.

1 (ii) The costs associated with participating in the
2 transdermal alcohol monitoring program may be established in a payment
3 schedule; and

4 (B)(i) To pay the reasonable cost of leasing and
5 maintaining the device.

6 (ii) The costs associated with the leasing or
7 maintaining the transdermal alcohol monitoring device may be established in a
8 payment schedule.

9 (2)(A) Notwithstanding any other penalty provided by law, if the
10 court finds that a person fails to comply with the requirements of this
11 subsection (d), then the court shall order the person to withdraw from the
12 transdermal alcohol monitoring program and shall impose a punishment as
13 provided under § 5-65-111(a) and (b).

14 (B) The term of the punishment imposed due to a violation
15 of subsection (d) of this section shall begin on the date of the court-
16 ordered termination of the alternative punishment.

17 (e)(1) A person sentenced under this section to participate in a
18 transdermal alcohol monitoring program as an alternative punishment may not
19 tamper with or in any way attempt to circumvent the operation of the
20 transdermal alcohol monitoring device that he or she is wearing pursuant to a
21 court order under this section.

22 (2) A violation of this subsection is a Class A misdemeanor.

23
24 SECTION 3. Arkansas Code § 5-65-101 is amended to read as follows:
25 5-65-101. Omnibus DWI Act - Application.

26 (a) This ~~aet~~ chapter shall be known as the "Omnibus DWI Act".

27 (b) The provisions of this ~~aet~~ chapter shall govern the prosecution
28 and administrative proceedings for offenses defined by this ~~aet~~ chapter and
29 committed after March 21, 1983.

30 (c)(1) The provisions of this ~~aet~~ chapter do not apply to offenses
31 committed prior to March 21, 1983.

32 (2)(A) ~~Those offenses~~ Offenses committed prior to March 21,
33 1983, shall be construed and punished in accordance with the law existing at
34 the time of the commission of the offense.

35 (B) However, all pleas of guilty and nolo contendere and
36 all findings of guilty of driving while intoxicated within three (3) years

1 prior to March 21, 1983, shall be counted in determining the number of prior
2 offenses for the purposes of enhancing the penalties provided by this ~~act~~
3 chapter for violating § 5-65-103.

4
5 SECTION 4. Arkansas Code § 5-65-102 is amended to read as follows:
6 5-65-102. Definitions.

7 ~~As used in this act, unless the context otherwise requires~~ As used in
8 this chapter:

9 (1) "Intoxicated" means influenced or affected by the ingestion
10 of alcohol, a controlled substance, any intoxicant, or any combination
11 thereof, to such a degree that the driver's reactions, motor skills, and
12 judgment are substantially altered and the driver, therefore, constitutes a
13 clear and substantial danger of physical injury or death to himself and other
14 motorists or pedestrians;

15 (2) "Controlled substance" means a drug, substance, or immediate
16 precursor in Schedules I through VI. The fact that any person charged with a
17 violation of this act is or has been entitled to use that drug or controlled
18 substance under the laws of this state shall not constitute a defense against
19 any charge of violating this ~~act~~ chapter;

20 (3) "Victim impact statement" means a voluntary written or oral
21 statement of a victim, or relative of a victim, who has sustained serious
22 injury due to a violation of this ~~act~~ chapter;

23 (4) "Sworn report" means a signed, written statement of a
24 certified law enforcement officer, under penalty of perjury, on a form
25 provided by the Director of the Department of Finance and Administration;

26 (5) "Transdermal alcohol measurement" means the detection and
27 determination of the ethanol alcohol content in a person's blood by using a
28 transdermal alcohol monitoring device that is in close and constant contact
29 with the skin;

30 (6) "Transdermal alcohol monitoring device" means an external
31 and noninvasive device approved by the Department of Health that:

32 (A) Is worn by a person twenty-four (24) hours a day;

33 (B) Provides at least one (1) transdermal alcohol
34 measurement during each one-hour period; and

35 (C) Transmits the transdermal alcohol measurements at
36 least one (1) time in a period of twenty-four (24) hours; and

1 (7) “Transdermal alcohol monitoring program” means the program
2 administered by the Office of Driver Services of the Revenue Division of the
3 Department of Finance and Administration that requires the use of a
4 transdermal alcohol monitoring device and that requires monitoring by an
5 entity approved by the Department of Health to monitor the data from the
6 transdermal alcohol monitoring device.

