

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013

# A Bill

SENATE BILL 357

4  
5 By: Senator Files

## For An Act To Be Entitled

6  
7  
8 AN ACT PERMITTING ADDITIONAL CHEMICAL TESTS FOR  
9 DRIVING WHILE INTOXICATED; OPERATING A MOTORBOAT  
10 WHILE INTOXICATED; OPERATING OR NAVIGATING AN  
11 AIRCRAFT WHILE INTOXICATED; AND UNDERAGE DRIVING  
12 UNDER THE INFLUENCE; CONCERNING DRIVER'S LICENSES,  
13 COMMERCIAL DRIVER'S LICENSES, AND HUNTING LICENSES;  
14 AND FOR OTHER PURPOSES.

## Subtitle

15  
16  
17  
18 PERMITTING ADDITIONAL CHEMICAL TESTS FOR  
19 THE OFFENSES OF DRIVING WHILE INTOXICATED  
20 AND RELATED OFFENSES; AND CONCERNING  
21 DRIVER'S LICENSES, COMMERCIAL DRIVER'S  
22 LICENSES, AND HUNTING LICENSES.

23  
24  
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26  
27 SECTION 1. Arkansas Code § 5-10-105(a)(1)(B), concerning the offense  
28 of negligent homicide, is amended to read as follows:

29 (B)(i) If at that time there is an alcohol concentration  
30 of eight hundredths (0.08) or more in the person's breath or blood based upon  
31 the definition of ~~breath, blood, and urine~~ alcohol concentration in § 5-65-  
32 204, as determined by a chemical test of the person's blood, urine, breath,  
33 saliva, or other bodily substance.

34 (ii) The method of the chemical ~~analysis~~ test of the  
35 person's blood, urine, saliva, ~~or~~ breath, or other bodily substance shall be  
36 made in accordance with §§ 5-65-204 and 5-65-206; or



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

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

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

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

SECTION 3. Arkansas Code § 5-65-119(a), concerning a fee to reinstate a suspended or revoked driving privilege, is amended to read as follows:

(a) The Office of Driver Services shall charge a fee to be calculated as provided under subsection (b) of this section for reinstating a driving privilege suspended or revoked because of an arrest for operating or being in actual physical control of a motor vehicle while intoxicated or while there was an alcohol concentration of eight-hundredths (0.08) or more in the person’s breath or blood, § 5-65-103, or refusing to submit to a chemical test of blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance contents of the person’s blood or breath, § 5-65-205, and the fee shall be distributed as follows:

SECTION 4. Arkansas Code § 5-65-202(a), concerning Arkansas’s implied consent law, is amended to read as follows:

(a) Any person who operates a motor vehicle or is in actual physical control of a motor vehicle in this state is deemed to have given consent, subject to the provisions of § 5-65-203, to one (1) or more chemical tests of his or her blood, breath, saliva, or urine for the purpose of determining the alcohol or controlled substance content of his or her breath or blood if:

SECTION 5. Arkansas Code § 5-65-203(b)(3), concerning the administration of a chemical test, is amended to read as follows:

(3) If any person objects to the taking of his or her blood for a chemical test, as authorized in this chapter, the breath, saliva, or urine

1 of the person may be used ~~to make the chemical analysis~~ for the chemical  
 2 test.

3  
 4 SECTION 6. Arkansas Code § 5-65-204(a)-(d)(2), concerning alcohol  
 5 concentration and testing, are amended to read as follows:

6 5-65-204. Validity – Approved methods.

7 (a)(1) ~~“Alcohol~~ As used in this chapter, § 5-10-105, § 5-75-101 et  
 8 seq., and § 5-76-101 et seq., “alcohol concentration” means either:

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

11 (B) Grams of alcohol per two hundred ten liters (210 l) of  
 12 breath.

13 (2) The alcohol concentration of ~~other bodily substances~~ urine,  
 14 saliva, or other bodily substance is based upon grams of alcohol per one  
 15 hundred milliliters (100 ml) or one hundred cubic centimeters (100 cc) of  
 16 blood, the same being percent weight per volume or percent alcohol  
 17 concentration.

