

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 87th General Assembly
3 Regular Session, 2009

A Bill

SENATE BILL 217

4
5 By: Senator Altes
6
7

For An Act To Be Entitled

8
9 AN ACT TO PROVIDE THAT THE PRESENCE OF CERTAIN
10 CONTROLLED SUBSTANCES IN A PERSON'S BODY IS A
11 VIOLATION OF THE OMNIBUS DWI ACT OR THE UNDERAGE
12 DUI LAW; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO PROVIDE THAT THE PRESENCE OF CERTAIN
16 CONTROLLED SUBSTANCES IN A PERSON'S BODY
17 IS A VIOLATION OF THE OMNIBUS DWI ACT OR
18 THE UNDERAGE DUI LAW.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 5-65-102(1), concerning the definition of
24 "controlled substance", is amended to read as follows:

25 (1)(A) "Controlled substance" means a drug, a substance, or an
26 immediate precursor in Schedules I through VI.

27 (B) ~~The~~ Except as provided in § 5-65-103(c)(2), the fact
28 that any person charged with a violation of this act is or has been entitled
29 to use that drug or controlled substance under the laws of this state does
30 not constitute a defense against any charge of violating this act;
31

32 SECTION 2. Arkansas Code § 5-65-103 is amended to read as follows:

33 5-65-103. Unlawful acts.

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



1 (b) It is unlawful and punishable as provided in this act for any
 2 person to operate or be in actual physical control of a motor vehicle if at
 3 that time the alcohol concentration in the person's breath or blood was
 4 eight-hundredths (0.08) or more based upon the definition of breath, blood,
 5 and urine concentration in § 5-65-204.

6 (c)(1) It is unlawful and punishable as provided in this subchapter
 7 for any person to operate or be in actual physical control of a motor vehicle
 8 if at the time any amount of a controlled substance listed in Schedule I or
 9 Schedule II, including a metabolite or derivative of the controlled
 10 substance, is present within the person's body as measured in the person's
 11 blood, urine, or other bodily substance by the State Crime Laboratory under §
 12 5-65-206.

13 (2) It is an affirmative defense to a prosecution under
 14 subdivision (c)(1) of this section that the controlled substance in the
 15 person's blood, urine, or other bodily substance was:

16 (A) Lawfully prescribed or dispensed for the person by a
 17 health care professional with prescriptive authority; and

18 (B) Taken in accordance with the directions of the health
 19 care professional with prescriptive authority.

20
 21 SECTION 3. Arkansas Code § 5-65-104 is amended to read as follows:

22 5-65-104. Seizure, suspension, and revocation of license – Temporary
 23 permits – Ignition interlock restricted license.

24 (a)(1) At the time of arrest for operating or being in actual physical
 25 control of a motor vehicle while intoxicated, ~~or~~ while there was an alcohol
 26 concentration of eight-hundredths (0.08) or more in the person's breath or
 27 blood, or while there was any amount of a controlled substance listed in
 28 Schedule I or Schedule II, including a metabolite or derivative of the
 29 controlled substance, in the person's blood, urine, or other bodily
 30 substance, as provided in § 5-65-103, the arrested person shall immediately
 31 surrender his or her license, permit, or other evidence of driving privilege
 32 to the arresting law enforcement officer as provided in § 5-65-402.

33 (2) The Office of Driver Services or its designated official
 34 shall suspend or revoke the driving privilege of an arrested person or shall
 35 suspend any nonresident driving privilege of an arrested person, as provided
 36 in § 5-65-402. The suspension or revocation shall be based on the number of

1 previous offenses as follows:

2 (A) Suspension for:

3 (i) One hundred twenty (120) days for the first
 4 offense of operating or being in actual physical control of a motor vehicle
 5 while intoxicated or while there was an alcohol concentration of at least
 6 eight hundredths (0.08) but less than fifteen hundredths (0.15) by weight of
 7 alcohol in the person's blood or breath, § 5-65-103;

8 (ii) Suspension for six (6) months for the first
 9 offense of operating or being in actual physical control of a motor vehicle
 10 while intoxicated by the ingestion of or by the use of a controlled substance
 11 or while there was any amount of a controlled substance listed in Schedule I
 12 or Schedule II, including a metabolite or derivative of the controlled
 13 substance, in the person's blood, urine, or other bodily substance; and

14 (iii)(a) Suspension for one hundred eighty (180)
 15 days for the first offense of operating or being in actual physical control
 16 of a motor vehicle while intoxicated and while there was an alcohol
 17 concentration of fifteen hundredths (0.15) or more by weight of alcohol in
 18 the person's blood or breath.