7
8 SECTION 5. Arkansas Code § 5-65-104 is amended to read as follows:

9 5-65-104. Seizure, suspension, and revocation of license - Temporary
10 permits - Ignition interlock restricted license - Transdermal alcohol
11 measurement.

12 (a)(1) At the time of arrest for operating or being in actual physical
13 control of a motor vehicle while intoxicated or while there was an alcohol
14 concentration of eight-hundredths (0.08) or more in the person’s breath or
15 blood, § 5-65-103, the arrested person shall immediately surrender his or her
16 license, permit, or other evidence of driving privilege to the arresting law
17 enforcement officer as provided in § 5-65-402.

18 (2) ~~The~~ Except as provided under § 5-65-501 et seq., the Office
19 of Driver Services of the Revenue Division of the Department of Finance and
20 Administration or its designated official shall suspend or revoke the driving
21 privilege of an arrested person or shall suspend any nonresident driving
22 privilege of an arrested person, as provided in § 5-65-402. The suspension or
23 revocation shall be based on the number of previous offenses as follows:

24 (A)(i) Suspension for one hundred twenty (120) days for
25 the first offense of operating or being in actual physical control of a motor
26 vehicle while intoxicated or while there was an alcohol concentration of at
27 least eight hundredths (0.08) but less than fifteen hundredths (0.15) by
28 weight of alcohol in the person’s blood or breath, § 5-65-103;

29 (ii) Suspension for six (6) months for the first
30 offense of operating or being in actual physical control of a motor vehicle
31 while intoxicated by the ingestion of or by the use of a controlled
32 substance; and

33 (iii) Suspension for one hundred eighty (180) days
34 for the first offense of operating or being in actual physical control of a
35 motor vehicle while intoxicated and while there was an alcohol concentration
36 of fifteen hundredths (0.15) or more by weight of alcohol in the person’s

1 blood or breath. Provided, however, that if the court orders issuance of an
2 ignition interlock restricted license under § 5-65-118, ~~the interlock~~
3 ~~restricted license shall be available immediately~~ the suspension period for
4 which no restricted license shall be available shall be a minimum of one
5 hundred eighty (180) days and ~~The~~ the restricted driving permit provision of
6 § 5-65-120 does not apply to this suspension;

7 (B) Suspension for twenty-four (24) months for a second
8 offense of operating or being in actual physical control of a motor vehicle
9 while intoxicated or while there was an alcohol concentration of eight
10 hundredths (0.08) or more by weight of alcohol in the person's blood or
11 breath, § 5-65-103, within five (5) years of the first offense. Provided,
12 however, that if the court orders issuance of an ignition interlock
13 restricted license under § 5-65-118, the suspension period for which no
14 restricted license shall be available shall be a minimum of one (1) year;

15 (C) Suspension for thirty (30) months for the third
16 offense of operating or being in actual physical control of a motor vehicle
17 while intoxicated or while there was an alcohol concentration of eight
18 hundredths (0.08) or more by weight of alcohol in the person's blood or
19 breath, § 5-65-103, within five (5) years of the first offense. Provided,
20 however, that if the court orders issuance of an ignition interlock
21 restricted license under § 5-65-118, the suspension period for which no
22 restricted license shall be available shall be a minimum of one (1) year; and

23 (D) Revocation for four (4) years, during which no
24 restricted permits may be issued, for the fourth or subsequent offense of
25 operating or being in actual physical control of a motor vehicle while
26 intoxicated or while there was an alcohol concentration of eight hundredths
27 (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-
28 103, within five (5) years of the first offense.

