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4

As Engrossed: S2/10/15
A Bill

SENATE BILL 81

5 By: Senators Hickey, Bledsoe, Caldwell, E. Cheatham, A. Clark, J. Hendren, Hester, Irvin, B. Pierce,
6 Rapert, E. Williams

7 By: Representatives Hickerson, Ballinger, Broadaway, Deffenbaugh, Farrer, Jean, Petty, Pitsch, Talley
8

9 **For An Act To Be Entitled**

10 AN ACT COMBINING THE CRIMINAL OFFENSES OF DRIVING
11 WHILE INTOXICATED AND BOATING WHILE INTOXICATED;
12 CONCERNING THE OMNIBUS DWI ACT, THE UNDERAGE DUI LAW,
13 ADMINISTRATIVE SUSPENSIONS OF A PERSON'S DRIVER'S
14 LICENSE, AND VEHICLE REGISTRATION; AND FOR OTHER
15 PURPOSES.
16
17

18 **Subtitle**

19 COMBINING THE OFFENSES OF DRIVING WHILE
20 INTOXICATED AND BOATING WHILE
21 INTOXICATED; CONCERNING THE OMNIBUS DWI
22 ACT, THE UNDERAGE DUI LAW, SUSPENSIONS OF
23 A PERSON'S DRIVER'S LICENSE, AND VEHICLE
24 REGISTRATION.
25
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 5-4-104(e)(1)(A)(iv), concerning suspension
30 of imposition of sentence and probation, is amended to read as follows:

31 (iv) Driving or boating while intoxicated, § 5-65-
32 103;
33

34 SECTION 2. Arkansas Code § 5-4-301(a)(1)(D), concerning offenses for
35 which suspension or probation is prohibited, is amended to read as follows:

36 (D) Driving or boating while intoxicated, § 5-65-103;



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SECTION 3. Arkansas Code § 5-4-322(b), concerning a fine or probation fee, is amended to read as follows:

(b)(1) This section regarding probation and probation fees does not apply when the defendant is charged with violating the Omnibus DWI or BWI Act, § 5-65-101 et seq., or the Underage DUI or BUI Law, § 5-65-301 et seq.

(2) When the defendant is charged with violating the Omnibus DWI or BWI Act, § 5-65-101 et seq., the district court ~~or city court~~ may require the defendant to pay a public service work supervisory fee in an amount to be established by it if the district court ~~or city court~~ orders public service in lieu of jail ~~pursuant to~~ under § 5-65-111.

(3) When the defendant is charged with violating the Underage DUI or BUI Law, § 5-65-301 et seq., the district court ~~or city court~~ may require the defendant to pay a public service work supervisory fee in an amount to be established by it for any public service work ordered by the district court ~~or city court~~.

SECTION 4. Arkansas Code § 5-4-801(2)(H), concerning the definition of "eligible offender" for community service work, is amended to read as follows:

(H) Driving or boating while intoxicated, second or subsequent offense, § 5-65-103;

SECTION 5. Arkansas Code § 5-64-710(b)(1)(A), concerning the denial of driving privileges for a minor, is amended to read as follows:

(b)(1)(A) When a person who is ~~less than~~ under eighteen (18) years of age pleads guilty or nolo contendere to or is found guilty of driving or boating while intoxicated under the Omnibus DWI or BWI Act, § 5-65-101 et seq., ~~any~~ a criminal offense involving the illegal possession or use of a controlled substance, or any drug offense in this state or any other state, the court having jurisdiction of the matter, including any federal court, shall prepare and transmit to the Department of Finance and Administration an order of denial of driving privileges for the ~~minor~~ person under eighteen (18) years of age.

SECTION 6. Arkansas Code Title 5, Chapter 65 is amended to read as

1 follows:

2
3 CHAPTER 65

4 Driving or Boating While Intoxicated

5
6 Subchapter 1 – General Provisions

7
8 5-65-101. Omnibus DWI or BWI Act – Application.

9 This ~~act~~ chapter shall be known as the “Omnibus DWI or BWI Act”.

10
11 5-65-102. Definitions.

12 As used in this ~~act~~ chapter:

13 (1)(A) “Controlled substance” means a drug, substance, or
14 immediate precursor in Schedules I through VI.

15 (B) The fact that any person charged with a violation of
16 this ~~act~~ chapter is or has been entitled to use that drug or controlled
17 substance under the laws of this state does not constitute a defense against
18 any charge of violating this ~~act~~ chapter;

19 (2) “Ignition interlock device” means a device that connects a
20 motor vehicle ignition system to a breath-alcohol analyzer and prevents a
21 motor vehicle ignition from starting if a driver’s blood alcohol level
22 exceeds the calibration setting on the device;

23 (3) “Influence”, with respect to an underage driver, means being
24 controlled or affected by the ingestion of an alcoholic beverage or similar
25 intoxicant, or any combination of an alcoholic beverage or similar
26 intoxicant, to such a degree that the underage driver’s reactions, motor
27 skills, and judgment are altered or diminished, even to the slightest scale,
28 and the underage driver, due to inexperience and lack of skill, constitutes a
29 danger of physical injury or death to himself or herself or another person;

30 (4) “Intoxicated” means influenced or affected by the ingestion
31 of alcohol, a controlled substance, any intoxicant, or any combination of
32 alcohol, a controlled substance, or an intoxicant, to such a degree that the
33 driver’s reactions, motor skills, and judgment are substantially altered and
34 the driver, therefore, constitutes a clear and substantial danger of physical
35 injury or death to himself ~~and other motorists or pedestrians~~ or herself or
36 another person;

1 (5)(A) "Motorboat" means any vessel operated upon water and that
2 is propelled by machinery, whether or not the machinery is the principal
3 source of propulsion.

4 (B) "Motorboat" includes personal watercraft as defined in
5 § 27-101-103(10);

6 ~~(3)~~(6) "Sworn report" means a signed and written statement of a
7 certified law enforcement officer, under penalty of perjury, on a form
8 provided by the Director of the Department of Finance and Administration; ~~and~~

9 (7) "Underage" means any person who is under twenty-one (21)
10 years of age;

11 ~~(4)~~(8) "Victim impact statement" means a voluntary written or
12 oral statement of a victim, or relative of a victim, who has sustained
13 serious injury due to a violation of this ~~act,~~ chapter; and

14 (9) "Waters of this state" means any public waters within the
15 territorial limits of the State of Arkansas.

16
17 5-65-103. ~~Unlawful acts~~ Driving or boating while intoxicated.

18 (a)(1) It is unlawful and punishable as provided in this chapter for
19 ~~any~~ a person who is intoxicated to operate or be in actual physical control
20 of a motorboat on the waters of this state or a motor vehicle.

21 ~~(b)~~(2) It is unlawful and punishable as provided in this chapter
22 for ~~any~~ a person to operate or be in actual physical control of a motorboat
23 on the waters of this state or a motor vehicle if at that time the alcohol
24 concentration in the person's breath or blood was eight-hundredths (0.08) or
25 more based upon the definition of alcohol concentration in § 5-65-204.

26 (b) The consumption of alcohol or the possession of an open container
27 of alcohol aboard a motorboat does not in and of itself constitute probable
28 cause that the person committed the offense of boating while intoxicated.

29
30 5-65-104. Seizure, suspension, and revocation of license – Temporary
31 permits – Ignition interlock restricted license.

32 (a)(1) At the time of arrest for operating or being in actual physical
33 control of a motorboat on the waters of this state or a motor vehicle while
34 intoxicated or while there was an alcohol concentration of eight hundredths
35 (0.08) or more in the person's breath or blood, as provided in § 5-65-103,
36 the arrested person shall immediately surrender his or her driver's license,

1 driver's permit, or other evidence of driving privilege to the arresting law
2 enforcement officer as provided in § 5-65-402.

3 (2) The Office of Driver Services or its designated official
4 shall suspend or revoke the driving privilege of an arrested person or shall
5 suspend any nonresident driving privilege of an arrested person, as provided
6 in § 5-65-402. The suspension or revocation shall be based on the number of
7 previous offenses as follows:

8 (A) Suspension for:

9 (i)(a) Six (6) months for the first offense of
10 operating or being in actual physical control of a motorboat on the waters of
11 this state or a motor vehicle while intoxicated or while there was an alcohol
12 concentration of at least eight hundredths (0.08) by weight of alcohol in the
13 person's blood or breath, § 5-65-103.

14 (b) If the Office of Driver Services allows
15 the issuance of an ignition interlock restricted license under § 5-65-118,
16 the ignition interlock restricted license shall be available immediately.

17 (c) The restricted driving permit under § 5-
18 65-120 is not allowed for a suspension under this subdivision (a)(2)(A)(i);
19 and

20 (ii)(a) Suspension for six (6) months for the first
21 offense of operating or being in actual physical control of a motorboat on
22 the waters of this state or a motor vehicle while intoxicated by the
23 ingestion of or by the use of a controlled substance.

24 (b) The ignition interlock restricted license
25 provision of § 5-65-118 does not apply to a suspension under subdivision
26 (a)(2)(A)(ii)(a) of this section;

27 (B)(i) Suspension for twenty-four (24) months for a second
28 offense of operating or being in actual physical control of a motorboat on
29 the waters of this state or a motor vehicle while intoxicated or while there
30 was an alcohol concentration of eight hundredths (0.08) or more by weight of
31 alcohol in the person's blood or breath, § 5-65-103, within five (5) years of
32 the first offense.

33 (ii) However, if the office allows the issuance of
34 an ignition interlock restricted license under § 5-65-118, the restricted
35 license is available immediately.

36 (iii) The ignition interlock restricted license

1 provision of § 5-65-118 does not apply to the suspension under subdivisions
2 (a)(2)(B)(i) and (ii) of this section if the person is arrested for an
3 offense of operating or being in actual physical control of a motor vehicle
4 or motorboat while intoxicated by the ingestion of or by the use of a
5 controlled substance;

6 (C)(i) Suspension for thirty (30) months for the third
7 offense of operating or being in actual physical control of a motorboat on
8 the waters of this state or a motor vehicle while intoxicated or while there
9 was an alcohol concentration of eight hundredths (0.08) or more by weight of
10 alcohol in the person's blood or breath, § 5-65-103, within five (5) years of
11 the first offense.

12 (ii) However, if the office allows the issuance of
13 an ignition interlock restricted license under § 5-65-118, the restricted
14 license is available immediately.

15 (iii) The ignition interlock restricted license
16 provision of § 5-65-118 does not apply to the suspension under subdivisions
17 (a)(2)(C)(i) and (ii) if the person is arrested for an offense of operating
18 or being in actual physical control of a motorboat on the waters of this
19 state or a motor vehicle while intoxicated by the ingestion of or by the use
20 of a controlled substance; and

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

27 (3) If a person is a resident who is convicted of driving
28 without a license or permit to operate a motor vehicle or motorboat and the
29 underlying basis for the suspension, revocation, or restriction of the
30 license or permit was for a violation of § 5-65-103, in addition to any other
31 penalties provided for under law, the court may restrict the offender to an
32 ignition interlock restricted license for a period of one (1) year prior to
33 the reinstatement or reissuance of a license or permit after the person would
34 otherwise be eligible for reinstatement or reissuance of the person's license
35 or permit.

36 (4) In order to determine the number of previous offenses to

1 consider when suspending or revoking the arrested person's driving ~~privileges~~
2 privilege, the office shall consider as a previous offense any of the
3 following that occurred within the five (5) years immediately before the
4 current offense:

5 (A) ~~Any~~ A conviction for an offense of operating or being
6 in actual physical control of a motorboat on the waters of this state or a
7 motor vehicle while intoxicated or while there was an alcohol concentration
8 of eight hundredths (0.08) or more in the person's breath or blood, including
9 a violation of § 5-10-105(a)(1)(A) or (B), that occurred:

10 (i) In Arkansas; or

11 (ii) In another state; or

12 (B) ~~Any~~ A suspension or revocation of driving ~~privileges~~
13 privilege for an arrest for operating or being in actual physical control of
14 a motorboat on the waters of this state or a motor vehicle while intoxicated
15 or while there was an alcohol concentration of eight hundredths (0.08) or
16 more in the person's breath or blood under § 5-65-103 when the person was not
17 subsequently acquitted of the criminal 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~~ A person whose ~~license~~ driving privilege is suspended or
26 revoked ~~pursuant to~~ under this section is required to complete an alcohol
27 education program or an alcohol treatment program as approved by the ~~Office~~
28 ~~of Alcohol and Drug Abuse Prevention~~ Division of Behavioral Health Services
29 unless the charges are dismissed or the person is acquitted of the charges
30 upon which the suspension or revocation is based.

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

36 (i) The additional charges are dismissed; or

1 (ii) He or she is acquitted of the additional
2 charges.

3 (2) A person whose ~~license~~ driving privilege is suspended or
4 revoked ~~pursuant to~~ under this section shall furnish proof of:

5 (A) ~~attendance~~ Attendance at and completion of the alcohol
6 education program or the alcohol treatment program required under subdivision
7 (b)(1) of this section before reinstatement of his or her suspended or
8 revoked ~~driver's license~~ driving privilege; or ~~shall furnish proof of~~

9 (B) ~~dismissal~~ Dismissal or acquittal of the charge on
10 which the suspension or revocation is based.

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

16
17 5-65-105. Operation of motor vehicle during period of license
18 suspension or revocation.

19 ~~Any~~ A person whose driving privilege ~~to operate a motor vehicle~~ has
20 been suspended or revoked under ~~a provision of this act~~ chapter who operates
21 a motor vehicle in this state during the period of the suspension or
22 revocation upon conviction is guilty of an unclassified misdemeanor and:

23 (1) ~~shall~~ Shall be imprisoned for ten (10) days; and

24 (2) ~~may~~ May be assessed a fine of not more than one thousand
25 dollars (\$1,000).