18 (b)(1)(A) A chemical ~~analysis test~~ made to determine the presence and  
 19 amount of alcohol in a person’s blood, urine, saliva, or breath to be  
 20 considered valid under this chapter shall be performed according to a method  
 21 approved by the Department of Health and State Board of Health or by an  
 22 individual possessing a valid certificate issued by the department for this  
 23 purpose.

24 (B) The department may:

25 (i) Approve satisfactory techniques or methods for  
 26 the chemical ~~analysis test~~;

27 (ii) Ascertain the qualifications and competence of  
 28 an individual to conduct the chemical ~~analysis test~~; and

29 (iii) Issue a certificate that is subject to  
 30 termination or revocation at the discretion of the department.

31 (C)(i) An auxiliary law enforcement officer appointed as a  
 32 reserve law enforcement officer and certified by the department in the  
 33 operation of an instrument used to determine the alcohol content of the  
 34 breath may operate an instrument used to determine the alcohol content of the  
 35 breath under this chapter.

36 (ii) The department shall promulgate rules to

1 implement subdivision (b)(1)(C)(i) of this section.

2 (2) However, a method of chemical analysis of a person's blood,  
3 urine, saliva, or other bodily substance made by the State Crime Laboratory  
4 for determining the presence of one (1) or more controlled substances or any  
5 intoxicant is exempt from approval by the ~~division~~ department or the State  
6 Board of Health.

7 ~~(e) To be considered valid under the provisions of this section, a~~  
8 ~~chemical analysis of a person's blood, urine, breath, or other bodily~~  
9 ~~substance for determining the alcohol content of the blood or breath shall be~~  
10 ~~performed according to a method approved by the board.~~

11 ~~(d)-(1)(c)(1)~~ When a person submits to a blood test at the request of a  
12 law enforcement officer under a provision of this section, blood may be drawn  
13 by a physician or a person acting under the direction and supervision of a  
14 physician.

15 (2) The limitation in subdivision ~~(d)-(1)(c)(1)~~ of this section  
16 does not apply to the taking of a breath, saliva, or urine specimen.

17  
18 SECTION 7. Arkansas Code § 5-65-205(b)(1)(A)(i), concerning the  
19 criminal offense of refusal to submit, is amended to read as follows:

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

24  
25 SECTION 8. Arkansas Code § 5-65-205(b)(2)-(4), concerning the criminal  
26 offense of refusal to submit, is amended to read as follows:

27 (2) Suspension for two (2) years, during which no restricted  
28 permit may be issued, for a second offense of refusing to submit to a  
29 chemical test of blood, breath, saliva, or urine for the ~~purposes~~ purpose of  
30 determining the alcohol concentration or controlled substance content of the  
31 person's blood or breath within five (5) years of the first offense;

32 (3) Revocation for three (3) years, during which no restricted  
33 permit may be issued, for the third offense of refusing to submit to a  
34 chemical test of blood, breath, saliva, or urine for the purpose of  
35 determining the alcohol concentration or controlled substance content of the  
36 person's blood or breath within five (5) years of the first offense; and

1           (4) Lifetime revocation, during which no restricted permit may  
 2 be issued, for the fourth or subsequent offense of refusing to submit to a  
 3 chemical test of blood, breath, saliva, or urine for the purpose of  
 4 determining the alcohol concentration or controlled substance content of the  
 5 person's blood or breath within five (5) years of the first offense.

6  
 7           SECTION 9. Arkansas Code § 5-65-208 is amended to read as follows:  
 8           5-65-208. Motor vehicle accidents – Testing required.

9           (a)~~(1)~~ When the driver of a motor vehicle is involved in an accident  
 10 resulting in loss of human life or when there is reason to believe death may  
 11 result, in addition to a penalty established elsewhere under state law, a  
 12 chemical test of the driver's blood, breath, ~~blood, breath,~~ saliva, or urine  
 13 shall be administered to the driver, even if fatally injured, to determine  
 14 the presence of and percentage of alcohol concentration ~~of alcohol~~ or the  
 15 presence of ~~drugs~~ a controlled substance, or both, in the driver's body.