29 (3) ~~If~~ Except as provided under § 5-65-501 et seq., if a person
30 is a resident who is convicted of driving without a license or permit to
31 operate a motor vehicle and the underlying basis for the suspension,
32 revocation, or restriction of the license was for a violation of § 5-65-103,
33 the court may order, in addition to any other penalties provided for under
34 law, that the Office of Driver Services issue only an ignition interlock
35 restricted permit for a period of one (1) year prior to the reinstatement or
36 reissuance of a license or permit after the person would otherwise be

1 eligible for reinstatement or reissuance of the person's license.

2 (4) In order to determine the number of previous offenses to
3 consider when suspending or revoking the arrested person's driving
4 privileges, the office 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
7 was an alcohol concentration of eight-hundredths (0.08) or more in the
8 person's breath or blood under § 5-65-103 or refusing to submit to a chemical
9 test under § 5-65-202 which occurred prior to July 1, 1996;

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

17 (b)(1) Any person whose license is suspended or revoked pursuant to
18 this section shall be required to complete an alcohol education program as
19 prescribed and approved by the Highway Safety Program or an alcohol treatment
20 program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the
21 Department of ~~Health~~ Human Services, unless the charges are dismissed or the
22 person is acquitted of the charges upon which the suspension or revocation is
23 based.

24 (2) A person whose license is suspended or revoked pursuant to
25 this section shall furnish proof of attendance at, and completion of, the
26 alcoholism treatment or education program before reinstatement of his or her
27 suspended or revoked driver's license or shall furnish proof of dismissal or
28 acquittal of the charge on which the suspension or revocation is based.

29 (3) Even if a person has filed a de novo petition for review
30 pursuant to former subsection (c) of this section, the person shall be
31 entitled to reinstatement of driving privileges upon complying with this
32 subsection and shall not be required to postpone reinstatement until the
33 disposition of the de novo review in circuit court has occurred.

34
35 SECTION 6. Arkansas Code § 5-65-111 is amended to read as follows:
36 5-65-111. Prison terms - ~~Exception~~ Exceptions.

1 (a)(1) ~~Any~~ Except as provided in subsection (e) of this section, any
2 person who pleads guilty or nolo contendere to, or is found guilty of,
3 violating § 5-65-103, for a first offense, may be imprisoned for no less than
4 twenty-four (24) hours and no more than one (1) year, except that the court
5 may order public service in lieu of jail, and in that instance, the court
6 shall include the reasons therefor in its written order or judgment.

7 (2) However, if a passenger under sixteen (16) years of age was
8 in the vehicle at the time of the offense, a person who pleads guilty or nolo
9 contendere to, or is found guilty of, violating § 5-65-103, for a first
10 offense, may be imprisoned for no fewer than seven (7) days and no more than
11 one (1) year, except that the court may order public service in lieu of jail,
12 and in that instance, the court shall include the reasons therefor in its
13 written order or judgment.

14 (b) ~~Any~~ Except as provided in subsection (e) of this section, any
15 person who pleads guilty or nolo contendere to, or is found guilty of,
16 violating § 5-65-103 or any other equivalent penal law of another state or
17 foreign jurisdiction shall be imprisoned or shall be ordered to perform
18 public service in lieu of jail as follows:

19 (1)(A) For no fewer than seven (7) days but no more than one (1)
20 year for the second offense occurring within five (5) years of the first
21 offense or no fewer than thirty (30) days of community service.

22 (B)(i) However, if a person under sixteen (16) years of
23 age was in the vehicle at the time of the offense, for no fewer than thirty
24 (30) days but no more than one (1) year for the second offense occurring
25 within five (5) years of the first offense or no fewer than sixty (60) days
26 of community service.

27 (ii) If the court orders community service, the
28 court shall clearly set forth in written findings the reasons for the order
29 of community service;

30 (2)(A) For no fewer than ninety (90) days but no more than one
31 (1) year for the third offense occurring within five (5) years of the first
32 offense or no fewer than ninety (90) days of community service.

33 (B)(i) However, if a person under sixteen (16) years of
34 age was in the vehicle at the time of the offense, for no fewer than one
35 hundred twenty ~~days~~ (120) days but no more than one (1) year for the third
36 offense occurring within five (5) years of the first offense or no fewer than

1 one hundred twenty (120) days of community service.