19 (b) However, if the ~~office~~ Office of Driver
 20 Services allows the issuance of an ignition interlock restricted license
 21 under § 5-65-118, the ignition interlock restricted license shall be
 22 available immediately.

23 (c) The restricted driving permit provision of
 24 § 5-65-120 does not apply to this suspension;

25 (B)(i) Suspension for twenty-four (24) months for a second
 26 offense of operating or being in actual physical control of a motor vehicle
 27 while intoxicated, ~~or~~ while there was an alcohol concentration of eight
 28 hundredths (0.08) or more by weight of alcohol in the person's blood or
 29 breath, or while there was any amount of a controlled substance listed in
 30 Schedule I or Schedule II, including a metabolite or derivative of the
 31 controlled substance, in the person's blood, urine, or other bodily
 32 substance, § 5-65-103, within five (5) years of the first offense.

33 (ii) However, if the ~~office~~ Office of Driver
 34 Services allows the issuance of an ignition interlock restricted license
 35 under § 5-65-118, the suspension period for which no restricted license is
 36 available is a minimum of one (1) year;

1 (C)(i) Suspension for thirty (30) months for the third
2 offense of operating or being in actual physical control of a motor vehicle
3 while intoxicated, ~~or~~ while there was an alcohol concentration of eight
4 hundredths (0.08) or more by weight of alcohol in the person's blood or
5 breath, or while there was any amount of a controlled substance listed in
6 Schedule I or Schedule II, including a metabolite or derivative of the
7 controlled substance, in the person's blood, urine, or other bodily
8 substance, § 5-65-103, within five (5) years of the first offense.

9 (ii) However, if the ~~office~~ Office of Driver
10 Services allows the issuance of an ignition interlock restricted license
11 under § 5-65-118, the suspension period for which no restricted license is
12 available is a minimum of one (1) year; and

13 (D) Revocation for four (4) years, during which no
14 restricted permits may be issued, for the fourth or subsequent offense of
15 operating or being in actual physical control of a motor vehicle while
16 intoxicated, ~~or~~ while there was an alcohol concentration of eight hundredths
17 (0.08) or more by weight of alcohol in the person's blood or breath, or while
18 there was any amount of a controlled substance listed in Schedule I or
19 Schedule II, including a metabolite or derivative of the controlled
20 substance, in the person's blood, urine, or other bodily substance, § 5-65-
21 103, within five (5) years of the first offense.

22 (3) If a person is a resident who is convicted of driving
23 without a license or permit to operate a motor vehicle and the underlying
24 basis for the suspension, revocation, or restriction of the license was for a
25 violation of § 5-65-103, in addition to any other penalties provided for
26 under law, the ~~office~~ Office of Driver Services may restrict the offender to
27 only an ignition interlock restricted license for a period of one (1) year
28 prior to the reinstatement or reissuance of a license or permit after the
29 person would otherwise be eligible for reinstatement or reissuance of the
30 person's license.

31 (4) In order to determine the number of previous offenses to
32 consider when suspending or revoking the arrested person's driving
33 privileges, the ~~office~~ Office of Driver Services shall consider as a previous
34 offense any of the following that occurred within the five (5) years
35 immediately before the current offense:

36 (A) Any conviction for an offense of operating or being in

1 actual physical control of a motor vehicle while intoxicated, ~~or~~ while there
 2 was an alcohol concentration of eight-hundredths (0.08) or more in the
 3 person's breath or blood, or while there was any amount of a controlled
 4 substance listed in Schedule I or Schedule II, including a metabolite or
 5 derivative of the controlled substance, in the person's blood, urine, or
 6 other bodily substance that occurred:

7 (i) In Arkansas; or

8 (ii) In another state;