26
27 5-65-106. Impoundment of license plate.

28 (a) When ~~any~~ a law enforcement officer arrests a person for operating
29 a motor vehicle while that person's ~~operator's license or permit~~ driving
30 privilege has been suspended or revoked under the laws of any state due to
31 the ~~person~~ person's having previously been found guilty or having pleaded
32 guilty or nolo contendere to violating § 5-65-103, and if the motor vehicle
33 operated by the person is owned in whole or part by the person, the motor
34 vehicle license plate shall be impounded by the law enforcement officer for
35 no less than ninety (90) days.

36 (b) If the court determines it is in the best interest of the

1 dependents of the ~~offender~~ person, the court shall instruct the Director of
 2 the Department of Finance and Administration to issue a temporary substitute
 3 motor vehicle license plate ~~to that~~ for the motor vehicle, and the temporary
 4 substitute motor vehicle license plate shall indicate that the original motor
 5 vehicle license plate has been impounded.

6
 7 5-65-107. Persons arrested to be tried on charges – No charges reduced
 8 – Filing citations.

9 ~~(a) A person arrested for violating § 5-65-103 shall be tried on those~~
 10 ~~charges or plead to those charges, and no such charges shall be reduced~~ A
 11 person arrested for violating § 5-65-103 shall be tried on the charge of
 12 violating § 5-65-103 or plead to the charge of violating § 5-65-103, and the
 13 charge of violating § 5-65-103 shall not be reduced or dismissed.

14 (b) Furthermore, when a law enforcement officer issues a citation for
 15 violating § 5-65-103, the citation shall be filed with the court as soon as
 16 possible.

17
 18 5-65-108. No probation prior to adjudication of guilt.

19 ~~(a) Section 16-93-301 et seq., allows a circuit court judge, district~~
 20 ~~court judge, or city court judge to place on probation a first offender who~~
 21 ~~pleads guilty or nolo contendere prior to an adjudication of guilt.~~

22 ~~(b) Upon successful completion of the probation terms, the circuit~~
 23 ~~court judge, district court judge, or city court judge is allowed to~~
 24 ~~discharge the accused without a court adjudication of guilt and expunge the~~
 25 ~~record.~~

26 ~~(c)(1) No (a) A circuit court judge, or district court judge, or city~~
 27 ~~court judge may not utilize the provisions of the first-time offender~~
 28 probation provisions under § 16-93-301 et seq. in an instance in which when
 29 the defendant is charged with violating § 5-65-103.

30 ~~(2)(b) Notwithstanding the provisions of § 5-4-301, § 5-4-322, or~~
 31 ~~subdivision (c)(1) of this section subsection (a) of this section, in~~
 32 ~~addition to the mandatory penalties required for a violation of § 5-65-103, a~~
 33 ~~circuit court judge, or district court judge, or city court judge may:~~

34 (1) utilize Utilize probationary supervision, in addition to the
 35 mandatory penalties required for a violation of § 5-65-103, solely for the
 36 purpose of monitoring compliance with his or her orders; and

1 (2) ~~require~~ Require an offender to pay a reasonable fee in an
2 amount to be established by the circuit court judge, or district court judge,
3 ~~or city court judge.~~

4
5 5-65-109. Presentencing report.

6 (a) The court shall immediately request and the Division of Behavioral
7 Health Services or its designee shall provide a presentence screening and
8 assessment report of the defendant ~~upon a plea of~~ who pleads guilty or nolo
9 ~~contendere to or a finding of guilt~~ or is found guilty of violating § 5-65-
10 103 or § 5-65-303.

11 (b)(1) The presentence screening and assessment report shall be
12 provided within thirty (30) days of the request, and the court shall not
13 pronounce sentence until ~~receipt of the~~ the court receives the presentence
14 screening and assessment report.

15 (2)(A) ~~After entry of a plea of guilty or nolo contendere or a~~
16 ~~finding of guilt and if the sentencing of the defendant~~ If the defendant's
17 sentencing is delayed by the defendant after he or she pleads guilty or nolo
18 contendere, or if she or she is found guilty, the clerk of the court shall
19 notify the defendant by first class mail sent to the defendant's last known
20 address that ~~the defendant~~ he or she has fifteen (15) days to appear and show
21 cause for failing to appear for sentencing.

22 (B) ~~After expiration of the fifteen (15) days, the~~ The
23 court may proceed with sentencing even in the absence of the defendant after
24 the expiration of the fifteen (15) days under subdivision (b)(2)(A) of this
25 section.

26 (c) The presentence screening and assessment report shall include, ~~but~~
27 ~~not be limited to,~~ without limitation:

28 (1) ~~the~~ The defendant's driving record;
29

30 (2) ~~an~~ An alcohol problem assessment;
31

32 (3) ~~a~~ A victim impact statement, ~~when~~ if applicable.

33 5-65-110. Record of violations and court actions – Abstract.

34 (a) ~~Any magistrate or judge of a~~ A court shall:

35 (1) ~~keep~~ Keep or cause to be kept a record of any violation of
36 this ~~act~~ chapter presented to that court; and

 (2) ~~shall keep~~ Keep a record of any official action by that

1 court in reference to the violation including, ~~but not limited to,~~ without
2 limitation:

- 3 (A) a A record of every finding of guilt;
- 4 (B) ~~plea~~ A record of every plea of guilty or nolo
5 contendere;
- 6 (C) ~~judgment~~ A judgment of acquittal; and
- 7 (D) ~~the~~ The amount of fine and jail sentence.

8 ~~(b)(1) Within thirty (30) days after sentencing a person who has been~~
9 ~~found guilty or pleaded guilty or nolo contendere on a charge of violating~~
10 ~~any provision of this act, the magistrate of the~~ The court or clerk of the
11 court shall prepare and immediately forward to the Office of Driver Services
12 an abstract of the court record ~~of the court covering~~ pertaining to the case
13 in which the person was found guilty or pleaded guilty or nolo contendere.

14 (2) and the The abstract shall be:

15 (A) Prepared within *five (5) business days* after the
16 defendant was found guilty or pleaded guilty or nolo contendere and then
17 sentenced;

18 (B) ~~eertified~~ Certified by the person ~~so~~ required to
19 prepare it to be true and correct; and

20 ~~(c) The abstract shall be made~~ (C) Made upon a form
21 furnished by the office and shall include:

22 ~~(1)(i)~~ (i) The name and address of the ~~party~~ person
23 charged;

24 ~~(2)(ii)~~ (ii) The number, if any, of the operator's or
25 chauffeur's license of the ~~party~~ person charged;

26 ~~(3)(iii)~~ (iii) The registration number of the vehicle or
27 motorboat involved;

28 ~~(4)(iv)~~ (iv) The date of the hearing;

29 ~~(5)(v)~~ (v) The defendant's plea;

30 ~~(6)(vi)~~ (vi) The judgment; and

31 ~~(7)(vii)~~ (vii) The amount of the fine and jail sentence,
32 ~~as the case may be.~~

33
34 5-65-111. ~~Prison terms~~ Sentencing – Periods of incarceration –
35 Exception.

36 (a)(1)(A) ~~Any~~ A person who pleads guilty or nolo contendere to or is

1 found guilty of violating § 5-65-103, for a first offense, is upon conviction
2 guilty of an unclassified misdemeanor and may be imprisoned for ~~no~~ not less
3 than twenty-four (24) hours ~~and~~ but no more than one (1) year.

4 (B) ~~However, the~~ The court may order public service ~~in~~
5 ~~lieu of jail, and in that instance, the court~~ instead of imprisonment and, if
6 the court orders public service, the court shall include the reasons for the
7 order of public service ~~in lieu~~ instead of ~~jail~~ imprisonment in the court's
8 written order or judgment.

9 (2)(A) ~~However, if~~ If a passenger under sixteen (16) years of
10 age was in the motor vehicle or motorboat at the time of the offense, a
11 person who pleads guilty or nolo contendere to or is found guilty of
12 violating § 5-65-103, ~~for a first offense,~~ is upon conviction guilty of an
13 unclassified misdemeanor and may be imprisoned for ~~no fewer~~ not less than
14 seven (7) days ~~and~~ but no more than one (1) year.

15 (B) (B) ~~However, the~~ The court may order public service
16 ~~in lieu of jail, and in that instance, the court~~ instead of imprisonment and,
17 if the court orders public service, the court shall include the reasons for
18 the order of public service ~~in lieu~~ instead of ~~jail~~ imprisonment in the
19 court's written order or judgment.

20 ~~(b) Any person who pleads guilty or nolo contendere to or is found~~
21 ~~guilty of violating § 5-65-103 or any other equivalent penal law of another~~
22 ~~state or foreign jurisdiction shall be imprisoned or shall be ordered to~~
23 ~~perform public service in lieu of jail as follows:~~

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

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

32 ~~(ii) If the court orders community service, the~~
33 ~~court shall clearly set forth in written findings the reasons for the order~~
34 ~~of community service;~~

35 ~~(2)(A) For no fewer than ninety (90) days but no more than one~~
36 ~~(1) year for the third offense occurring within five (5) years of the first~~

1 ~~offense or no fewer than ninety (90) days of community service.~~

2 ~~(B)(i) However, if a person under sixteen (16) years of~~
3 ~~age was in the vehicle at the time of the offense, for no fewer than one~~
4 ~~hundred twenty days (120) days but no more than one (1) year for the third~~
5 ~~offense occurring within five (5) years of the first offense or no fewer than~~
6 ~~one hundred twenty (120) days of community service.~~

7 ~~(ii) If the court orders community service, the~~
8 ~~court shall clearly set forth in written findings the reasons for the order~~
9 ~~of community service;~~

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

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

18 ~~(ii) If the court orders community service, the~~
19 ~~court shall clearly set forth in written findings the reasons for the order~~
20 ~~of community service; and~~

21 ~~(4)(A)(i) Except as provided in § 5-65-122, for at least two (2)~~
22 ~~years but no more than ten (10) years for the fifth or subsequent offense~~
23 ~~occurring within five (5) years of the first offense or not less than two (2)~~
24 ~~years of community service and is guilty of an unclassified felony.~~

25 ~~(ii) If the court orders community service, the~~
26 ~~court shall clearly set forth in written findings the reasons for the order~~
27 ~~of community service.~~

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

33 ~~(ii) If the court orders community service, the~~
34 ~~court shall clearly set forth in written findings the reasons for the order~~
35 ~~of community service.~~

36 (b)(1) A person who pleads guilty or nolo contendere to or is found

1 guilty of violating § 5-65-103 for a second offense occurring within five (5)
2 years of the first offense is upon conviction guilty of an unclassified
3 misdemeanor and may be imprisoned for not less than:

4 (A) Seven (7) days but no more than one (1) year; or

5 (B) Thirty (30) days but no more than one (1) year if a
6 passenger under sixteen (16) years of age was in the vehicle or motorboat at
7 the time of the offense.

8 (2) The court may order public service instead of imprisonment
9 in the following manner and if the court orders public service, the court
10 shall include the reasons for the order of public service instead of
11 imprisonment in its written order or judgment:

12 (A) Not less than thirty (30) days; or

13 (B) Not less than sixty (60) days if a passenger under
14 sixteen (16) years of age was in the motor vehicle or motorboat at the time
15 of the offense.

16 (c)(1) A person who pleads guilty or nolo contendere to or is found
17 guilty of violating § 5-65-103 for a third offense occurring within five (5)
18 years of the first offense is upon conviction guilty of an unclassified
19 misdemeanor and may be imprisoned for not less than:

20 (A) Ninety (90) days but no more than one (1) year; or

21 (B) One hundred twenty (120) days but no more than one (1)
22 year if a passenger under sixteen (16) years of age was in the motor vehicle
23 or motorboat at the time of the offense.

24 (2) The court may order public service instead of imprisonment
25 in the following manner and if the court orders public service, the court
26 shall include the reasons for the order of public service instead of
27 imprisonment in its written order or judgment:

28 (A) Not less than ninety (90) days; or

29 (B) Not less than one hundred twenty (120) days if a
30 passenger under sixteen (16) years of age was in the motor vehicle or
31 motorboat at the time of the offense.

32 (d)(1) A person who pleads guilty or nolo contendere to or is found
33 guilty of violating § 5-65-103 for a fourth offense occurring within five (5)
34 years of the first offense is upon conviction guilty of an unclassified
35 felony and may be imprisoned for not less than:

36 (A) One (1) year but no more than six (6) years; or

1 (B) Two (2) years but no more than six (6) years if a
2 passenger under sixteen (16) years of age was in the motor vehicle or
3 motorboat at the time of the offense.

4 (2) The court may order public service instead of imprisonment in
5 the following manner and if the court orders public service, the court shall
6 include the reasons for the order of public service instead of imprisonment
7 in its written order or judgment:

8 (A) Not less than one (1) year but no more than six (6)
9 years; or

10 (B) Not less than two (2) years but no more than six (6)
11 years if a passenger under sixteen (16) years of age was in the motor vehicle
12 or motorboat at the time of the offense.

13 (e)(1) A person who pleads guilty or nolo contendere to or is found
14 guilty of violating § 5-65-103 for a fifth or subsequent offense occurring
15 within five (5) years of the first offense is upon conviction guilty of an
16 unclassified felony and may be imprisoned for no fewer than:

17 (A) Two (2) years but no more than ten (10) years; or

18 (B) Three (3) years but no more than ten (10) years if a
19 passenger under sixteen (16) years of age was in the motor vehicle or
20 motorboat at the time of the offense.

21 (2) The court may order public service instead of imprisonment
22 in the following manner and if the court orders public service, the court
23 shall include the reasons for the order of public service instead of
24 imprisonment in its written order or judgment:

25 (A) Not less than two (2) years but no more than ten (10)
26 years; or

27 (B) Not less than *three* (3) years but no more than ten
28 (10) years if a passenger under sixteen (16) years of age was in the motor
29 vehicle or motorboat at the time of the offense.