2 (ii) If the court orders community service, the
3 court shall clearly set forth in written findings the reasons for the order
4 of community service;

5 (3)(A) For at least one (1) year but no more than six (6) years
6 for the fourth offense occurring within five (5) years of the first offense
7 or not less than one (1) year of community service and shall be guilty of a
8 felony.

9 (B)(i) However, if a person under sixteen (16) years of
10 age was in the vehicle at the time of the offense, for at least two (2) years
11 but no more than six (6) years for the fourth offense occurring within five
12 (5) years of the first offense or not less than two (2) years of community
13 service and shall be guilty of a felony.

14 (ii) If the court orders community service, the
15 court shall clearly set forth in written findings the reasons for the order
16 of community service; and

17 (4)(A)(i) For at least two (2) years but no more than ten (10)
18 years for the fifth or subsequent offense occurring within five (5) years of
19 the first offense or not less than two (2) years of community service and
20 shall be guilty of a felony.

21 (ii) If the court orders community service, the
22 court shall clearly set forth in written findings the reasons for the order
23 of community service.

24 (B)(i) However, if a person under sixteen (16) years of
25 age was in the vehicle at the time of the offense, for at least three (3)
26 years but no more than ten (10) years for the fifth offense occurring within
27 five (5) years of the first offense or not less than three (3) years of
28 community service and shall be guilty of a felony.

29 (ii) If the court orders community service, the
30 court shall clearly set forth in written findings the reasons for the order
31 of community service.

32 (c) For all arrests or offenses occurring before July 30, 1999, but
33 which have not reached a final disposition as to judgment in court, the
34 offenses shall be decided under the law in effect at the time the offense
35 occurred, and any defendant shall be subject to the penalty provisions in
36 effect at that time and not under the provisions of this section.

1 (d) It is an affirmative defense to prosecution under subdivisions
2 (a)(2), (b)(1)(B), (b)(2)(B), (b)(3)(B), and (b)(4)(B) of this section that
3 the person operating or in actual physical control of the motor vehicle was
4 not more than two (2) years older than the passenger.

5 (e)(1)(A) If a court makes the following findings, then the court may
6 order a person to an alternative punishment under subdivision (e)(1)(B) of
7 this section:

8 (i) The person has been found guilty, pleaded
9 guilty, or pleaded nolo contendere to a violation of § 5-65-103(b) or an
10 alcohol-related offense under § 5-65-103(a);

11 (ii) The person is financially able to afford the
12 use of a transdermal alcohol monitoring device, electronic monitoring, and
13 participation in a transdermal alcohol monitoring program; and

14 (iii) The person agrees to follow the rules,
15 procedures, and terms related to electronic monitoring, house arrest, the use
16 of a transdermal alcohol monitoring device, or participation in a transdermal
17 alcohol monitoring program as provided under subdivision (e)(2) of this
18 section.

19 (B) A court may order a person to submit to an alternative
20 punishment of one (1) or more of the following in lieu of imprisonment or
21 community service under this section:

22 (i) The use of a transdermal alcohol monitoring
23 device and participation in a transdermal alcohol monitoring program; and

24 (ii) House arrest with electronic monitoring.

25 (2) If a court orders an alternative punishment under this
26 subsection (e), then the court shall order the person to the use of a
27 transdermal alcohol monitoring device and house arrest with electronic
28 monitoring for:

29 (A) No less than three (3) months and no more than six (6)
30 months for the first offense;

31 (B) No less than six (6) months and no more than twelve
32 (12) months for a second offense occurring within five (5) years after the
33 first offense;

34 (C) No less than twelve (12) months and no more than
35 eighteen (18) months for a third offense occurring within five (5) years
36 after the first offense; and

1 (D) No less than twenty-four (24) months and no more than
2 five (5) years for a fourth or subsequent offense occurring within five (5)
3 years after the first offense.

4 (3) The Department of Health and the Department of Correction
5 shall jointly promulgate rules, procedures, and forms to be used under this
6 subsection.