9 (B) Any suspension or revocation of driving privileges for
 10 an arrest for operating or being in actual physical control of a motor
 11 vehicle while intoxicated, ~~or~~ while there was an alcohol concentration of
 12 eight-hundredths (0.08) or more in the person's breath or blood, or while
 13 there was any amount of a controlled substance listed in Schedule I or
 14 Schedule II, including a metabolite or derivative of the controlled
 15 substance, in the person's blood, urine, or other bodily substance under § 5-
 16 65-103 when the person was not subsequently acquitted of the criminal
 17 charges; or

18 (C) Any conviction under § 5-76-102 for an offense of
 19 operating a motorboat on the waters of this state while intoxicated or while
 20 there was an alcohol concentration in the person's breath or blood of eight-
 21 hundredths (0.08) or more based upon the definition of breath, blood, and
 22 urine concentration in § 5-65-204 or refusing to submit to a chemical test
 23 under § 5-76-104 occurring on or after July 31, 2007, when the person was not
 24 subsequently acquitted of the criminal charges.

25 (b)(1)(A) Any person whose license is suspended or revoked ~~pursuant to~~
 26 under this section is required to complete an alcohol education program or an
 27 alcohol treatment program as approved by the Office of Alcohol and Drug Abuse
 28 Prevention unless the charges are dismissed or the person is acquitted of the
 29 charges upon which the suspension or revocation is based.

30 (B) If during the period of suspension or revocation under
 31 subdivision (b)(1)(A) of this section the person commits an additional
 32 violation of § 5-65-103, he or she is also required to complete an approved
 33 alcohol education program or alcohol treatment program for each additional
 34 violation, unless:

35 (i) The additional charges are dismissed; or

36 (ii) He or she is acquitted of the additional

1 charges.

2 (2) A person whose license is suspended or revoked ~~pursuant to~~
 3 under this section shall furnish proof of attendance at and completion of the
 4 alcohol education program or the alcohol treatment program required under
 5 subdivision (b)(1) of this section before reinstatement of his or her
 6 suspended or revoked driver's license or shall furnish proof of dismissal or
 7 acquittal of the charge on which the suspension or revocation is based.

8 (3) Even if a person has filed a de novo petition for review
 9 ~~pursuant to~~ under former subsection (c) of this section, the person is
 10 entitled to reinstatement of driving privileges upon complying with this
 11 subsection and is not required to postpone reinstatement until the
 12 disposition of the de novo review in circuit court has occurred.

13
 14 SECTION 4. Arkansas Code § 5-65-119 is amended to read as follows:

15 5-65-119. Distribution of fee.

16 (a) The Office of Driver Services shall charge a fee to be calculated
 17 as provided under subsection (b) of this section for reinstating a driving
 18 privilege suspended or revoked because of an arrest for operating or being in
 19 actual physical control of a motor vehicle while intoxicated, ~~or~~ while there
 20 was an alcohol concentration of eight-hundredths (0.08) or more in the
 21 person's breath or blood, or while there was any amount of a controlled
 22 substance listed in Schedule I or Schedule II, including a metabolite or
 23 derivative of the controlled substance, in the person's blood, urine, or
 24 other bodily substance, § 5-65-103, or refusing to submit to a chemical test
 25 of blood, breath, or urine for the purpose of determining the alcohol or
 26 controlled substance contents of the person's blood or breath, § 5-65-205,
 27 and the fee shall be distributed as follows:

28 (1) Seven percent (7%) of the revenues derived from this fee
 29 shall be deposited into the State Treasury as special revenues and credited
 30 to the Public Health Fund to be used exclusively for the Office of Alcohol
 31 Testing of the Division of Health of the Department of Health and Human
 32 Services;

33 (2) Thirty-three percent (33%) of the revenues derived from this
 34 fee shall be deposited as special revenues into the State Treasury into the
 35 Constitutional Officers Fund and the State Central Services Fund as a direct
 36 revenue to be used by the Office of Driver Services for use in supporting the

1 administrative driver's licensing revocation and sanctions programs provided
2 for in this subchapter;

3 (3) Ten percent (10%) of the revenues derived from this fee
4 shall be deposited into the State Treasury, and the Treasurer of State shall
5 credit them as general revenues to the various funds in the respective
6 amounts to each and to be used for the purposes as provided in the Revenue
7 Stabilization Law, § 19-5-101 et seq.; and

8 (4) Fifty percent (50%) of the revenues derived from this fee
9 shall be deposited into the State Treasury as special revenues to the credit
10 of the Department of Arkansas State Police Fund.