16           (b)(1) The law enforcement agency that investigates an accident  
 17 described in subsection (a) of this section, the physician in attendance, or  
 18 any other person designated by state law shall order the chemical test as  
 19 soon as practicable.

20           (2)(A) The ~~medical personnel who conducted~~ person who conducts  
 21 the chemical test under subsection (a) of this section of the driver's blood,  
 22 breath, saliva, or urine 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~~ chemical tests required by  
 25 subsection (a) of this 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~~ Controlled substances were found to be a  
 31 factor, listing the class of ~~drugs~~ controlled substances so found and their  
 32 amounts; and

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

1 (c) The results of the ~~analyses~~ chemical tests required by this  
2 section shall be reported to the department and may be used by state and  
3 local officials for statistical purposes that do not reveal the identity of  
4 the deceased person or for any law enforcement purpose, including prosecution  
5 for the violation of any law.

6  
7 SECTION 10. Arkansas Code § 5-65-309(a), concerning the implied  
8 consent law, is amended to read as follows:

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

15  
16 SECTION 11. Arkansas Code § 5-65-402(a)(4)(A)(iii)(b), concerning the  
17 surrender of a license or permit to an arresting officer, is amended to read  
18 as follows:

19 (b) A sworn report that the arrested person  
20 refused to submit to a chemical test of blood, breath, saliva, or urine for  
21 the purpose of determining the alcohol concentration or controlled substance  
22 content of the arrested person's breath or blood in violation of § 5-65-205,  
23 § 5-65-310, or § 27-23-114(a)(5).

24  
25 SECTION 12. Arkansas Code § 5-65-402(a)(8)(D)(ii), concerning the  
26 surrender of a license or permit to an arresting officer, is amended to read  
27 as follows:

28 (ii) Refused to submit to a chemical test of the  
29 blood, breath, saliva, or urine for the purpose of determining the alcohol  
30 concentration or controlled substance contents of the person's breath or  
31 blood and whether the person was placed under arrest;

32  
33 SECTION 13. Arkansas Code § 5-65-402(a)(8)(F)(i)(b), concerning the  
34 surrender of a license or permit to an arresting officer, is amended to read  
35 as follows:

36 (b) The breath, blood, saliva, or urine

1 specimen was obtained from the arrested person within the established and  
2 certified criteria of the Department of Health;

3  
4 SECTION 14. Arkansas Code § 5-65-402(c)(4)(B), concerning the  
5 surrender of a license or permit to an arresting officer, is amended to read  
6 as follows:

7 (B) If the results of a chemical test of blood, breath,  
8 saliva, or urine are used as evidence in the suspension, revocation, or  
9 disqualification of the person’s privilege to drive, then the provisions of §  
10 5-65-206 shall apply in the circuit court proceeding.

11  
12 SECTION 15. Arkansas Code § 5-75-103(a), concerning Arkansas’s implied  
13 consent law, is amended to read as follows:

14 (a) Any person who operates or navigates any aircraft or is in actual  
15 physical control of any aircraft in this state is deemed to have given  
16 consent, subject to the provisions of § 5-75-104, to a chemical test of his  
17 or her blood, breath, saliva, or urine for the purpose of determining the  
18 alcohol concentration or controlled substance content of his or her breath or  
19 blood, if:

20  
21 SECTION 16. Arkansas Code § 5-75-104(b)(3), concerning the  
22 administration of a chemical test is amended to read as follows:

23 (3) If any person shall object to the taking of his or her blood  
24 for a chemical test, as authorized in this section, the breath, saliva, or  
25 urine of the person may be used ~~to make the analysis~~ for the chemical test.