30 (f)(1) A person who pleads guilty or nolo contendere to or is found
31 guilty of violating § 5-65-103 for a sixth or subsequent offense occurring
32 within ten (10) years of the first offense is upon conviction guilty of Class
33 B felony.

34 (2) The court may order public service instead of imprisonment
35 in the following manner and if the court orders public service, the court
36 shall include the reasons for the order of public service instead of

1 imprisonment in its written order or judgment:

2 (A) Not less than two (2) years but no more than ten (10)
3 years; or

4 (B) Not less than three (2) years but no more than ten
5 (10) years if a passenger under sixteen (16) years of age was in the motor
6 vehicle or motorboat at the time of the offense.

7 (g) A certified judgment of conviction of driving or boating while
8 intoxicated or other equivalent offense from another state or jurisdiction
9 may be used to enhance the penalties as a previous offense under this
10 section.

11 ~~(e)(h)~~ For any arrest or offense occurring before ~~July 30, 1999~~ the
12 effective date of this act, but that has not reached a final disposition as
13 to judgment in court, the offense shall be decided under the law in effect at
14 the time the offense occurred, and ~~any~~ the defendant is subject to the
15 penalty provisions in effect at that time and not under the provisions of
16 this section.

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

22 ~~(e)(j)(1)~~ A prior conviction for § 5-10-105(a)(1)(A) or (B) is
23 considered a previous offense for purposes of ~~subsection (b)~~ of this section.

24 (2) A prior conviction under the former § 5-76-102 is considered
25 a previous offense for purposes of this section only if the current offense
26 is operating a motorboat on the waters of this state while intoxicated.

27
28 5-65-112. Fines.

29 ~~Any~~ A person who pleads guilty or nolo contendere to or is found guilty
30 of violating § 5-65-103 shall be fined:

31 (1) No less than one hundred fifty dollars (\$150) and no more
32 than one thousand dollars (\$1,000) for the first offense;

33 (2) No less than four hundred dollars (\$400) and no more than
34 three thousand dollars (\$3,000) for the second offense occurring within five
35 (5) years of the first offense; and

36 (3) ~~Except as provided in § 5-65-122, no~~ No less than nine

1 hundred dollars (\$900) and no more than five thousand dollars (\$5,000) for
2 the third or subsequent offense occurring within five (5) years of the first
3 offense.

4
5 5-65-114. Inability to pay – Alternative public service work.

6 ~~If it is determined that any individual~~ a court finds that a person
7 against whom fines, fees, or court costs are levied for ~~driving while~~
8 ~~intoxicated or driving while impaired~~ violating this chapter is financially
9 unable to pay the fines, fees, or costs, ~~the court levying the fines, fees,~~
10 ~~or costs~~ the court shall order the ~~individual~~ person to perform public
11 service work ~~of such type and for such duration as deemed~~ as the court
12 determines is appropriate ~~by the court.~~

13
14 5-65-115. Alcohol treatment or education program – Fee.

15 (a)(1) ~~Any~~ A person whose driving privileges are suspended or revoked
16 for violating § 5-65-103, § 5-65-303, § 5-65-310, or § 3-3-203 is required to
17 complete an alcohol education program provided by a contractor with the
18 Division of Behavioral Health Services or an alcoholism treatment program
19 licensed by the Division of Behavioral Health Services.

20 (2)(A) The alcohol education program may collect a program fee
21 of up to one hundred twenty-five dollars (\$125) per enrollee to offset
22 program costs.

23 (B)(i) A person ordered to complete an alcohol education
24 program under this section may be required to pay, in addition to the costs
25 collected for education or treatment, a fee of up to twenty-five dollars
26 (\$25.00) to offset the additional costs associated with reporting
27 requirements under this subchapter.

28 (ii) The alcohol education program shall report
29 monthly to the Division of Behavioral Health Services all revenue derived
30 from this fee.

31 (b)(1) A person whose ~~license~~ driving privilege is suspended or
32 revoked for violating § 5-65-103 shall:

33 (A) Both:

34 (i) Furnish proof of attendance at and completion of
35 the alcoholism treatment program or alcohol education program required under
36 § 5-65-104(b)(1) before reinstatement of his or her suspended or revoked

1 ~~driver's license~~ driving privilege; and

2 (ii) Pay any fee for reinstatement required under §
3 5-65-119 or § 5-65-304; or

4 (B) Furnish proof of dismissal or acquittal of the charge
5 on which the suspension or revocation is based.

6 (2) An application for reinstatement shall be made to the Office
7 of Driver Services.

8 (c) Even if a person has filed a de novo petition for review ~~pursuant~~
9 ~~to~~ under § 5-65-402, ~~the person~~ he or she is entitled to reinstatement of
10 driving privileges upon complying with this section and is not required to
11 postpone reinstatement until the disposition of the de novo review in circuit
12 court has occurred.

13 (d)(1) A person whose driving privilege has been suspended or revoked
14 under this ~~act~~ chapter may enroll in an alcohol education program prior to
15 disposition of the ~~offense~~ case by the circuit court, or district court, ~~or~~
16 ~~city court~~.

17 (2) However, the person is not entitled to ~~any~~ a refund of a fee
18 paid if the charges are dismissed or if the person is acquitted ~~of the~~
19 ~~charges~~.

20 (e) ~~Each~~ An alcohol education program or alcoholism treatment program
21 operating under this chapter shall remit the fees imposed under this section
22 to the Division of Behavioral Health Services.

23
24 ~~5-65-116. Denial of driving privileges for minor—Restricted permit.~~

25 ~~(a) As used in this section, "drug offense" means the same as in § 5-~~
26 ~~64-710.~~

27 ~~(b)(1)(A) If a person who is less than eighteen (18) years of age~~
28 ~~pleads guilty or nolo contendere to or is found guilty of driving while~~
29 ~~intoxicated under § 5-65-101 et seq., or of any criminal offense involving~~
30 ~~the illegal possession or use of controlled substances, or of any drug~~
31 ~~offense, in this state or any other state, or is found by a juvenile court to~~
32 ~~have committed such an offense, the court having jurisdiction of the matter,~~
33 ~~including any federal court, shall prepare and transmit to the Department of~~
34 ~~Finance and Administration an order of denial of driving privileges for the~~
35 ~~minor.~~

36 ~~(B) A court within the State of Arkansas shall prepare and transmit~~

1 ~~any order under subdivision (b)(1)(A) of this section within twenty four (24)~~
2 ~~hours after the plea or finding to the department.~~

3 ~~(C) A court outside Arkansas having jurisdiction over any~~
4 ~~person holding driving privileges issued by the State of Arkansas shall~~
5 ~~prepare and transmit any order under subdivision (b)(1)(A) of this section~~
6 ~~pursuant to an agreement or arrangement entered into between that state and~~
7 ~~the Director of the Department of Finance and Administration.~~

8 ~~(D) An arrangement or agreement under subdivision~~
9 ~~(b)(1)(C) of this section may also provide for the forwarding by the~~
10 ~~department of an order issued by a court within this state to the state where~~
11 ~~the person holds driving privileges issued by that state.~~

12 ~~(2) For any person holding driving privileges issued by the~~
13 ~~State of Arkansas, a court within this state in a case of extreme and unusual~~
14 ~~hardship may provide in an order for the issuance of a restricted driving~~
15 ~~permit to allow driving to and from a place of employment or driving to and~~
16 ~~from school.~~

17 ~~(c) A penalty prescribed in this section or § 27-16-914 is in addition~~
18 ~~to any other penalty prescribed by law for an offense covered by this section~~
19 ~~and § 27-16-914.~~

20 ~~(d) In regard to any offense involving illegal possession under this~~
21 ~~section, it is a defense if the controlled substance is the property of an~~
22 ~~adult who owns the vehicle.~~

23
24 5-65-117. Seizure and sale of a motor vehicles vehicle or motorboat.

25 (a)(1)(A) ~~Any~~ A person who pleads guilty or nolo contendere to or is
26 *found guilty of violating § 5-65-103 for a fourth or subsequent offense*
27 *occurring within five (5) years of the first offense, ~~at the discretion of~~*
28 *the court,* may have his or her motor vehicle or motor boat seized at the
29 discretion of the court.

30 (B) A motor vehicle or motorboat seized under this section
31 shall be the motor vehicle or motorboat that the person was operating or was
32 in actual physical control of at the time he or she committed the fourth
33 offense.

34 (C) ~~If the motor vehicle is seized, the~~ The title to the
35 motor vehicle or motorboat is forfeited to the state if the motor vehicle or
36 motorboat is seized under this section.

1 (2)(A) ~~If ordered by the court, it~~ It is the duty of the county
2 sheriff of the county where the offense occurred to seize the motor vehicle
3 or motorboat if seizure is ordered by the court.

4 (B) The court may issue an order directing the county
5 sheriff to sell the seized motor vehicle or motorboat ~~seized~~ at a public
6 auction to the highest bidder within thirty (30) days from the date of
7 judgment.

8 (b)(1) The county sheriff shall advertise the motor vehicle or
9 motorboat for sale for a period of two (2) weeks prior to the date of sale by
10 at least one (1) insertion per week in a newspaper having a bona fide
11 circulation in the county.

12 (2) The notice shall include a brief description of the motor
13 vehicle or motorboat to be sold and the time, place, and terms of the sale.

14 (c) The proceeds of the sale of the seized motor vehicle or motorboat
15 shall be deposited into the county general fund.

16 (d)(1) ~~After the sheriff has made the sale and has turned over the~~
17 ~~proceeds of the sale to the county treasurer, the~~ The county sheriff shall
18 report his or her actions to the court in which the defendant was tried after
19 the county sheriff has made the sale and has turned over the proceeds of the
20 sale to the county treasurer.

21 (2) The report required by subdivision (d)(1) of this section
22 shall be filed with the court within sixty (60) days from the date of
23 judgment.

24 (e) A forfeiture of a ~~conveyance~~ motor vehicle or motor boat under
25 this section that is encumbered by a bona fide security interest is subject
26 to the interest of the secured party if the secured party neither had
27 knowledge of nor consented to the ~~act or omission~~ offense.

28
29 5-65-118. Additional penalties – Ignition interlock devices.

30 (a)(1)(A)(i) ~~In addition to any other penalty authorized for a~~
31 ~~violation of this chapter, upon an arrest of a person for violating § 5-65-~~
32 ~~103 for a first or second offense, the Office of Driver Services may restrict~~
33 ~~the person to operating only a motor vehicle that is equipped with a~~
34 ~~functioning ignition interlock device.~~ The Office of Driver Services may
35 place a restriction on a person who has violated § 5-65-103 for a first or
36 second offense that requires the person's motor vehicle to be equipped with a

1 functioning ignition interlock device in addition to any other penalty
2 authorized by this chapter.

3 (ii) The restriction may continue for a period of up
4 to one (1) year after the person's license driving privilege is no longer
5 suspended or restricted under ~~the provisions of~~ § 5-65-104.

6 (B)(i) ~~Upon a finding that a person is financially able to~~
7 ~~afford an ignition interlock device and upon an arrest for a violation of §~~
8 ~~5-65-103 for a third or subsequent offense, the office may restrict the~~
9 ~~offender to operate only a motor vehicle that is equipped with a functioning~~
10 ~~ignition interlock device for up to one (1) year after the person's license~~
11 ~~is no longer suspended or restricted under § 5-65-104. The office may place a~~
12 restriction on a person who has violated § 5-65-103 for a third or subsequent
13 offense that requires the person's motor vehicle to be equipped with a
14 functioning ignition interlock device in addition to any other penalty
15 authorized by this chapter and after finding that the person is financially
16 able to afford the ignition interlock device.

17 (ii) The restriction may continue for a period of up
18 to one (1) year after the person's driving privilege is no longer suspended
19 or restricted under § 5-65-104.

20 (2) ~~In accordance with the requirements under the provisions of~~
21 ~~§ 5-65-104, the~~ The office may issue an ignition interlock restricted license
22 to the person only after the person has verified installation of a
23 functioning ignition interlock device to the office in any motor vehicle the
24 person intends to operate, except for an exemption allowed under ~~subsection~~
25 ~~(g) of this section~~ § 5-65-123(f).

26 (3) The office shall establish:

27 (A) A specific calibration setting no lower than two
28 hundredths of one percent (0.02%) nor more than five hundredths of one
29 percent (0.05%) of alcohol in the person's blood at which the ignition
30 interlock device will prevent the motor vehicle's being started; and

31 (B) The period of time that the person is subject to the
32 restriction.

33 (4) ~~As used in this section, "ignition interlock device" means a~~
34 ~~device that connects a motor vehicle ignition system to a breath alcohol~~
35 ~~analyzer and prevents a motor vehicle ignition from starting if a driver's~~
36 ~~blood alcohol level exceeds the calibration setting on the device.~~

1 ~~Upon restricting the offender to the use of an ignition interlock~~
2 ~~device, the~~ The office shall do the following after restricting a person's
3 driving by requiring the use of an ignition interlock device:

4 (1)(A) State on the record the requirement for and the period of
5 use of the ignition interlock device.