11 (b)(1)(A) The reinstatement fee shall be calculated by multiplying one
12 hundred fifty dollars (\$150) by each separate occurrence of an offense
13 resulting in an administrative suspension order under § 5-65-103 or § 5-65-
14 205 unless the administrative suspension order has been removed because:

15 (i) The person has been found not guilty of the
16 offense by a circuit court or district court; or

17 (ii) A de novo review of the administrative
18 suspension order by the Office of Driver Services results in the removal.

19 (B) The fee under this section is supplemental to and in
20 addition to any fee imposed under § 5-65-304, § 5-65-310, § 27-16-508, or §
21 27-16-808.

22 (2) As used in this subsection, "occurrence" means each separate
23 calendar date when an offense or offenses take place.

24

25 SECTION 5. Arkansas Code § 5-65-202 is amended to read as follows:

26 5-65-202. Implied consent.

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

33 (1) The person is arrested for any offense arising out of an act
34 alleged to have been committed while the person was driving while
35 intoxicated, ~~or~~ driving while there was an alcohol concentration of eight-
36 hundredths (0.08) or more in the person's breath or blood, or driving while

1 there was any amount of a controlled substance listed in Schedule I or
 2 Schedule II, including a metabolite or derivative of the controlled
 3 substance, in the person's blood, urine, or other bodily substance;

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

6 (3) At the time the person is arrested for driving while
 7 intoxicated, the law enforcement officer has reasonable cause to believe that
 8 the person, while operating or in actual physical control of a motor vehicle,
 9 is intoxicated, ~~or~~ has an alcohol concentration of eight-hundredths (0.08) or
 10 more in the person's breath or blood, or has any amount of a controlled
 11 substance listed in Schedule I or Schedule II, including a metabolite or
 12 derivative of the controlled substance, in the person's blood, urine, or
 13 other bodily substance.

14 (b) Any person who is dead, unconscious, or otherwise in a condition
 15 rendering him or her incapable of refusal is deemed not to have withdrawn the
 16 consent provided by subsection (a) of this section, and a chemical test may
 17 be administered subject to the provisions of § 5-65-203.

18
 19 SECTION 6. Arkansas Code § 5-65-203 is amended to read as follows:
 20 5-65-203. Administration.

21 (a) A chemical test shall be administered at the direction of a law
 22 enforcement officer having reasonable cause to believe the person to have
 23 been operating or in actual physical control of a motor vehicle while:

24 (1) ~~intoxicated or~~ Intoxicated;

25 (2) ~~while there~~ There was an alcohol concentration of eight-
 26 hundredths (0.08) or more in the person's breath or blood; or

27 (3) There was any amount of a controlled substance listed in
 28 Schedule I or Schedule II, including a metabolite or derivative of the
 29 controlled substance, present within the person's body as measured in the
 30 person's blood, urine, or other bodily substance.

31 (b)(1) The law enforcement agency by which the law enforcement officer
 32 is employed shall designate which chemical test shall be administered, and
 33 the law enforcement agency is responsible for paying any expense incurred in
 34 conducting the chemical test.

35 (2) If the person tested requests that an additional chemical
 36 test be made, as authorized in § 5-65-204(e), the cost of the additional

1 chemical test shall be borne by the person tested, unless the person is found
 2 not guilty, in which case the arresting law enforcement agency shall
 3 reimburse the person for the cost of the additional chemical test.

4 (3) If any person objects to the taking of his or her blood for
 5 a chemical test, as authorized in this chapter, the breath, ~~or~~ urine, or
 6 other bodily substance of the person may be used to make the chemical
 7 analysis.

8
 9 SECTION 7. Arkansas Code § 5-65-205 is amended to read as follows:
 10 5-65-205. Refusal to submit.