7 (4) The purpose of this subsection is to provide an alternative
8 for the court to consider in lieu of mandatory imprisonment or community
9 service under this section.

10
11 SECTION 7. Arkansas Code § 5-65-204 is amended to read as follows:
12 5-65-204. Validity - Approved methods.

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

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

16 (B) Grams of alcohol per two hundred ten liters (210 l) of
17 breath.

18 (2) The alcohol concentration of other bodily substances shall
19 be based upon grams of alcohol per one hundred milliliters (100 ml), or one
20 hundred cubic centimeters (100 cc) of blood, the same being percent weight
21 per volume or percent alcohol concentration.

22 (b)(1) Chemical analyses of the person's blood, urine, ~~or~~ breath, or
23 other bodily substances to be considered valid under the provisions of this
24 ~~act~~ chapter shall have been performed according to methods approved by the
25 Department of Health or by an individual possessing a valid permit issued by
26 the Department of Health for this purpose.

27 (2) The Department of Health is authorized to approve
28 satisfactory techniques or methods, to ascertain the qualifications and
29 competence of individuals to conduct such analyses, and to issue permits
30 which shall be subject to termination or revocation at the discretion of the
31 Department of Health.

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

36 (d)(1) When a person ~~shall submit~~ submits to a blood test at the

1 request of a law enforcement officer under the provisions of this section,
2 blood may be drawn by a physician or a person acting under the direction and
3 supervision of a physician.

4 (2) ~~This limitation~~ The limitation under subdivision (d)(1) of
5 this section shall not apply to the taking of breath, ~~or~~ urine, or other
6 bodily substance specimens.

7 (3) No person, institution, or office in this state who
8 withdraws blood for the purpose of determining alcohol or controlled
9 substance content thereof at the request of a law enforcement officer under
10 the provisions of this subchapter shall be held liable for violating any of
11 the criminal laws of this state in connection therewith, nor shall any
12 physician, institution, or person acting under the direction or supervision
13 of a physician be held liable in tort for the withdrawal of such blood unless
14 such persons are negligent in connection therewith, or the blood is taken
15 over the objections of the subject.

16 (e)(1) The person tested may have a physician or a qualified
17 technician, registered nurse, or other qualified person of his own choice
18 administer a complete chemical test in addition to any test administered at
19 the direction of a law enforcement officer.

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

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

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

31
32 SECTION 8. Arkansas Code § 5-65-205 is amended to read as follows:
33 5-65-205. Refusal to submit.

34 (a) If a person under arrest refuses upon the request of a law
35 enforcement officer to submit to a chemical test designated by the law
36 enforcement agency, as provided in § 5-65-202, none shall be given, and the

1 person's motor vehicle operator's license shall be seized by the law
2 enforcement officer, and the officer shall immediately deliver to the person
3 from whom the license was seized a temporary driving permit, as provided by §
4 5-65-402.

5 (b) ~~The~~ Except as provided under § 5-65-501 et seq., the Office of
6 Driver Services of the Revenue Division of the Department of Finance and
7 Administration shall then proceed to suspend or revoke the driving privilege
8 of the arrested person, as provided in § 5-65-402. The suspension shall be as
9 follows:

10 (1)(A) Suspension for one hundred eighty (180) days for the
11 first offense of refusing to submit to a chemical test of blood, breath, or
12 urine for the purpose of determining the alcohol or controlled substance
13 contents of the person's blood or breath. However, if the court orders
14 issuance of an ignition interlock restricted license under § 5-65-118, the
15 interlock restricted license shall be available immediately. The restricted
16 driving permit provision of § 5-65-120 does not apply to this suspension.

17 (B) The office, in addition to any other penalties, shall
18 deny to that person the issuance of an operator's license until that person
19 has been issued an ignition interlock restricted license for a period of six
20 (6) months;

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

26 (3) Revocation for three (3) years, during which no restricted
27 permits may be issued, for the third offense of refusing to submit to a
28 chemical test of blood, breath, or urine for the purpose of determining the
29 alcohol or controlled substance contents of the person's blood within five
30 (5) years of the first offense; and

31 (4) Lifetime revocation, during which no restricted permit may
32 be issued, for the fourth or subsequent offense of refusing to submit to a
33 chemical test of blood, breath, or urine for the purpose of determining the
34 alcohol or controlled substance contents of the person's blood or breath
35 within five (5) years of the first offense.