6 (B) However, if the office restricts the ~~offender~~ person
7 ~~to the use of~~ using an ignition interlock device in conjunction with the
8 issuance of an ignition interlock restricted license under ~~a provision of~~ §
9 5-65-104, the ~~period of requirement of use of~~ time the person is required to
10 use the ignition interlock device shall be at least the ~~remaining~~ time period
11 ~~of~~ remaining on the original suspension imposed under § 5-65-104;

12 (2) Ensure that the records of the office reflect that the
13 person may not operate a motor vehicle that is not equipped with an ignition
14 interlock device;

15 (3) Attach or imprint a notation on the driver's license of ~~any~~
16 a person restricted under this section stating that the person may operate
17 ~~only~~ a motor vehicle only if it is equipped with an ignition interlock
18 device;

19 (4) Require that the person restricted under this section ~~to~~
20 show proof of installation of a certified ignition interlock device prior to
21 the issuance ~~by the office~~ of an ignition interlock restricted license by the
22 office under ~~a provision of~~ § 5-65-104;

23 (5) Require both proof of the installation of ~~the~~ an ignition
24 interlock device and periodic reporting by the person for verification of the
25 proper operation of the ignition interlock device;

26 (6) Require the person to have the ignition interlock device
27 serviced and monitored at least every sixty-seven (67) days for proper use
28 and accuracy by an entity approved by the Department of Health; and

29 (7)(A) Require the person to pay the reasonable cost of leasing
30 or buying and monitoring and maintaining the ignition interlock device.

31 (B) The office may establish a payment schedule for the
32 reasonable cost of leasing or buying and monitoring and maintaining the
33 ignition interlock device.

34 ~~(c)(1) A person restricted under this section to operate only a motor~~
35 ~~vehicle that is equipped with an ignition interlock device may not solicit or~~
36 ~~have another person start or attempt to start a motor vehicle equipped with~~

1 ~~an ignition interlock device.~~

2 ~~(2) Except as provided in subsection (g) of this section, a~~
3 ~~violation of this subsection is a Class A misdemeanor.~~

4 ~~(d)(1) A person may not start or attempt to start a motor vehicle~~
5 ~~equipped with an ignition interlock device for the purpose of providing an~~
6 ~~operable motor vehicle to a person who is restricted under this section to~~
7 ~~operate only a motor vehicle that is equipped with an ignition interlock~~
8 ~~device.~~

9 ~~(2) Except as provided in subsection (g) of this section, a~~
10 ~~violation of this subsection is a Class A misdemeanor.~~

11 ~~(e)(1) A person may not tamper with or in any way attempt to~~
12 ~~circumvent the operation of an ignition interlock device that has been~~
13 ~~installed in a motor vehicle.~~

14 ~~(2) Except as provided in subsection (g) of this section, a~~
15 ~~violation of this subsection is a Class A misdemeanor.~~

16 ~~(f)(1) A person may not knowingly provide a motor vehicle not equipped~~
17 ~~with a functioning ignition interlock device to another person who the~~
18 ~~provider of the vehicle knows or should know was restricted to operate only a~~
19 ~~motor vehicle equipped with an ignition interlock device.~~

20 ~~(2) Except as provided in subsection (g) of this section, a~~
21 ~~violation of this subsection is a Class A misdemeanor.~~

22 ~~(g)(1) Any person found to have violated subsections (e)-(f) of this~~
23 ~~section is guilty of a Class A misdemeanor.~~

24 ~~(2) However, the penalty provided in subdivision (g)(1) of this~~
25 ~~section does not apply if:~~

26 ~~(A) The starting of a motor vehicle or the request to~~
27 ~~start a motor vehicle equipped with an ignition interlock device is done for~~
28 ~~the purpose of safety or mechanical repair of the ignition interlock device~~
29 ~~or the motor vehicle and the person subject to the restriction does not~~
30 ~~operate the motor vehicle; or~~

31 ~~(B)(i) The court finds that a person is required to~~
32 ~~operate a motor vehicle in the course and scope of the person's employment~~
33 ~~and, if the motor vehicle is owned by the employer, that the person may~~
34 ~~operate that motor vehicle during regular working hours for the purposes of~~
35 ~~his or her employment without installation of an ignition interlock device if~~
36 ~~the employer has been notified of the driving privilege restriction and if~~

1 ~~proof of that notification is with the motor vehicle.~~

2 ~~(ii) However, the employment exemption in~~
3 ~~subdivision (g)(2)(B)(i) of this section does not apply if:~~

4 ~~(a) The business entity that owns the motor~~
5 ~~vehicle is owned or controlled by the person who is prohibited from operating~~
6 ~~a motor vehicle not equipped with an ignition interlock device; or~~

7 ~~(b) The driving privilege restriction is the~~
8 ~~result of the offender's second or subsequent offense.~~

9 ~~(h)(c)~~ If the person whose driving privilege is restricted under this
10 section cannot provide proof of installation of a functioning ignition
11 interlock device to the office under subsection (a) of this section, the
12 office shall not issue an ignition interlock restricted license as authorized
13 under this section.

14 ~~(i) In addition to any other penalty authorized under this section, if~~
15 ~~the (d) The office finds that a person has violated a condition under this~~
16 ~~section related to the proper use, circumvention, or maintenance of an~~
17 ~~ignition interlock device, the office shall revoke the ignition interlock~~
18 ~~restricted license and reinstate a license driving privilege suspension for~~
19 ~~the term of the original license driving privilege suspension if it finds~~
20 ~~that a person has violated § 5-65-123.~~

21 ~~(j) Any (e) A person whose license was who has had his or her driving~~
22 ~~privilege suspended or revoked under § 5-65-104 who would otherwise be~~
23 ~~eligible to obtain an ignition interlock restricted license may petition the~~
24 ~~office for a hearing and the office ~~or its designated official~~ may issue an~~
25 ~~ignition interlock restricted license as authorized under ~~the applicable~~~~
26 ~~~~provisions of §§ 5-65-104 and 5-65-205.~~~~

27 ~~(k)(1)(f)(1)~~ The department shall:

28 (A) Certify the ignition interlock devices for use in this
29 state;

30 (B) Approve the entities that install and monitor the
31 ignition interlock devices; and

32 (C) Adopt rules ~~and regulations~~ for the certification of
33 the ignition interlock devices and ignition interlock device installation.

34 (2) The rules ~~and regulations~~ shall require an ignition
35 interlock device, at a minimum, to:

36 (A) Not impede the safe operation of the motor vehicle;

- 1 (B) Minimize the opportunities to be bypassed;
- 2 (C) Work accurately and reliably in an unsupervised
- 3 environment;
- 4 (D) Properly and accurately measure the person's blood
- 5 alcohol levels;
- 6 (E) Minimize the inconvenience to a sober user; and
- 7 (F) Be manufactured by an entity that is responsible for
- 8 installation, user training, and servicing and maintenance of the ignition
- 9 interlock device, and that is capable of providing monitoring reports to the
- 10 office.

11 (3) The department shall develop a warning label to be affixed
12 to any ignition interlock device used in the state to warn any person of the
13 possible penalties for tampering with or attempting to circumvent the
14 ignition interlock device.

15 (4) The department shall:

16 (A) Publish and update a list of certified ignition
17 interlock device manufacturers and approved ignition interlock device
18 installers; and

19 (B) Periodically provide the list required by subdivision
20 ~~(k)(4)(A)(f)(4)(A)~~ of this section to the office.

21

22 5-65-119. Distribution of fee.

23 (a)~~(1)~~ The Office of Driver Services shall charge a fee to be
24 calculated ~~as provided~~ under subsection (b) of this section for reinstating a
25 driving privilege suspended or revoked because of an arrest ~~for operating or~~
26 ~~being in actual physical control of a motor vehicle while intoxicated or~~
27 ~~while there was an alcohol concentration of eight hundredths (0.08) or more~~
28 ~~in the person's breath or blood, § 5-65-103, or refusing to submit to a~~
29 ~~chemical test of blood, breath, saliva, or urine for the purpose of~~
30 ~~determining the alcohol concentration or controlled substance contents of the~~
31 ~~person's blood or breath, under § 5-65-205, and the fee shall be distributed~~
32 ~~as follows:~~

33 (2) The fee under subsection (a) of this section shall be
34 distributed as follows:

35 ~~(1)(A)~~ Seven percent (7%) of the revenues derived from
36 this fee shall be deposited into the State Treasury as special revenues and

1 credited to the Public Health Fund to be used exclusively for the Office of
2 Alcohol Testing of the Department of Health;

3 ~~(2)~~(B) Thirty-three percent (33%) of the revenues derived
4 from this fee shall be deposited as special revenues into the State Treasury
5 into the Constitutional Officers Fund and the State Central Services Fund as
6 a direct revenue to be used by the Office of Driver Services for use in
7 supporting the administrative driver's licensing revocation and sanctions
8 programs provided for in this subchapter;

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

14 ~~(4)~~(D) Fifty percent (50%) of the revenues derived from
15 this fee shall be deposited into the State Treasury as special revenues to
16 the credit of the Department of Arkansas State Police Fund.

17 (b)(1)(A) The ~~reinstatement~~ fee under subsection (a) of this section
18 shall be calculated by multiplying one hundred fifty dollars (\$150) by each
19 separate occurrence of an offense resulting in an administrative suspension
20 order under § 5-65-103 or § 5-65-205 unless the administrative suspension
21 order has been removed because:

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

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

26 (B) The fee under ~~this~~ subsection (a) of this section is
27 supplemental to and in addition to any fee imposed under § 5-65-304, § 5-65-
28 310, § 27-16-508, or § 27-16-808.

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

31
32 5-65-120. Restricted driving permit.

33 ~~(a) Following an administrative hearing for suspension or revocation~~
34 ~~of a driver's license as provided for in § 5-65-402, or upon a request of a~~
35 ~~person whose privilege to drive has been denied or suspended, the Office of~~
36 ~~Driver Services or its designated agent may modify the denial or suspension~~

1 ~~in a case of extreme and unusual hardship by the issuance of a restricted~~
2 ~~driving permit when, upon a review of the person's driving record for a time~~
3 ~~period of five (5) years prior to the current denial, revocation, or~~
4 ~~suspension of driving privilege or a driver's license, at the discretion of~~
5 ~~the office or its designated agent it is determined that:~~

6 ~~(1) The person:~~

7 ~~(A) Is not a multiple traffic law offender; or~~

8 ~~(B) Does not present a threat to the general public; and~~

9 ~~(2) No other adequate means of transportation exists for the~~
10 ~~person except to allow driving in any of the following situations:~~

11 ~~(A) To and from the person's place of employment;~~

12 ~~(B) In the course of the person's employment;~~

13 ~~(C) To and from an educational institution for the purpose~~
14 ~~of attending a class if the person is enrolled and regularly attending a~~
15 ~~class at the institution;~~

16 ~~(D) To and from an alcohol education program or alcoholism~~
17 ~~treatment program for drunk drivers; or~~

18 ~~(E) To and from a hospital or clinic for medical treatment~~
19 ~~or care for an illness, disease, or other medical condition of the person or~~
20 ~~a family member.~~

21 (a) The Office of Driver Services may modify the administrative denial
22 or suspension of a driver's license under § 5-65-402 after a hearing or upon
23 the request of a person whose driving privilege has been denied or suspended
24 by issuing a restricted driving permit if:

25 (1) The denial or suspension results in a case of extreme and
26 unusual hardship; and

27 (2) After reviewing the person's driving record for the five (5)
28 years previous to the denial, revocation, or suspension of his or her driving
29 privilege, the office determines that:

30 (A) The person:

31 (i) Is not a multiple traffic law offender; or

32 (ii) Does not present a threat to the general
33 public; and

34 (B) Other adequate means of transportation do not exist
35 for the person except to allow the person to drive in any of the following
36 situations:

1 (i) To and from the person's place of employment;
 2 (ii) In the course of the person's employment;
 3 (iii) To and from an educational institution for the
 4 purpose of attending a class if the person is enrolled and regularly
 5 attending a class at the institution;
 6 (iv) To and from an alcohol education program or
 7 alcoholism treatment program for drunk drivers; or
 8 (v) To and from a hospital or clinic for medical
 9 treatment or care for an illness, disease, or other medical condition of the
 10 person or a family member.

11 (b) The issuance of a restricted driving permit under this section is
 12 solely within the discretion of the office.

13 ~~(b)~~ (c) A restricted driving permit issued under this section
 14 shall state the specific times and circumstances under which driving is
 15 permitted.

16 ~~(e)~~ (d) A restricted driving permit issued under this section
 17 shall not be granted to any a person whose driving privilege was suspended or
 18 revoked for a second or subsequent offense of violating § 5-65-103, § 5-65-
 19 205, § 5-65-303, or § 5-65-310 a second or subsequent time within five (5)
 20 years of the first offense.

21
 22 5-65-121. Victim impact panel attendance – Fee.

23 (a)(1) A person whose driving privileges are suspended or revoked for
 24 violating § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, or § 3-3-203 shall
 25 attend a victim impact panel sponsored by an organization approved by the
 26 Division of Behavioral Health Services of the Department of Human Services.

27 (2) The organization selected by the ~~office~~ division shall be an
 28 organization that provides statewide services to victims of drunk driving.

29 (b)(1) The organization approved by the ~~office~~ division may collect a
 30 program fee of ten dollars (\$10.00) per enrollee to offset program costs to
 31 be remitted to the organization.

32 (2) The organization approved by the ~~office~~ division shall
 33 provide proof of attendance and completion to the person required to attend
 34 the victim impact panel upon completion of the victim impact panel.

35
 36 ~~5-65-122. Driving while intoxicated – Sixth or subsequent offense.~~

1 ~~(a)(1) A sixth or subsequent offense of violating § 5-65-103 occurring~~
2 ~~within ten (10) years of a prior offense is a Class B felony.~~

3 ~~(2)(A) A person may be sentenced under this section to two (2)~~
4 ~~years' community service in lieu of imprisonment or fine unless a person~~
5 ~~under sixteen (16) years of age was in the vehicle at the time of the~~
6 ~~offense, for which the person may be sentenced under this section to three~~
7 ~~(3) years' community service in lieu of imprisonment or fine.~~

8 ~~(B) If the court orders community service under~~
9 ~~subdivision (a)(2)(A) of this section, it shall clearly set forth in written~~
10 ~~findings the reasons for the order of community service.~~

11 ~~(b) The following are considered a prior offense for purposes of~~
12 ~~subsection (a) of this section:~~

13 ~~(1) A prior conviction for violation of a penal law of another~~
14 ~~state, federal, or foreign jurisdiction that is equivalent to § 5-65-103; or~~

15 ~~(2) A prior conviction for violation of § 5-10-105(a)(1)(A) or~~
16 ~~(B).~~

17
18 5-65-123. Offenses involving a motor vehicle equipped with an ignition
19 interlock device.