11 (a) If a person under arrest refuses upon the request of a law
 12 enforcement officer to submit to a chemical test designated by the law
 13 enforcement agency, as provided in § 5-65-202, no chemical test shall be
 14 given, and the person's motor vehicle operator's license shall be seized by
 15 the law enforcement officer, and the law enforcement officer shall
 16 immediately deliver to the person from whom the motor vehicle operator's
 17 license was seized a temporary driving permit, as provided by § 5-65-402.

18 (b) The Office of Driver Services shall then proceed to suspend or
 19 revoke the driving privilege of the arrested person, as provided in § 5-65-
 20 402. The suspension shall be as follows:

21 (1)(A)(i) Suspension for one hundred eighty (180) days for the
 22 first offense of refusing to submit to a chemical test of blood, breath, ~~or~~
 23 urine, or other bodily substance for the purpose of determining the alcohol
 24 or controlled substance content of the person's blood, ~~or~~ breath, urine or
 25 other bodily substance.

26 (ii) However, if the office allows the issuance of
 27 an ignition interlock restricted license under § 5-65-118, the ignition
 28 interlock restricted license shall be available immediately.

29 (iii) The restricted driving permit provision of §
 30 5-65-120 does not apply to this suspension.

31 (B) The office, in addition to any other penalty, shall
 32 deny to that person the issuance of an operator's license until that person
 33 has been issued an ignition interlock restricted license for a period of six
 34 (6) months;

35 (2) Suspension for two (2) years, during which no restricted
 36 permit may be issued, for a second offense of refusing to submit to a

1 chemical test of blood, breath, ~~or~~ urine, or other bodily substance for the
2 purposes of determining the alcohol or controlled substance content of the
3 person's blood, ~~or~~ breath, urine, or other bodily substance within five (5)
4 years of the first offense;

5 (3) Revocation for three (3) years, during which no restricted
6 permit may be issued, for the third offense of refusing to submit to a
7 chemical test of blood, breath, ~~or~~ urine, or other bodily substance for the
8 purpose of determining the alcohol or controlled substance content of the
9 person's blood, breath, urine, or other bodily substance within five (5)
10 years of the first offense; and

11 (4) Lifetime revocation, during which no restricted permit may
12 be issued, for the fourth or subsequent offense of refusing to submit to a
13 chemical test of blood, breath, ~~or~~ urine, or other bodily substance for the
14 purpose of determining the alcohol or controlled substance content of the
15 person's blood, ~~or~~ breath, urine, or other bodily substance within five (5)
16 years of the first offense.

17 (c) For any arrest or offense occurring before July 30, 1999, but that
18 has not reached a final disposition as to judgment in court:

19 (1) The offense shall be decided under the law in effect at the
20 time the offense occurred; and

21 (2) Any defendant is subject to the penalty provisions in effect
22 at that time and not under the provisions of this section.

23 (d) In order to determine the number of previous offenses to consider
24 when suspending or revoking the arrested person's driving privileges, the
25 office shall consider as a previous offense any of the following that
26 occurred within the five (5) years immediately before the current offense:

27 (1) Any conviction for an offense of refusing to submit to a
28 chemical test; and

29 (2) Any suspension or revocation of driving privileges for an
30 arrest for refusing to submit to a chemical test when the person was not
31 subsequently acquitted of the criminal charge.

32 (e) In addition to any other penalty provided for in this section:

33 (1) If the person is a resident without a license or permit to
34 operate a motor vehicle in this state, the office shall deny to that person
35 the issuance of a license or permit for a period of six (6) months for a
36 first offense; and

1 (2) For a second or subsequent offense by a resident without a
2 license or permit to operate a motor vehicle, the office shall deny to that
3 person the issuance of a license or permit for a period of one (1) year.
4

5 SECTION 8. Arkansas Code § 5-65-208 is amended to read as follows:

6 5-65-208. Collisions – Testing required.

7 (a) When the driver of a motor vehicle is involved in an accident
8 resulting in loss of human life or when there is reason to believe death may
9 result, and there exists probable cause to believe that the driver is guilty
10 of a violation of the state's law prohibiting driving while under the
11 influence, in addition to a penalty established elsewhere under state law, a
12 chemical test of the driver's blood, breath, ~~or~~ urine, or other bodily
13 substance shall be administered to the driver, even if fatally injured, to
14 determine the presence of and percentage of concentration of alcohol or
15 drugs, or both, in the driver's body.