26  
27 SECTION 17. Arkansas Code § 5-76-104(a)(1), concerning Arkansas’s  
28 implied consent law, is amended to read as follows:

29 (a)(1) Any person who operates a motorboat or is in actual physical  
30 control of a motorboat in this state is deemed to have given consent, subject  
31 to the provisions of subsection (c) of this section, to a chemical test of  
32 his or her blood, breath, saliva, or urine for the purpose of determining the  
33 alcohol concentration or controlled substance content of his or her breath or  
34 blood if:

35  
36 SECTION 18. Arkansas Code § 5-76-104(a)(3)(A), concerning Arkansas’s

1 implied consent law, is amended to read as follows:

2 (3)(A) When a person operating a motorboat is involved in  
 3 an accident resulting in loss of human life or when there is reason to  
 4 believe that death may result, a law enforcement officer shall request and  
 5 the person shall submit to a chemical test of the person’s blood, breath,  
 6 saliva, or urine for the purpose of determining the alcohol concentration or  
 7 controlled substance content of his or her breath or blood.

8

9 SECTION 19. Arkansas Code § 15-42-127 is amended to read as follows:  
 10 15-42-127. Implied consent.

11 (a)(1) Subject to the provisions of subsection (c) of this section,  
 12 any person who purchases a hunting license for use in the State of Arkansas  
 13 or engages in hunting privileges in this state shall be deemed to have given  
 14 consent to a chemical test or tests of his or her blood, breath, saliva, or  
 15 urine for the purpose of determining the alcohol concentration or controlled  
 16 substance content of his or her blood, breath, saliva, or urine if the person  
 17 is involved in a shooting accident while hunting.

18 (2) Any person who is dead, unconscious, or otherwise in a  
 19 condition rendering the person incapable of refusal to submit to a chemical  
 20 test of his or her blood, breath, saliva, or urine shall be deemed not to  
 21 have withdrawn the consent provided by subdivision (a)(1) of this section,  
 22 and the chemical test may be administered subject to the provisions of  
 23 subsection (c) of this section.

24 (3)(A) When a person who is hunting in this state is involved in  
 25 a shooting accident resulting in loss of human life or serious bodily injury,  
 26 a law enforcement officer shall request and the person or persons shall  
 27 submit to a chemical test or tests of the person’s blood, breath, saliva, or  
 28 urine for the purpose of determining the alcohol concentration or controlled  
 29 substance content of his or her blood, breath, saliva, or urine.

30 (B) The law enforcement officer shall cause the chemical  
 31 test or tests to be administered to the person or persons involved in the  
 32 shooting accident, including the person injured by the shooting and the  
 33 person who caused the injury by shooting another person.

34 (b) If a person who is hunting is involved in a shooting accident  
 35 resulting in loss of human life or serious bodily injury and the person  
 36 refuses to submit to a chemical test under this section upon the request of



1 the law enforcement officer, the person shall be guilty of a violation for  
 2 refusal to submit, and upon conviction:

3 (1) The court shall levy a fine of not less than two thousand  
 4 five hundred dollars (\$2,500) and not greater than five thousand dollars  
 5 (\$5,000); and

6 (2) The Arkansas State Game and Fish Commission may suspend or  
 7 revoke the person's hunting privileges or eligibility to purchase a hunting  
 8 license for life.

9 (c)(1) The chemical tests required under this section shall be  
 10 administered at the direction of a law enforcement officer having reasonable  
 11 cause to believe the person to have been hunting while under the influence of  
 12 alcohol or a controlled substance.

13 (2)(A) The law enforcement agency by which the officer referred  
 14 to in subdivision (c)(1) of this section is employed shall designate which  
 15 chemical tests authorized by this section shall be administered, and the law  
 16 enforcement agency shall be responsible for paying all expenses incurred in  
 17 conducting the chemical tests.

18 (B) If a person tested under this section requests that  
 19 additional chemical tests be made as authorized in subsection (g) of this  
 20 section, the cost of the additional chemical tests shall be ~~borne by~~ charged  
 21 to the person tested.

22 (C) If any person objects to the taking of his or her  
 23 blood for a chemical test as authorized by this section, the breath, saliva,  
 24 or urine of the person may be used ~~to make the analysis for the chemical~~  
 25 test.