20 (a) A person commits the offense of unlawfully allowing another person
21 to start or attempt to start a motor vehicle equipped with an ignition
22 interlock device if he or she:

23 (1) Has had his or her driving privileges restricted under § 5-
24 65-118 and cannot operate or be in actual physical control of a motor vehicle
25 that is not equipped with an ignition interlock device;

26 (2) Knowingly solicits or allows a person to start or attempt to
27 start a motor vehicle equipped with an ignition interlock device; and

28 (3) Has the purpose to operate or be in actual physical control
29 of the motor vehicle.

30 (b) A person commits the offense of unlawfully starting or attempting
31 to start a motor vehicle equipped with an ignition interlock device for
32 another person if he or she knowingly starts or attempts to start a motor
33 vehicle equipped with an ignition interlock device for another person.

34 (c) A person commits the offense of tampering with an ignition
35 interlock device if he or she knowingly tampers with or attempts to
36 circumvent the operation of an ignition interlock device that has been

1 installed in a motor vehicle.

2 (d) A person commits the offense of providing a motor vehicle not
3 equipped with a functioning ignition interlock device to another person if he
4 or she:

5 (1) Knowingly provides a motor vehicle not equipped with a
6 functioning ignition interlock device to another person who is restricted
7 from operating or being in actual physical control of a motor vehicle that
8 does not have a functioning ignition interlock device; and

9 (2) Knows or should have known that the other person was
10 restricted from operating or being in actual physical control of a motor
11 vehicle not equipped with an ignition interlock device.

12 (e) A person who violates this section is upon conviction guilty of a
13 Class A misdemeanor.

14 (f) It is a defense to prosecution under this section if:

15 (1) A person starts or attempts to start a motor vehicle
16 equipped with an ignition interlock device for the purpose of safety or
17 mechanical repair of the ignition interlock device or the motor vehicle and
18 the person subject to the restriction does not operate the motor vehicle; or

19 (2)(A) The court has previously found that a person is required
20 to operate a motor vehicle in the course and scope of his or her employment
21 and, if the motor vehicle is owned by the employer but does not have a
22 functioning ignition interlock device installed, that the person may operate
23 that motor vehicle during regular working hours for the purposes of his or
24 her employment if:

25 (i) The employer has been notified of the driving
26 privilege restriction; and

27 (ii) Proof of that notification is with the motor
28 vehicle.

29 (B) However, the defense in subdivision (f)(2)(A) of this
30 section does not apply if:

31 (i) The business entity that owns the motor vehicle
32 is owned or controlled by the person who is prohibited from operating a motor
33 vehicle not equipped with an ignition interlock device; or

34 (ii) The driving privilege restriction is the result
35 of the offender's second or subsequent offense.

36

1 SECTION 7. Arkansas Code § 5-65-202 is amended to read as follows:
2 5-65-202. Implied consent.

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

10 (1) The person is arrested for any offense arising out of an act
11 alleged to have been committed while the person was driving or boating while
12 intoxicated or driving or boating while there was an alcohol concentration of
13 eight hundredths (0.08) or more in the person's breath or blood;

14 (2) The person is involved in an accident while operating or in
15 actual physical control of a motorboat on the waters of this state or a motor
16 vehicle; or

17 (3) At the time the person is arrested for driving or boating
18 while intoxicated, the law enforcement officer has reasonable cause to
19 believe that the person, while operating or in actual physical control of a
20 motorboat on the waters of this state or a motor vehicle, is intoxicated or
21 has an alcohol concentration of eight hundredths (0.08) or more in the
22 person's breath or blood.

23 (b) ~~Any~~ A person who is dead, unconscious, or otherwise in a condition
24 rendering him or her incapable of refusal is deemed not to have withdrawn the
25 consent provided by subsection (a) of this section, and one (1) or more
26 chemical tests may be administered subject to ~~the provisions of~~ § 5-65-203.

27
28 SECTION 8. Arkansas Code § 5-65-203 is amended to read as follows:
29 5-65-203. Administration of a chemical test.

30 (a) One (1) or more chemical tests authorized in § 5-65-202 shall be
31 administered at the direction of a law enforcement officer having reasonable
32 cause to believe the person to have been operating or in actual physical
33 control of a motorboat on the waters of this state or a motor vehicle while
34 intoxicated or while there was an alcohol concentration of eight hundredths
35 (0.08) or more in the person's breath or blood.

36 (b)(1) The law enforcement agency by which the law enforcement officer

1 is employed shall designate which chemical test or chemical tests shall be
 2 administered, and the law enforcement agency is responsible for paying any
 3 expense incurred in conducting the chemical test or chemical tests.

4 (2) If the person tested requests that additional chemical test
 5 or chemical tests be made, as authorized in § 5-65-204(e), the cost of the
 6 additional chemical test or chemical tests shall be borne by the person
 7 tested, unless the person is found not guilty, in which case the arresting
 8 law enforcement agency shall reimburse the person for the cost of the
 9 additional chemical test or chemical tests.

10 (3) If ~~any~~ a person objects to the taking of his or her blood
 11 for a chemical test, as authorized in this chapter, the breath, saliva, or
 12 urine of the person may be used for the chemical test.

13
 14 SECTION 9. Arkansas Code § 5-65-205 is amended to read as follows:

15 5-65-205. Refusal to submit to a chemical test.

16 (a)(1) If a person under arrest refuses upon the request of a law
 17 enforcement officer to submit to a chemical test designated by the law
 18 enforcement agency, as provided in § 5-65-202,:

19 (A) ~~no chemical~~ A chemical test shall not be given, ~~and;~~

20 (B) ~~the~~ The person's motor vehicle operator's license,
 21 permit, or other evidence of driving privilege shall be seized by the law
 22 enforcement officer, ~~;~~ and

23 (C) ~~the~~ The law enforcement officer shall immediately
 24 deliver to the person from whom the motor vehicle operator's license, permit,
 25 or other evidence of driving privilege was seized a temporary driving permit,
 26 ~~as provided by~~ under § 5-65-402.

27 (2) Refusal to submit to a chemical test under this subsection
 28 is a strict liability offense and is a violation ~~pursuant to § 5-1-108.~~

29 (b)(1) The Office of Driver Services shall ~~then proceed to~~ suspend or
 30 revoke the driving privilege of ~~the~~ an arrested person who refuses to submit
 31 to a chemical test under this subchapter, as provided in § 5-65-402. ~~The~~
 32 ~~suspension shall be as follows,.~~

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

1 ~~(ii)(a) However, if the office allows the issuance~~
2 ~~of an ignition interlock restricted license under § 5-65-118, the ignition~~
3 ~~interlock restricted license shall be available immediately.~~

4 ~~(b) The ignition interlock restricted license~~
5 ~~provision of § 5-65-118 does not apply to the suspension under subdivision~~
6 ~~(b)(1)(A)(i) of this section if the person is arrested for an offense of~~
7 ~~operating or being in actual physical control of a motor vehicle while~~
8 ~~intoxicated by the ingestion of or by the use of a controlled substance.~~

9 ~~(iii) The restricted driving permit provision of §~~
10 ~~5-65-120 does not apply to this suspension.~~

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

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

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

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

30 (2)(A) A person who refuses to submit to a chemical test of his
31 or her blood, breath, saliva, or urine for the purpose of determining the
32 alcohol or controlled substance content of the person's blood or breath shall
33 have his or her driving privileges:

34 (i) Suspended for one hundred eighty (180) days for
35 a first offense;

36 (ii) Suspended for two (2) years for a second

1 offense occurring within five (5) years of the first offense;

2 (iii) Revoked for three (3) years for a third
3 offense occurring within five (5) years of the first offense; and

4 (iv) Revoked for his or her lifetime for a fourth
5 offense occurring within five (5) years of the first offense.

6 (B) The office may issue an ignition interlock restricted
7 license under § 5-65-118 immediately, but only:

8 (i) To a person who is arrested for a first offense
9 under this section; and

10 (ii) When the person is arrested for operating or
11 being in actual physical control of a motor vehicle or motorboat while
12 intoxicated by the ingestion of alcohol.

13 (C) The restricted driving permit provision of § 5-65-120
14 does not apply to a suspension for a first offense under this section.

15 ~~(e) — [Repealed.]~~

16 ~~(d)(c) In order to determine the number of previous offenses to~~
17 ~~consider when suspending or revoking the arrested person's driving~~
18 ~~privileges, the The office shall consider as a previous offense any of the~~
19 ~~following that occurred within the five (5) years immediately before the~~
20 ~~current offense a previous offense for the purposes of enhancing the~~
21 ~~administrative penalty under this section:~~

22 ~~(1) Any A conviction for an offense of refusing to submit to a~~
23 ~~chemical test; and~~

24 ~~(2) Any A suspension or revocation of driving privileges for an~~
25 ~~arrest for refusing to submit to a chemical test when the person was not~~
26 ~~subsequently acquitted of the criminal charge.~~

27 ~~(e) — In addition to any other penalty provided for in this section:~~

28 ~~(1) — If the person is a resident without a license or permit to~~
29 ~~operate a motor vehicle in this state, the office shall deny to that person~~
30 ~~the issuance of a license or permit for a period of six (6) months for a~~
31 ~~first offense; and~~

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

35 (d) The office shall deny the issuance of a license or permit to
36 operate a motor vehicle to a person who is a resident and who violates this

1 section but who does not have a license or permit to operate a motor vehicle,
2 in addition to any other penalty under this section, for the following
3 periods of time:

4 (1) Six (6) months for a first offense; and

5 (2) One (1) year for a second or subsequent offense.

6
7 SECTION 10. Arkansas Code § 5-65-206 is amended to read as follows:

8 5-65-206. Evidence in prosecution - Presumptions.

9 ~~(a) In any criminal prosecution of a person charged with the offense~~
10 ~~of driving while intoxicated, the amount of alcohol in the defendant's breath~~
11 ~~or blood at the time or within four (4) hours of the alleged offense, as~~
12 ~~shown by chemical analysis of the defendant's blood, urine, breath, or other~~
13 ~~bodily substance gives rise to the following:~~

14 ~~(1) If there was at that time an alcohol concentration of four~~
15 ~~hundredths (0.04) or less in the defendant's blood, urine, breath, or other~~
16 ~~bodily substance, it is presumed that the defendant was not under the~~
17 ~~influence of intoxicating liquor; and~~

18 ~~(2) If there was at the time an alcohol concentration in excess~~
19 ~~of four hundredths (0.04) but less than eight hundredths (0.08) by weight of~~
20 ~~alcohol in the defendant's blood, urine, breath, or other bodily substance,~~
21 ~~this fact does not give rise to any presumption that the defendant was or was~~
22 ~~not under the influence of intoxicating liquor, but this fact may be~~
23 ~~considered with other competent evidence in determining the guilt or~~
24 ~~innocence of the defendant.~~

25 (a)(1) It is presumed at the trial of a person who is charged with a
26 violation of § 5-65-103 that the person was not intoxicated if the alcohol
27 concentration of a person's blood, urine, breath, or other bodily substance
28 is four hundredths (0.04) or less by weight as shown by chemical analysis at
29 the time of or within four (4) hours after the alleged offense.

30 (2) A presumption does not exist if at the time of the alleged
31 offense the person has an alcohol concentration of more than four hundredths
32 (0.04) but less than eight hundredths (0.08) by weight of alcohol in the
33 defendant's blood, urine, breath, or other bodily substance, although this
34 fact may be considered with other competent evidence in determining the guilt
35 or innocence of the defendant.

36 (b) The provisions ~~in~~ of subsection (a) of this section shall not be

1 ~~construed as limiting~~ limit the introduction of ~~any~~ other relevant evidence
2 ~~bearing upon the question of~~ offered to show whether or not the defendant was
3 intoxicated.

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

6 (d)(1)~~(A)~~ Except as provided in subsection (e) of this section, a
7 record or report of a certification, rule, evidence analysis, or other
8 document pertaining to work performed by the Office of Alcohol Testing of the
9 Department of Health under the authority of this chapter shall be received as
10 competent evidence as to the matters contained in the record or report in a
11 court of this state, subject to the applicable rules of criminal procedure
12 when duly attested to by the Director of the Office of Alcohol Testing of the
13 Department of Health or his or her assistant, in the form of an original
14 signature or by certification of a copy.

15 ~~(B) A document described in subdivision (d)(1)(A) of this~~
16 ~~section is self-authenticating.~~

17 (2) ~~However, the~~ An instrument performing the chemical analysis
18 shall have been duly certified at least one (1) time in the last three (3)
19 months preceding arrest, and the operator of the instrument shall have been
20 properly trained and certified.

21 (3)~~(A)~~ ~~Nothing in this section is deemed to abrogate a~~
22 ~~defendant's right to confront the person who performs the calibration test or~~
23 ~~check on the instrument, the operator of the instrument, or a representative~~
24 ~~of the office~~ A person charged with violating § 5-65-103 has the right to
25 cross-examine or call as a witness:

26 (i) The person who calibrates the instrument
27 conducting a chemical analysis of the person's bodily substances;

28 (ii) The operator of the instrument conducting a
29 chemical analysis of the person's bodily substances; or

30 (iii) A representative of the office.