16 (b)(1) The police officer who responds to the collision, the physician
17 in attendance, or any other person designated by state law who was present
18 when the death occurred, shall order the chemical test as soon as
19 practicable.

20 (2)(A) The medical personnel who conducted the chemical test
21 under subsection (a) of this section of the driver's blood, breath, ~~or~~ urine,
22 or other bodily substance shall forward the results of the chemical test to
23 the Department of Arkansas State Police, and the department shall establish
24 and maintain the results of the analyses required by subsection (a) of this
25 section in a database.

26 (B) The information in the database shall reflect the
27 number of fatal motor vehicle accidents in which:

28 (i) Alcohol was found to be a factor, with the
29 percentage of alcohol concentration involved;

30 (ii) Drugs were found to be a factor, listing the
31 class of drugs so found and their amounts; and

32 (iii) Both alcohol and drugs were found to be
33 factors, with the percentage of alcohol concentration involved, and listing
34 the class of drugs so found and their amounts.

35 (c) The results of the analyses required by this section shall be
36 reported to the department and may be used by state and local officials only

1 for statistical purposes that do not reveal the identity of the deceased
2 person.

3
4 SECTION 9. Arkansas Code § 5-65-302, concerning definitions used in
5 the Underage DUI Law, is amended to add an additional subdivision to read as
6 follows:

7 (3)(A) "Controlled substance" means a drug, a substance, or an
8 immediate precursor in Schedules I through VI.

9 (B) Except as provided in § 5-65-303(c)(2), the fact that
10 any person charged with a violation of this subchapter is or has been
11 entitled to use that drug or controlled substance under the laws of this
12 state does not constitute a defense against any charge of violating this
13 subchapter.

14
15 SECTION 10. Arkansas Code § 5-65-303 is amended to read as follows:
16 5-65-303. Conduct proscribed.

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

21 (b) It is unlawful and punishable as provided in this subchapter for
22 any underage person to operate or be in actual physical control of a motor
23 vehicle if at that time there was an alcohol concentration of two-hundredths
24 (0.02) but less than eight-hundredths (0.08) in the underage person's breath
25 or blood as determined by a chemical test of the underage person's blood or
26 breath or other bodily substance.

27 (c)(1) It is unlawful and punishable as provided in this subchapter
28 for any underage person to operate or be in actual physical control of a
29 motor vehicle if at the time any amount of a controlled substance listed in
30 Schedule I or Schedule II, including a metabolite or derivative of the
31 controlled substance, is present within the underage person's body as
32 measured in the underage person's blood, urine, or other bodily substance by
33 the State Crime Laboratory under § 5-65-206.

34 (2) It is an affirmative defense to a prosecution under
35 subdivision (c)(1) of this section that the controlled substance in the
36 underage person's blood, urine, or other bodily substance was:

1 (A) Lawfully prescribed or dispensed for the underage
 2 person by a health care professional with prescriptive authority; and

3 (B) Taken in accordance with the directions of the health
 4 care professional with prescriptive authority.

5
 6 SECTION 11. Arkansas Code § 5-65-309 is amended to read as follows:

7 5-65-309. Implied consent.

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

14 (1) The underage person is arrested for any offense arising out
 15 of an act alleged to have been committed while the underage person was
 16 driving while under the influence, ~~or~~ driving while there was an alcohol
 17 concentration of two-hundredths (0.02) but less than eight-hundredths (0.08)
 18 in his or her breath or blood, or driving while there was any amount of a
 19 controlled substance listed in Schedule I or Schedule II, including a
 20 metabolite or derivative of the controlled substance, present within the
 21 person's body as measured in the person's blood, urine, or other bodily
 22 substance;

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

25 (3) The underage person is stopped by a law enforcement officer
 26 who has reasonable cause to believe that the underage person, while operating
 27 or in actual physical control of a motor vehicle, is under the influence, ~~or~~
 28 has an alcohol concentration of two-hundredths (0.02) but less than eight-
 29 hundredths (0.08) in his or her breath or blood, or has any amount of a
 30 controlled substance listed in Schedule I or Schedule II, including a
 31 metabolite or derivative of the controlled substance, present within the
 32 person's body as measured in the person's blood, urine, or other bodily
 33 substance.