26 (d)(1) To be considered valid under the provisions of this section,  
 27 ~~chemical analyses~~ a chemical test of a person's blood, breath, saliva, or  
 28 urine must be performed according to methods approved by the State Board of  
 29 Health or by an individual possessing a valid permit issued by the Department  
 30 of Health for that purpose.

31 (2) The department ~~is authorized to~~ may:

32 (A) Approve satisfactory techniques or methods for the  
 33 ~~chemical analysis~~ test of a person's blood, breath, saliva, or urine;

34 (B) Ascertain the qualifications and competence of  
 35 individuals to conduct the ~~analysis~~ chemical test; and

36 (C) Issue permits that shall be subject to termination or

1 revocation at the discretion of the department.

2 (e)(1) When a person submits to a blood test at the request of a law  
 3 enforcement officer, blood may be drawn by a physician or by a person acting  
 4 under the direction and supervision of a physician.

5 (2) The limitation of subdivision (e)(1) of this section shall  
 6 not apply to the taking of breath, saliva, or urine specimens.

7 (3)(A) No person, institution, or office in this state that  
 8 withdraws blood for the purpose of determining alcohol concentration or  
 9 controlled substance content of the blood at the request of a law enforcement  
 10 officer under this section shall be held liable for violating any of the  
 11 criminal laws of this state in connection with the withdrawal of blood.

12 (B) A physician, institution, or person acting under the  
 13 direction or supervision of a physician shall not be held liable in tort for  
 14 the withdrawal of the blood unless the person or institution is negligent in  
 15 connection with the withdrawal of blood or the blood is taken over the  
 16 objections of the subject.

17 (f) Upon the request of a person who submits to a chemical test ~~or~~  
 18 ~~tests~~ at the request of a law enforcement officer under this section, full  
 19 information concerning the chemical test ~~or tests~~ shall be made available to  
 20 the person or the person's attorney.

21 (g)(1) A person tested may have a physician, qualified technician,  
 22 registered nurse, or other qualified person of his or her own choice  
 23 administer a complete chemical test in addition to any chemical test  
 24 administered at the direction of a law enforcement officer.

25 (2) The law enforcement officer shall advise the person of this  
 26 right.

27 (3) If a law enforcement officer refuses or fails to advise the  
 28 person of this right and to permit and assist the person to obtain the  
 29 chemical test, then the results of the chemical test ~~or tests~~ taken at the  
 30 direction of the law enforcement officer under this section shall not be  
 31 admissible into evidence.

32  
 33 SECTION 20. Arkansas Code § 27-23-115(a), concerning Arkansas's  
 34 implied consent law for commercial motor vehicle drivers, is amended to read  
 35 as follows:

36 (a) A person who drives a commercial motor vehicle within this state

1 shall be deemed to have given consent, subject to the provisions of § 5-65-  
2 202, to take a test or tests of that person's blood, breath, saliva, or urine  
3 for the purpose of determining that person's blood alcohol concentration or  
4 the presence of other drugs.

5  
6 SECTION 21. Arkansas Code § 27-101-205(c), concerning procedures when  
7 there is a collision or accident involving a watercraft, is amended to read  
8 as follows:

9 (c) When a person operating a vessel is involved in a collision,  
10 accident, or other casualty resulting in loss of human life or when there is  
11 reason to believe death may result, or a law enforcement officer has  
12 reasonable cause to believe that the person while operating a vessel is  
13 intoxicated or under the influence of any narcotic drug, ~~barbituate~~  
14 barbiturate, or marijuana or while under any physical or mental disability so  
15 as to be incapable of operating the vessel safely under the prevailing  
16 circumstances, a law enforcement officer shall request and the person shall  
17 submit to a chemical test of the person's blood, breath, saliva, or urine in  
18 accordance with the provisions of § 5-76-104, even if the person is fatally  
19 injured, for the purpose of determining the alcohol concentration or  
20 controlled substance content of his or her blood, breath, saliva, or urine.

21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36