31 ~~(4)(B)(i) The testimony of the appropriate analyst or~~
32 ~~official may be compelled by the issuance of a proper subpoena by the party~~
33 ~~who wishes to call the appropriate analyst or official given ten (10) days~~
34 ~~prior to the date of hearing or trial, in which case the record or report is~~
35 ~~admissible through the analyst or official, who is subject to cross-~~
36 ~~examination by the defendant or his or her counsel.~~ The prosecuting attorney

1 or the defendant may compel the testimony of a person listed in subdivision
 2 (d)(3)(A) of this section by a subpoena issued to that person at least ten
 3 (10) days before the date of the hearing or trial.

4 (ii) The person whose testimony is compelled shall
 5 have with him or her the record or report at issue and the record or report
 6 is admissible at the hearing or trial.

7 ~~(e) When a chemical analysis of a defendant's blood, urine, or other~~
 8 ~~bodily substance is made by the State Crime Laboratory for the purpose of~~
 9 ~~ascertaining the presence of one (1) or more controlled substances or any~~
 10 ~~intoxicant, other than alcohol, in any criminal prosecution under § 5-65-103,~~
 11 ~~§ 5-65-303, or § 5-10-105, the provisions of § 12-12-313 govern the~~
 12 ~~admissibility of the chemical analysis into evidence rather than the~~
 13 ~~provisions of this section~~ The admissibility of a chemical analysis that
 14 determines the presence in a person's bodily substance of a controlled
 15 substance or other intoxicant that is not alcohol is governed by § 12-12-313
 16 when that chemical analysis is performed by the State Crime Laboratory and
 17 when the chemical analysis is being used in a criminal prosecution under § 5-
 18 65-103, § 5-65-303, or § 5-10-105.

19
 20 SECTION 11. Arkansas Code § 5-65-207 is amended to read as follows:

21 5-65-207. Alcohol testing devices.

22 (a)(1) ~~Any~~ An instrument used to determine the alcohol content of the
 23 breath for the purpose of determining if the person was operating a motorboat
 24 on the waters of this state or a motor vehicle while intoxicated or with an
 25 alcohol concentration of eight hundredths (0.08) or more shall be ~~so~~
 26 constructed so the analysis:

27 (A) that the analysis is made ~~that the analysis is made~~ Is made automatically when a
 28 sample of the person's breath is placed in the instrument~~;~~ and

29 (B) without any ~~without any~~ Does not require adjustment or other
 30 action ~~of~~ by the person administering the analysis.

31 (2) The instrument shall ~~be so constructed that the alcohol~~
 32 ~~content is shown by visible digital~~ digitally the alcohol content on
 33 the instrument itself and as well as on an automatic ~~readout~~ printout.

34 (b) ~~Any~~ A breath analysis made by or through the use of an instrument
 35 that does not conform to the requirements ~~prescribed in~~ of this section is
 36 inadmissible in ~~any~~ a criminal or civil proceeding.

1 (c)(1) The State Board of Health may adopt appropriate rules ~~and~~
2 ~~regulations~~ to carry out the intent ~~and purposes~~ of this section, ~~and~~.

3 (2) ~~only~~ Only instruments approved by the board as meeting the
4 requirements of this section and ~~regulations of the board~~ its own regulations
5 shall be used for making the breath analysis for determining alcohol
6 concentration.

7 ~~(2)(A)(3)(A)~~ The Department of Health ~~specifically~~ may limit by
8 its rules the types or models of testing devices that may be approved for use
9 ~~in Arkansas for the purposes set forth in~~ under this section.

10 (B) The approved types or models shall be specified by
11 manufacturer's name and model.

12 (d) ~~Any~~ A law enforcement agency that conducts alcohol testing shall
13 ~~maintain full compliance~~ comply with this section.

14
15 SECTION 12. Arkansas Code § 5-65-208 is amended to read as follows:

16 5-65-208. Motor vehicle and motorboat accidents – Testing required.

17 (a) When the driver of a motor vehicle or operator of a motorboat on
18 the waters of this state is involved in an accident resulting in loss of
19 human life or when there is reason to believe death may result, ~~in addition~~
20 ~~to a penalty established elsewhere under state law~~, a chemical test of the
21 driver's or operator's blood, breath, saliva, or urine shall be administered
22 to the driver or operator, even if he or she is fatally injured, to determine
23 the presence of and percentage of alcohol concentration or the presence of a
24 controlled substance, or both, in the driver's or operator's body.

25 (b)(1) ~~The law enforcement agency that investigates an accident~~
26 ~~described in subsection (a) of this section, the physician in attendance, or~~
27 ~~any other person designated by state law shall order the~~ A chemical test
28 under this section shall be ordered as soon as practicable by one (1) of the
29 following persons or agencies:

30 (A) The law enforcement agency investigating the accident;

31 (B) The physician in attendance; or

32 (C) Other person designated by state law.

33 (2)(A) The person who conducts the chemical test ~~under~~
34 ~~subsection (a) of this section~~ of the driver's or operator's blood, breath,
35 saliva, or urine under this section shall forward the results of the chemical
36 test to the Department of Arkansas State Police, and the department shall

1 establish and maintain the results of the chemical tests required by
2 subsection (a) of this section in a database.

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

5 (i) Alcohol was found to be a factor, ~~with~~ including
6 the percentage of alcohol concentration involved;

7 (ii) Controlled substances were found to be a
8 factor, ~~listing the class of controlled substances so found and their amounts~~
9 including a list of the controlled substances found, the specific class of
10 the controlled substance, and the amount; and

11 (iii) Both alcohol and a controlled ~~substances were~~
12 substance were found to be factors, ~~with~~ including the percentage of alcohol
13 concentration involved, ~~and listing the class of~~ as well as a list of the
14 controlled ~~substances so~~ substances found and ~~their amounts~~ the amount.

15 (c) The ~~results~~ result of the a chemical ~~tests~~ test required by this
16 section shall be reported to the department and may be used by state and
17 local officials for:

18 (1) ~~statistical~~ Statistical purposes that do not reveal the
19 identity of the deceased person; or

20 (2) ~~for any~~ Any law enforcement purpose, including prosecution
21 for the violation of any law.

22
23 SECTION 13. Arkansas Code Title 5, Chapter 65, Subchapter 3, is
24 amended to read as follows:

25
26 Subchapter 3 – Underage Driving or Boating Under the Influence Law

27
28 5-65-301. Title.

29 This subchapter may be known and cited as the “Underage Driving or
30 Boating Under the Influence Law” or the “Underage DUI or BUI Law”.

31
32 ~~5-65-302. Definitions.~~

33 ~~As used in this subchapter:~~

34 (1) ~~“Influence” means being controlled or affected by the~~
35 ~~ingestion of an alcoholic beverage or similar intoxicant, or any combination~~
36 ~~of an alcoholic beverage or similar intoxicant, to such a degree that the~~

1 ~~driver's reactions, motor skills, and judgment are altered or diminished,~~
2 ~~even to the slightest scale, and the underage driver, therefore, due to~~
3 ~~inexperience and lack of skill, constitutes a danger of physical injury or~~
4 ~~death to himself or herself and other motorists or pedestrians; and~~

5 ~~(2) "Underage" means any person who is under twenty one (21)~~
6 ~~years of age and therefore may not legally consume alcoholic beverages in~~
7 ~~Arkansas.~~

8
9 5-65-303. ~~Conduct proscribed~~ Driving or boating under the influence
10 while underage.

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

15 ~~(b) It is unlawful and punishable as provided in this subchapter for~~
16 ~~any underage person to operate or be in actual physical control of a motor~~
17 ~~vehicle if at that time there was an alcohol concentration of two hundredths~~
18 ~~(0.02) but less than eight hundredths (0.08) in the underage person's breath~~
19 ~~or blood as determined by a chemical test of the underage person's blood or~~
20 ~~breath or other bodily substance.~~

21 (a) A person commits the offense of driving or boating under the
22 influence while underage if he or she is underage and operates or is in
23 actual physical control of a motorboat on the waters of this state or a motor
24 vehicle while:

25 (1) Under the influence of an alcoholic beverage or similar
26 intoxicant; or

27 (2) At that time there was an alcohol concentration of two-
28 hundredths (0.02) but less than eight-hundredths (0.08) in his or her breath,
29 blood, urine, or saliva as determined by a chemical test.

30 (b) A violation of this section is an unclassified misdemeanor with
31 penalties as prescribed by this subchapter.

32
33 5-65-304. Seizure, suspension, and revocation of license – Temporary
34 permits.

35 (a) At the time of arrest for violating § 5-65-303, the arresting law
36 enforcement officer shall seize the ~~motor vehicle operator's license of the~~

1 ~~underage person arrested and~~ underage person's motor vehicle operator's
 2 license, permit, or other evidence of driving privilege and issue to the
 3 underage person a temporary driving permit as provided by § 5-65-402.

4 (b)(1) ~~The~~ As provided by § 5-65-402, the Office of Driver Services
 5 shall:

6 (A) ~~suspend~~ Suspend or revoke the driving privileges of
 7 the arrested underage person ~~under the provisions of § 5-65-402;~~ and

8 (B) ~~the arrested underage person shall have the same~~
 9 Provide the arrested underage person the right to hearing and judicial review
 10 ~~as provided under § 5-65-402.~~

11 (2) ~~The suspension or revocation shall be~~ office shall suspend
 12 or revoke the underage person's driving privilege for violating § 5-65-303 as
 13 follows:

14 (A) ~~Suspension~~ Suspend the driving privilege for ninety
 15 (90) days for ~~the~~ a first offense ~~of violating § 5-65-303;~~

16 (B) ~~Suspension~~ Suspend the driving privilege for one (1)
 17 year for ~~the~~ a second offense ~~of violating § 5-65-303~~ occurring while the
 18 person is underage; and

19 (C)(i) ~~Revocation for the~~ Revoke the driving privilege for
 20 a third or subsequent offense ~~of violating § 5-65-303~~ occurring while the
 21 person is underage.

22 (ii) ~~Revocation is~~ A revocation issued under
 23 subdivision (b)(2)(C) continues until the underage person reaches twenty-one
 24 (21) years of age or for a period of three (3) years, whichever is longer.

25 (c) ~~In order to determine the number of previous offenses to consider~~
 26 ~~when suspending or revoking the arrested underage person's driving~~
 27 ~~privileges, the office shall consider as a previous offense~~ Either of the
 28 following are considered a previous offense by the office under this section:

29 (1) ~~Any~~ A conviction for violating § 5-65-103 or § 5-65-303; and

30 (2) ~~Any~~ A suspension or revocation of driving privileges for an
 31 arrest for a violation of § 5-65-103 or § 5-65-303 when the person was not
 32 subsequently acquitted of the criminal charge.

33 ~~(d)(1)(A)(i) The office shall charge a fee to be calculated as~~
 34 ~~provided under subdivision (d)(2)(B) of this section for reinstating a~~
 35 ~~driver's license suspended because of a violation of § 5-65-303 or § 5-65-~~
 36 ~~310.~~

1 ~~(ii) Forty percent (40%) of the revenues derived~~
2 ~~from this fee shall be deposited into the State Treasury as special revenues~~
3 ~~and credited to the Public Health Fund to be used exclusively for the Blood~~
4 ~~Alcohol Program of the Department of Health.~~

5 ~~(B) The reinstatement fee is calculated by multiplying~~
6 ~~twenty five dollars (\$25.00) by each separate occurrence of an offenses~~
7 ~~resulting in an administrative suspension order under § 5-65-303 unless the~~
8 ~~administrative suspension order has been removed because:~~

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

11 ~~(ii) A de novo review of the administrative~~
12 ~~suspension order by the office results in the removal.~~

13 ~~(C) The fee under this section is supplemental to and in~~
14 ~~addition to any fee imposed under § 5-65-119, § 5-65-310, § 27-16-508, or §~~
15 ~~27-16-808.~~

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

18 (d)(1)(A) A driving privilege that is suspended under this section may
19 be reinstated by the office upon payment of a twenty-five dollars (\$25.00)
20 for each occurrence of an offense that resulted in an order of administrative
21 suspension under § 5-65-303.

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

24 (2) The fee under this subsection is not required when an
25 administrative suspension order has been removed because:

26 (A) The person has been found not guilty of the offense by
27 a circuit court or district court; or

28 (B) A de novo review of the administrative suspension
29 order by the office resulted in the removal.

30 (3) Forty percent (40%) of the revenues derived from the fee
31 under this subsection shall be deposited into the State Treasury as special
32 revenues and credited to the Public Health Fund to be used exclusively for
33 the Blood Alcohol Program of the Department of Health.

34 (4) The fee under this subsection is supplemental to and in
35 addition to any fee imposed under § 5-65-119, § 5-65-310, § 27-16-508, or §
36 27-16-808.

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5-65-305. Fines.

(a) ~~Any~~ A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-303 or § 5-65-310 shall be fined:

(1) ~~No~~ Not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500) for ~~the~~ a first offense;

(2) ~~No~~ Not less than two hundred dollars (\$200) and not more than one thousand dollars (\$1,000) for ~~the~~ a second offense ~~occurring underage~~; and

(3) ~~No~~ Not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000) for ~~the~~ a third or subsequent offense ~~occurring underage~~.

(b)(1) For the purpose of determining ~~an underage~~ a person's fine under this ~~subchapter section~~, ~~an underage person who has one (1) or more previous convictions or suspensions~~ a conviction or suspension for a violation of violating § 5-65-103 or § 5-65-205 ~~is deemed to have a conviction for a violation of this subchapter for each conviction for driving while intoxicated~~ may be considered a previous offense.

(2) However, a conviction or suspension for § 5-65-103 or § 5-65-205 is considered only one (1) previous offense if the conviction or suspension arose out of the same criminal offense.

5-65-306. Public service work.

(a) ~~Any underage~~ A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-303 or § 5-65-310 shall be ordered by the court to perform public service work ~~of the type and for the duration as deemed appropriate by~~ at the discretion of the court.