36 (c) For all arrests or offenses occurring before July 30, 1999, but

1 which have not reached a final disposition as to judgment in court, the
2 offenses shall be decided under the law in effect at the time the offense
3 occurred, and any defendant shall be subject to the penalty provisions in
4 effect at that time and not under the provisions of this section.

5 (d) In order to determine the number of previous offenses to consider
6 when suspending or revoking the arrested person's driving privileges, the
7 Office of Driver Services shall consider as a previous offense:

8 (1) Any conviction for offenses of operating or being in actual
9 physical control of a motor vehicle while intoxicated or in violation of § 5-
10 65-103 or refusing to submit to a chemical test which occurred prior to July
11 1, 1996; and

12 (2) Any suspension or revocation of driving privileges for
13 arrests for a violation of § 5-65-103 or violation of § 5-65-205(a) occurring
14 on or after July 1, 1996, where the person was subsequently convicted of the
15 criminal charges.

16 (e)(1) If the person is a resident without a license or permit to
17 operate a motor vehicle in this state, the Office of Driver Services shall,
18 in addition to any other penalties provided for in this section, deny to that
19 person the issuance of a license or permit for a period of six (6) months for
20 a first offense.

21 (2) For a second or subsequent offense by a resident without a
22 license or permit to operate a motor vehicle, the Office of Driver Services
23 shall, in addition to any other penalties provided for in this section, deny
24 to that person the issuance of a license or permit for a period of one (1)
25 year.

26

27 SECTION 9. Arkansas Code § 5-65-208, regarding collisions and the
28 testing required following collisions, is amended to add an additional
29 subsection to read as follows:

30 (d)(1) If a person who is participating in a transdermal alcohol
31 monitoring program is found to have unlawfully driven and was involved in an
32 accident that results in the loss of human life or serious personal injury,
33 then the transdermal alcohol monitoring device shall be sent to the law
34 enforcement agency that is investigating the accident.

35 (2) The transdermal alcohol monitoring program shall fully
36 comply with the law enforcement agency that is investigating the accident.

1 (3) If necessary to preserve evidence or to protect the chain of
2 custody, the transdermal alcohol monitoring device and the reported output of
3 the transdermal alcohol monitoring device shall become the property of the
4 law enforcement agency.

5
6 SECTION 10. Arkansas Code § 5-65-402(a)(8)(C), regarding the surrender
7 of a driver's license or permit to the arresting officer, is amended to read
8 as follows:

9 (C) If the revocation, suspension, disqualification, or
10 denial is based upon a chemical test result indicating that the person was
11 intoxicated or impaired and a sworn report from a law enforcement officer,
12 the scope of the hearing shall also cover the issues as to whether:

13 (i) The person was advised that his privilege to
14 drive would be revoked, disqualified, suspended, or denied if the test result
15 reflected an alcohol concentration equal to or in excess of the amount by
16 weight of blood provided by law or the presence of other intoxicating
17 substances;

18 (ii) The breath, blood, ~~or~~ urine specimen, or other
19 bodily substance was obtained from the person within the established and
20 certified criteria of the Department of Health;

21 (iii) The testing procedures used were in accordance
22 with existing rules; and

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

26
27 SECTION 11. Arkansas Code § 5-65-402(c)(4)(B), regarding the surrender
28 of a driver's license or permit to the arresting officer, is amended to read
29 as follows:

30 (B) If the results of a chemical test of blood, breath, ~~or~~
31 urine, or other bodily substances are used as evidence in the suspension,
32 revocation, or disqualification of the person's privilege to drive, then the
33 *provisions of § 5-65-206 shall apply in the circuit court proceeding.*

34
35 SECTION 12. Sections 1 through 11 of this act are contingent upon the
36 approval by the National Highway Traffic Safety Administration of the