34 (b) Any underage person who is dead, unconscious, or otherwise in a
 35 condition rendering him or her incapable of refusal is deemed not to have
 36 withdrawn the consent provided by subsection (a) of this section, and a

1 chemical test may be administered subject to the provisions of § 5-65-203.

2
3 SECTION 12. Arkansas Code § 5-65-402(a)(4), concerning the sworn
4 report of the arresting law enforcement officer for certain offenses, is
5 amended to read as follows:

6 (4)(A) The office or its designated official shall suspend,
7 revoke, or disqualify the driving privilege of an arrested person or any
8 nonresident driving privilege of an arrested person when it receives a sworn
9 report from the arresting law enforcement officer that he or she had
10 reasonable grounds to believe the arrested person:

11 (i) Was under twenty-one (21) years of age and
12 purchased or was in possession of intoxicating liquor, wine, or beer in
13 violation of § 3-3-203(a);

14 (ii) Was under twenty-one (21) years of age and
15 attempted to purchase an alcoholic beverage or use a fraudulent or altered
16 personal identification document for the purpose of purchasing an alcoholic
17 beverage illegally or other material or substance restricted to adult
18 purchase or possession under existing law in violation of § 5-27-503(a)(3);
19 or

20 (iii) Had been operating or was in actual physical
21 control of a motor vehicle in violation of § 5-65-103, § 5-65-303, § 27-23-
22 114(a)(1), or § 27-23-114(a)(2) and the sworn report is accompanied by:

23 (a) A written chemical test report or a sworn
24 report that the arrested person was operating or in actual physical control
25 of a motor vehicle in violation of § 5-65-103, § 5-65-303, or § 27-23-114; or

26 (b) A sworn report that the arrested person
27 refused to submit to a chemical test of blood, breath, ~~or~~ urine, or other
28 bodily substance for the purpose of determining the alcohol or controlled
29 substance content of the arrested person's blood in violation of § 5-65-205,
30 § 5-65-310, or § 27-23-114(a)(5).

31 (B) The suspension, disqualification, or revocation shall
32 be based as follows:

33 (i) The driving privileges of any person violating §
34 5-65-103 shall be suspended or revoked as provided by § 5-65-104;

35 (ii) The driving privileges of any person violating
36 § 5-65-205(a) shall be suspended or revoked as provided by § 5-65-205(b);

1 (iii) The driving privileges of any person violating
 2 § 5-65-303 shall be suspended or revoked as provided by § 5-65-304(b);

3 (iv) The driving privileges of any person violating
 4 § 5-65-310(a) shall be suspended or revoked as provided by § 5-65-310(b);

5 (v) The driving privileges of any person violating §
 6 27-23-114(a)(1) or § 27-23-114(a)(2) shall be disqualified as provided by §
 7 27-23-112;

8 (vi) The driving privileges of any person violating
 9 § 27-23-114(a)(5) shall be disqualified as provided by § 27-23-112;

10 (vii) The driving privileges of any person violating
 11 § 3-3-203(a) shall be suspended, revoked, or disqualified as provided by § 3-
 12 3-203(c); and

13 (viii) The driving privileges of any person
 14 violating § 5-27-503(a)(3) shall be suspended, revoked, or disqualified as
 15 provided by § 5-27-503(d).

16
 17 SECTION 13. Arkansas Code § 5-65-402(a)(8), concerning the hearing
 18 relating to the surrender of a license, permit, or other evidence of driving
 19 privilege to a law enforcement officer at the time of arrest for certain
 20 offenses, is amended to read as follows:

21 (8)(A) The hearing shall be before the office or its authorized
 22 agent, ~~in the office~~ at the location of the Revenue Division of the
 23 Department of Finance and Administration nearest the county where the alleged
 24 event occurred for which the person was arrested, unless the office or its
 25 authorized agent and the arrested person agree otherwise to the hearing's
 26 being held in some other county or that the office or its authorized agent
 27 may schedule the hearing or any part of the hearing by telephone and conduct
 28 the hearing by telephone conference call.