(b) The period of ~~community~~ public service work shall be for not less than:

(1) ~~No less than thirty~~ Thirty (30) days for a second offense of violating § 5-65-303; and

(2) ~~No less than sixty~~ Sixty (60) days for a third or subsequent offense of violating § 5-65-303.

5-65-307. Alcohol and driving education program.

(a)(1)(A) ~~Any~~ A person who has his or her driving privileges

1 suspended, revoked, or denied for violating § 3-3-203, § 5-65-310, or § 5-65-
2 303 is required to complete an alcohol and driving education program for
3 underage drivers as prescribed and approved by the Division of Behavioral
4 Health Services or an alcoholism treatment program licensed by the Division
5 of Behavioral Health Services, or both, in addition to any other penalty
6 provided in this chapter.

7 (B) ~~If during the period of suspension or revocation in~~
8 ~~subdivision (a)(1)(A) of this section the underage person commits an~~
9 ~~additional violation of § 3-3-203 or § 5-65-303, the underage~~ A person who
10 subsequently violates § 3-3-203 or § 5-65-303 while his or her driving
11 privileges are suspended or revoked for violating § 3-3-203 or § 5-65-303 is
12 also required to complete an approved alcohol and driving education program
13 or alcoholism treatment program for each additional violation.

14 (2) The Division of Behavioral Health Services shall approve
15 only those programs in alcohol and driving education that are targeted at the
16 underage driving group and are intended to intervene and prevent repeat
17 occurrences of driving under the influence or driving while intoxicated.

18 (3)(A)(i) The alcohol and driving education program may collect
19 a program fee of up to one hundred twenty-five dollars (\$125) per enrollee to
20 offset program costs.

21 (ii) ~~An underage~~ A person ordered to complete an
22 alcohol and driving education program or an alcoholism treatment program
23 under this section may be required to pay, ~~in addition to the costs collected~~
24 ~~for the program,~~ a fee of up to twenty-five dollars (\$25.00) to offset the
25 additional costs associated with reporting requirements under this subchapter
26 in addition to the costs collected for the program.

27 (B) An approved alcohol and driving education program
28 shall report monthly to the Division of Behavioral Health Services all
29 revenue derived from these fees.

30 (b) ~~Prior to reinstatement of a driver's license suspended or revoked~~
31 ~~under this subchapter, the driver~~ The person shall furnish proof of
32 attendance at and completion of the alcohol and driving education program or
33 alcoholism treatment program required under subdivision (a)(1) of this
34 section prior to reinstatement of his or her driving privilege.

35 (c) The Division of Behavioral Health Services may promulgate rules
36 reasonably necessary to carry out the purposes of this section regarding the

1 approval and monitoring of the alcohol and driving education programs.

2 (d)(1)(A) A person whose ~~license~~ driving privilege is suspended or
3 revoked for violating § 5-65-303 or § 5-65-310 shall:

4 (i) Both:

5 (a) Furnish proof of attendance at and
6 completion of the alcohol and driving education program or alcoholism
7 treatment program required under subdivision (a)(1) of this section and at a
8 victim impact panel as provided in § 5-65-121 before reinstatement of his or
9 her suspended or revoked ~~driver's license~~ driving privilege; and

10 (b) Pay any fee for reinstatement required
11 under § 5-65-119, § 5-65-304, or § 5-65-121; or

12 (ii) Furnish proof of dismissal or acquittal of the
13 charge on which the suspension or revocation is based.

14 (B) An application for reinstatement shall be made to the
15 Office of Driver Services.

16 (2) Even if a person has filed a de novo petition for review
17 ~~pursuant to~~ under § 5-65-402, the person is entitled to reinstatement of
18 driving privileges upon complying with this subsection and is not required to
19 postpone reinstatement until the disposition of the de novo review in circuit
20 court has occurred.

21 (3)(A) A person whose driving privilege is suspended under this
22 subchapter may enroll in an alcohol education program prior to disposition of
23 the offense by the circuit court, or district court, ~~or city court~~, but is
24 not entitled to ~~any~~ a refund of fees paid if the charges are dismissed or if
25 the person is acquitted of the charges.

26 (B) A person who enrolls in an alcohol education program
27 is not entitled to any refund of fees paid if the person is subsequently
28 acquitted.

29 (e) ~~Any~~ An alcohol and driving education program required by this
30 section shall remit the fees imposed under this section to the Division of
31 Behavioral Health Services.

32

33 5-65-308. No probation prior to adjudication of guilt.

34 ~~(a)(1) Section 16-93-301 et seq. allows a circuit court judge,~~
35 ~~district court judge, or city court judge to place on probation a first~~
36 ~~offender who plead guilty or nolo contendere prior to an adjudication of~~

1 ~~guilt, and upon successful completion of probation, the circuit court judge,~~
2 ~~district court judge, or city court judge may discharge the accused without a~~
3 ~~court adjudication of guilt and expunge the record.~~

4 ~~(2)(A) No circuit court judge, district court judge, or city~~
5 ~~court judge may utilize the provisions of § 16-93-301 et seq. in an instance~~
6 ~~in which an underage person is charged with violating § 5-65-303.~~

7 ~~(B) Notwithstanding the provisions of § 5-4-301, § 5-4-~~
8 ~~322, or subdivision (a)(2)(A) of this section, in addition to the mandatory~~
9 ~~penalties required for a violation of § 5-65-303 a circuit court judge,~~
10 ~~district court judge, or city court judge may utilize probationary~~
11 ~~supervision solely for the purpose of monitoring compliance with his or her~~
12 ~~orders and require an offender to pay a reasonable fee in an amount to be~~
13 ~~established by the circuit court judge, district court judge, or city court~~
14 ~~judge.~~

15 (a) A circuit court judge, or district court judge may not utilize the
16 first-time offender probation provisions under § 16-93-301 et seq. when the
17 defendant is charged with violating § 5-65-303.

18 (b) Notwithstanding the provisions of § 5-4-301, § 5-4-322, or this
19 section, a circuit court judge or district court judge may:

20 (1) Utilize probationary supervision, in addition to the
21 mandatory penalties required for a violation of § 5-65-303, solely for the
22 purpose of monitoring compliance with his or her orders; and

23 (2) Require a defendant to pay a reasonable fee in an amount to
24 be established by the circuit court judge or district court judge.

25 ~~(b) Any magistrate or judge of a court shall keep or cause to be kept~~
26 ~~a record of any violation of this subchapter presented to that court and~~
27 ~~shall keep a record of any official action by that court in reference to the~~
28 ~~violation of this subchapter, including, but not limited to, a record of any~~
29 ~~finding of guilt, plea of guilty or nolo contendere, or judgment of~~
30 ~~acquittal, and the amount of fine and other sentence.~~

31 (c) The court shall keep or cause to be kept a record of all official
32 actions that are the result of a violation of this subchapter, including
33 without limitation:

34 (1) The ultimate resolution of the case; and

35 (2) The sentence and fine, if applicable.

36 ~~(e) Within thirty (30) days after sentencing a person who has been~~

1 ~~found guilty or pleaded guilty or nolo contendere on a charge of violating~~
 2 ~~any provision of this subchapter, any magistrate of the~~

3 (d)(1) The court or clerk of the court shall prepare and immediately
 4 forward to the Office of Driver Services within *five (5) business days* after
 5 the sentencing of a person who has been found guilty or pleaded guilty or
 6 nolo contendere to, a violation of this subchapter, an abstract of the record
 7 ~~of the court covering the case in which the person was found guilty or~~
 8 ~~pleaded guilty or nolo contendere, and the abstract shall be certified by the~~
 9 ~~person so required to prepare it to be true and correct.~~

10 (2) The abstract shall be:

11 (A) Certified by the person required to prepare it to be
 12 true and correct; and

13 ~~(d) The abstract shall be made~~ (B) Made upon a form
 14 furnished by the office and shall include:

15 ~~(1)(i)~~ (i) The name and address of the ~~party~~ person
 16 charged;

17 ~~(2)(ii)~~ (ii) The number, if any, of the driver's license
 18 of the ~~party~~ person charged;

19 ~~(3)(iii)~~ (iii) The registration number of the motor
 20 vehicle or motorboat involved;

21 ~~(4)(iv)~~ (iv) The date of hearing;

22 ~~(5)(v)~~ (v) The plea;

23 ~~(6)(vi)~~ (vi) The judgment; and

24 ~~(7)(vii)~~ (vii) The amount of the fine and ~~other~~ sentence,
 25 ~~as the case may be.~~

26
 27 5-65-309. Implied consent.

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

35 (1) The underage person is arrested for any offense arising out
 36 of an act alleged to have been committed while the underage person was

1 driving or boating while under the influence or driving or boating while
 2 there was an alcohol concentration of two-hundredths (0.02) but less than
 3 eight-hundredths (0.08) in his or her breath, ~~or~~ blood, saliva, or urine;

4 (2) The underage person is involved in an accident while
 5 operating or in actual physical control of a motorboat on the waters of this
 6 state or a motor vehicle; or

7 (3) The underage person is stopped by a law enforcement officer
 8 who has reasonable cause to believe that the underage person, while operating
 9 or in actual physical control of a motorboat on the waters of this state or a
 10 motor vehicle, is under the influence or has an alcohol concentration of two-
 11 hundredths (0.02) but less than eight-hundredths (0.08) in his or her breath
 12 or blood.

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

17
 18 5-65-310. Refusal to submit to a chemical test.

19 (a)(1) If an underage person under arrest refuses upon the request of
 20 a law enforcement officer to submit to a chemical test designated by the law
 21 enforcement agency, ~~as provided for in~~ § 5-65-309, ~~;~~

22 ~~(A) no chemical~~ A chemical test shall not be given, ~~and;~~

23 ~~(B) the underage person's~~ The underage person's driver's
 24 license, driver's permit, or other evidence of driving privilege shall be
 25 seized by the law enforcement officer, ~~;~~ and

26 ~~(C) the~~ The law enforcement officer shall immediately
 27 deliver to the underage person from whom the driver's license, driver's
 28 permit, or other evidence of driving privilege was seized a temporary driving
 29 permit, as provided by § 5-65-402.

30 (2) Refusal to submit to a chemical test under this subsection
 31 is a strict liability offense and is a violation ~~pursuant to~~ § 5-1-108.

32 (b)(1) The Office of Driver Services shall suspend or revoke the
 33 driving privileges of ~~the~~ arrested underage person who refuses to submit to a
 34 chemical test under this subchapter under § 5-65-402, ~~;~~

35 ~~(2) The office shall suspend the person's driving privileges as~~
 36 follows:

1 ~~(A) Suspension for ninety (90) days for a first offense~~
2 ~~under this section;~~

3 ~~(B) Suspension for one (1) year for a second offense under~~
4 ~~this section; and~~

5 ~~(C)(i) Revocation for the third or subsequent offense~~
6 ~~occurring while the person is underage.~~

7 (A) Suspension for one hundred ninety (90) days for a
8 first offense;

9 (B) Suspension for one (1) year for a second offense; and

10 (C) Revocation for a third or subsequent offense.

11 (2) Revocation is A revocation issued under this subsection
12 continues until the underage person reaches twenty-one (21) years of age or
13 for a period of three (3) years, whichever is longer.

14 (c) In order to determine the number of previous offenses to consider
15 when suspending or revoking the arrested underage person's driving
16 privileges, the office shall consider as a previous offense:

17 (1) ~~Any~~ A conviction for violating § 5-65-310; and

18 (2) ~~Any~~ A suspension or revocation of driving privileges for an
19 arrest for a violation of § 5-65-310 when the person was not subsequently
20 acquitted of the criminal charge.

21 ~~(d) In addition to any other penalty provided for in this section, if~~
22 ~~the underage person is a resident without a license or permit to operate a~~
23 ~~motor vehicle in this state;~~

24 ~~(1) The office shall deny to that underage person the issuance~~
25 ~~of a license or permit for a period of six (6) months for a first offense;~~
26 ~~and~~

27 ~~(2) For a second or subsequent offense by an underage resident~~
28 ~~without a license or permit to operate a motor vehicle, the office shall deny~~
29 ~~to that underage person the issuance of a license or permit for a period of~~
30 ~~one (1) year.~~

31 (d) The office shall deny the issuance of a license or permit to
32 operate a motor vehicle to an underage person who is a resident and who
33 violates this section but who does not have a license or permit to operate a
34 motor vehicle, in addition to any other penalty under this section, for the
35 following periods of time:

36 (1) Six (6) months for a first offense; and

1 (2) One (1) year for a second or subsequent offense.

2 (e) When an underage nonresident's driving privilege to operate a
3 motor vehicle in this state has been suspended under this section, the office
4 shall notify the ~~office~~ entity of issuance of that underage person's
5 nonresident motor vehicle ~~license~~ driving privilege of action taken by the
6 office.

7 ~~(f)(1)(A) The office shall charge a reinstatement fee to be calculated~~
8 ~~as provided under subdivision (f)(1)(B) of this section for reinstating a~~
9 ~~driver's license suspended or revoked for a violation of this section.~~

10 ~~(B) The reinstatement fee is calculated by multiplying~~
11 ~~twenty-five dollars (\$25.00) by the number of offenses resulting in an~~
12 ~~administrative suspension order under § 5-65-310 unless the administrative~~
13 ~~suspension order has been removed because:~~

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

16 ~~(ii) The office has entered an administrative~~
17 ~~suspension order.~~

18 ~~(C) The fee under subdivision (f)(1)(A) of this section is~~
19 ~~supplemental to and in addition to any fee imposed by § 5-65-119, § 5-65-304,~~
20 ~~§ 27-16-508, or § 27-16-808.~~

21 ~~(2) Forty percent (40%) of the revenues derived from the~~
22 ~~reinstatement fee under this subsection shall be deposited into the State~~
23 ~~Treasury as special revenues and credited to the Public Health Fund to be~~
24 ~~used exclusively for the Blood Alcohol Program of the Department of Health.~~

25 (f)(1)(A) A driving privilege that is suspended under this section may
26 be reinstated by the office upon payment of twenty-five dollars (\$25.00) for
27 each occurrence of an offense that resulted in an order of administrative
28 suspension under § 5-65-303.