29 (B) The hearing shall not be recorded.

30 (C) At the hearing, the burden of proof is on the state
 31 and the decision shall be based on a preponderance of the evidence.

32 (D) The scope of the hearing shall cover the issues of
 33 whether the arresting law enforcement officer had reasonable grounds to
 34 believe that the person:

35 (i) Had been operating or was in actual physical
 36 control of a motor vehicle or commercial motor vehicle while:

1 (a) Intoxicated or impaired;

2 (b) The person's blood alcohol concentration
3 measured by weight of alcohol in the person's blood was equal to or greater
4 than the blood alcohol concentration prohibited by § 5-65-103(b);

5 (c) The blood alcohol concentration of a
6 person under twenty-one (21) years of age was equal to or greater than the
7 blood alcohol concentration prohibited by § 5-65-303; ~~or~~

8 (d) The person's blood alcohol concentration
9 measured by weight of alcohol in the person's blood was equal to or greater
10 than the blood alcohol concentration prohibited by § 27-23-114; or

11 (e) There was any amount of a controlled
12 substance listed in Schedule I or Schedule II, including a metabolite or
13 derivative of the controlled substance, present within the person's body as
14 measured in the person's blood, urine, or other bodily substance;

15 (ii) Refused to submit to a chemical test of the
16 blood, breath, ~~or~~ urine, or other bodily substance for the purpose of
17 determining the alcohol or controlled substance contents of the person's
18 blood and whether the person was placed under arrest;

19 (iii) Was under twenty-one (21) years of age and
20 purchased or was in possession of any intoxicating liquor, wine, or beer; or

21 (iv) Was under twenty-one (21) years of age and
22 attempted to purchase an alcoholic beverage or use a fraudulent or altered
23 personal identification document for the purpose of purchasing an alcoholic
24 beverage illegally or other material or substance restricted to adult
25 purchase or possession under existing law.

26 (E)(i) The office or its agent at the hearing shall
27 consider any document submitted to the office by the arresting law
28 enforcement agency, document submitted by the arrested person, and the
29 statement of the arrested person.

30 (ii) The office shall not have the power to compel
31 the production of documents or the attendance of witnesses.

32 (F)(i) If the revocation, suspension, disqualification, or
33 denial is based upon a chemical test result indicating that the arrested
34 person was intoxicated, ~~or~~ impaired, or had any amount of a controlled
35 substance listed in Schedule I or Schedule II, including a metabolite or
36 derivative of the controlled substance, present within the person's body and

1 a sworn report from the arresting law enforcement officer, the scope of the
 2 hearing shall also cover the issues as to whether:

3 (a) The arrested person was advised that his
 4 or her privilege to drive would be revoked, disqualified, suspended, or
 5 denied if the chemical test result reflected an alcohol concentration equal
 6 to or in excess of the amount by weight of blood provided by law, ~~or~~ the
 7 presence of other intoxicating substances, or the presence of any amount of a
 8 controlled substance listed in Schedule I or Schedule II, including a
 9 metabolite or derivative of the controlled substance;

10 (b) The breath, blood, ~~or~~ urine, or other
 11 bodily substance specimen was obtained from the arrested person within the
 12 established and certified criteria of the Department of Health;

13 (c) The chemical testing procedure used was in
 14 accordance with existing rules; and

15 (d) The chemical test result in fact reflects
 16 an alcohol concentration, the presence of any amount of a controlled
 17 substance listed in Schedule I or Schedule II, including a metabolite or
 18 derivative of the controlled substance, the presence of other intoxicating
 19 substances, or a combination of alcohol concentration or other intoxicating
 20 substance.

21 (ii) If the revocation, suspension,
 22 disqualification, or denial is based upon the refusal of the arrested person
 23 to submit to a chemical test as provided in § 5-65-205, § 5-65-310, or § 27-
 24 23-114(a)(5), reflected in a sworn report by the arresting law enforcement
 25 officer, the scope of the hearing shall also include whether:

26 (a) The arrested person refused to submit to
 27 the chemical test; and

28 (b) The arrested person was informed that his
 29 or her privilege to drive would be revoked, disqualified, suspended, or
 30 denied if the arrested person refused to submit to the chemical test.

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