29 (B) As used in this subsection, "occurrence" means each
30 separate calendar date when an offense or offenses take place.

31 (2) The fee under this subsection is not required when an
32 administrative suspension order has been removed because:

33 (A) The person has been found not guilty of the offense by
34 a circuit court or district court; or

35 (B) A de novo review of the administrative suspension
36 order by the office resulted in the removal.

1 (3) Forty percent (40%) of the revenues derived from the fee
 2 under this subsection shall be deposited into the State Treasury as special
 3 revenues and credited to the Public Health Fund to be used exclusively for
 4 the Blood Alcohol Program of the Department of Health.

5 (4) The fee under this subsection is supplemental to and in
 6 addition to any fee imposed under § 5-65-119, § 5-65-304, § 27-16-508, or §
 7 27-16-808.

8
 9 5-65-311. Relationship to other laws.

10 (a) A penalty ~~prescribed in~~ under this subchapter for ~~underage driving~~
 11 ~~under the influence violating § 5-65-303~~ is in addition to ~~any other penalty~~
 12 ~~penalties~~ prescribed by law for the offense under another law of the State of
 13 Arkansas.

14 (b) ~~For the purposes of this subchapter, there~~ There is no
 15 ~~presumption, as there is found in § 5-65-206, under this subchapter~~ that an
 16 underage person is not under the influence of an intoxicating substance, such
 17 as alcohol or a similar intoxicant, if the underage person's alcohol
 18 concentration is four hundredths (0.04) or less.

19 (c) The following ~~are the same for a chemical test or instrument used~~
 20 aspects of the chemical test or instrument for testing breath or blood
 21 alcohol concentration under ~~the Omnibus DWI Act, § 5-65-101 et seq~~ this
 22 chapter may be used in the same manner for an offense under this subchapter:

23 (1) The administration of a chemical test for breath or blood
 24 alcohol;

25 (2) The instrument used to administer the chemical test;

26 (3) The procedure used to calibrate and maintain the instrument;
 27 and

28 (4) The use of the chemical test results as evidence.

29 ~~(d) If there is evidence of an alcohol concentration of more than~~
 30 ~~four hundredths (0.04) but less than eight hundredths (0.08) in an underage~~
 31 ~~person's blood, breath, or other bodily substance, this fact does not~~
 32 ~~preclude the underage person from being prosecuted for driving while~~
 33 ~~intoxicated under the Omnibus DWI Act, § 5-65-101 et seq.~~

34
 35 SECTION 14. Arkansas Code § 5-65-402 is amended to read as follows:

36 5-65-402. Surrender of license or permit to arresting officer.

1 (a)(1)(A) At the time of arrest for violating § 3-3-203(a), § 5-27-
2 503(a)(3), § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1),
3 § 27-23-114(a)(2), or § 27-23-114(a)(5), the arrested person shall
4 immediately surrender his or her license, permit, or other evidence of
5 driving privilege to the arresting law enforcement officer.

6 (B) The arresting law enforcement officer shall seize the
7 license, permit, or other evidence of driving privilege surrendered by the
8 arrested person or found on the arrested person during a search.

9 (C)(i) If a juvenile, as defined in the Arkansas Juvenile
10 Code of 1989, § 9-27-301 et seq., is arrested for violating § 3-3-203(a) or §
11 5-27-503(a)(3), the arresting officer shall issue the juvenile a citation to
12 appear for a juvenile intake with a juvenile intake officer.

13 (ii) The arresting officer shall forward a copy of
14 the citation and the license, permit, or other evidence of the driving
15 privilege to the juvenile office before the scheduled juvenile intake.

16 (iii) Juveniles subject to the jurisdiction of the
17 circuit court under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.,
18 shall not be subject to this section, except as provided in this subdivision
19 (a)(1).

20 (2)(A)(i) If the license, permit, or other evidence of driving
21 privilege seized by the arresting law enforcement officer has not expired and
22 otherwise appears valid to the arresting law enforcement officer, the
23 arresting law enforcement officer shall issue to the arrested person a dated
24 receipt for that license, permit, or other evidence of driving privilege on a
25 form prescribed by the Office of Driver Services.

26 (ii) This receipt shall be recognized as a license
27 and authorizes the arrested person to operate a motor vehicle for a period
28 not to exceed thirty (30) days.

29 (B)(i) The receipt form shall contain and shall constitute
30 a notice of suspension, disqualification, or revocation of driving privileges
31 by the office, effective in thirty (30) days, notice of the right to a
32 hearing within twenty (20) days, and if a hearing is to be requested, as
33 notice that the hearing request is required to be made within seven (7)
34 calendar days of the notice being given.

35 (ii) The receipt form shall also contain phone
36 numbers and the address of the office and inform the driver of the procedure

1 for requesting a hearing.

2 (C) If the office is unable to conduct a hearing within
3 the twenty-day period, a temporary permit shall be issued and is valid until
4 the date of the hearing.

5 (D)(i) The seized license, permit, or other evidence of
6 driving privilege and a copy of the receipt form issued to the arrested
7 person shall be attached to the sworn report of the arresting law enforcement
8 officer and shall be submitted by mail or in person to the office or its
9 designated representative within seven (7) days of the issuance of the
10 receipt.

11 (ii) The failure of the arresting law enforcement
12 officer to timely file the sworn report does not affect the authority of the
13 office to suspend, disqualify, or revoke the driving privilege of the
14 arrested person.

15 (3)(A) Any notice from the office required under this subchapter
16 that is not personally delivered shall be sent by certified mail and is
17 deemed to have been delivered on the date when postmarked and shall be sent
18 to the last known address on file with the office.

19 (B) Refusal of the addressee to accept delivery or
20 attempted delivery of the notice at the address obtained by the arresting law
21 enforcement officer or on file with the office does not constitute nonreceipt
22 of notice.

23 (C) For any notice that is personally delivered, the
24 person shall be asked to sign a receipt acknowledging that he or she received
25 the required notice.

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

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

34 (ii) Was under twenty-one (21) years of age and
35 attempted to purchase an alcoholic beverage or use a fraudulent or altered
36 personal identification document for the purpose of purchasing an alcoholic

1 beverage illegally or other material or substance restricted to adult
2 purchase or possession under existing law in violation of § 5-27-503(a)(3);
3 or

4 (iii) Had been operating or was in actual physical
5 control of a motorboat on the waters of this state or a motor vehicle in
6 violation of § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2)
7 and the sworn report is accompanied by:

8 (a) A written chemical test report or a sworn
9 report that the arrested person was operating or in actual physical control
10 of a motorboat on the waters of this state or motor vehicle in violation of §
11 5-65-103, § 5-65-303, or § 27-23-114; or

12 (b) A sworn report that the arrested person
13 refused to submit to a chemical test of blood, breath, saliva, or urine for
14 the purpose of determining the alcohol concentration or controlled substance
15 content of the arrested person's breath or blood in violation of § 5-65-205,
16 § 5-65-310, or § 27-23-114(a)(5).

17 (B) The suspension, disqualification, or revocation shall
18 be based as follows:

19 (i) The driving privileges of ~~any~~ a person violating
20 § 5-65-103 shall be suspended or revoked as provided by § 5-65-104;

21 (ii) The driving privileges of ~~any~~ a person
22 violating § 5-65-205(a) shall be suspended or revoked as provided by § 5-65-
23 205(b);

24 (iii) The driving privileges of ~~any~~ a person
25 violating § 5-65-303 shall be suspended or revoked as provided by § 5-65-
26 304(b);

27 (iv) The driving privileges of ~~any~~ a person
28 violating § 5-65-310(a) shall be suspended or revoked as provided by § 5-65-
29 310(b);

30 (v) The driving privileges of ~~any~~ a person violating
31 § 27-23-114(a)(1) or § 27-23-114(a)(2) shall be disqualified as provided by §
32 27-23-112;

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

35 (vii) The driving privileges of ~~any~~ a person
36 violating § 3-3-203(a) shall be suspended, revoked, or disqualified as

1 provided by § 3-3-203(e); and

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

5 (5) In addition to any other penalty provided for in this
6 section, if the arrested person is a resident without a license or permit to
7 operate a motor vehicle in this state:

8 (A) The office shall deny to that arrested person the
9 issuance of a license or permit for a period of six (6) months for a first
10 offense; and

11 (B) For a second or subsequent offense by a resident
12 without a license or permit to operate a motor vehicle, the office shall deny
13 to that arrested person the issuance of a license or permit for a period of
14 one (1) year.

15 (6)(A)(i) If the arrested person is a nonresident, the arrested
16 person's driving privilege ~~to operate a motor vehicle~~ in Arkansas shall be
17 suspended in the same manner as that of a resident.

18 (ii) The office shall notify the office that issued
19 the nonresident's ~~motor vehicle license~~ driving privilege of the action taken
20 by the office.

21 (B) When the arrested person is a nonresident without a
22 license or permit to operate a motor vehicle, the office shall notify the
23 office of issuance for that arrested person's state of residence of action
24 taken by the office.

25 (7)(A) Upon the written request of a person whose driving
26 privilege ~~to drive~~ has been revoked, denied, disqualified, or suspended, or
27 who has received a notice of revocation, suspension, disqualification, or
28 denial by the arresting law enforcement officer, the office shall grant the
29 person an opportunity to be heard if the request is received by the office
30 within seven (7) calendar days after the notice of the revocation,
31 suspension, disqualification, or denial is given in accordance with this
32 section or as otherwise provided in this chapter.

33 (B) A request described in subdivision (a)(7)(A) of this
34 section does not operate to stay the revocation, suspension,
35 disqualification, or denial by the office until the disposition of the
36 hearing.

1 (8)(A) The hearing shall be before the office or its authorized
2 agent, in the office of the Revenue Division of the Department of Finance and
3 Administration nearest the county where the alleged event occurred for which
4 the person was arrested, unless the office or its authorized agent and the
5 arrested person agree otherwise to the hearing's being held in some other
6 county or that the office or its authorized agent may schedule the hearing or
7 any part of the hearing by telephone and conduct the hearing by telephone
8 conference call.

9 (B) The hearing shall not be recorded.

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

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

15 (i) Had been operating or was in actual physical
16 control of a motorboat on the waters of this state or a motor vehicle or
17 commercial motor vehicle while:

18 (a) Intoxicated or impaired;

19 (b) The person's blood alcohol concentration
20 measured by weight of alcohol in the person's blood was equal to or greater
21 than the blood alcohol concentration prohibited by ~~§ 5-65-103(b)~~ § 5-65-
22 103(a)(2);

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

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

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

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

35 (iv) Was under twenty-one (21) years of age and
36 attempted to purchase an alcoholic beverage or use a fraudulent or altered

1 personal identification document for the purpose of purchasing an alcoholic
2 beverage illegally or other material or substance restricted to adult
3 purchase or possession under existing law.

4 (E)(i) The office or its agent at the hearing shall
5 consider any document submitted to the office by the arresting law
6 enforcement agency, document submitted by the arrested person, and the
7 statement of the arrested person.

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

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

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

20 (b) The breath, blood, saliva, or urine
21 specimen was obtained from the arrested person within the established and
22 certified criteria of the Department of Health;

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

25 (d) The chemical test result in fact reflects
26 an alcohol concentration, the presence of other intoxicating substances, or a
27 combination of alcohol concentration or other intoxicating substance.

28 (ii) If the revocation, suspension,
29 disqualification, or denial is based upon the refusal of the arrested person
30 to submit to a chemical test as provided in § 5-65-205, § 5-65-310, or § 27-
31 23-114(a)(5), reflected in a sworn report by the arresting law enforcement
32 officer, the scope of the hearing shall also include whether:

33 (a) The arrested person refused to submit to
34 the chemical test; and

35 (b) The arrested person was informed that his
36 or her privilege to drive would be revoked, disqualified, suspended, or

1 denied if the arrested person refused to submit to the chemical test.

2 (b) After the hearing, the office or its authorized agent shall order
3 the revocation, suspension, disqualification, or denial to be rescinded or
4 sustained and shall then advise any person whose ~~license~~ driving privilege is
5 revoked, suspended, or denied that he or she may request a restricted permit
6 as otherwise provided for by this chapter.

7 (c)(1)(A) A person adversely affected by the hearing disposition order
8 of the office or its authorized agent may file a de novo petition for review
9 within thirty (30) days in the circuit court in the county in which the
10 offense took place.

11 (B) A copy of the decision of the office shall be attached
12 to the petition.

13 (C) The petition shall be served on the Director of the
14 Department of Finance and Administration under Rule 4 of the Arkansas Rules
15 of Civil Procedure.

16 (2)(A) The filing of a petition for review does not stay or
17 place in abeyance the decision of the office or its authorized agent.

18 (B) If the circuit court issues an order staying the
19 decision or placing the decision in abeyance, the circuit court shall
20 transmit a copy of the order to the office in the same manner that
21 convictions and orders relating to driving records are sent to that office.

22 (C)(i) The circuit court shall hold a final hearing on the
23 de novo review within one hundred twenty (120) days after the date that the
24 order staying the decision or placing the decision in abeyance is entered.

25 (ii) The circuit court may conduct the final hearing
26 by telephone conference with the consent of the parties.

27 (3) An administrative hearing held ~~pursuant to~~ under this
28 section is exempt from the Arkansas Administrative Procedure Act, § 25-15-201
29 et seq.

30 (4)(A) On review, the circuit court shall hear the case de novo
31 in order to determine based on a preponderance of the evidence whether a
32 ground exists for revocation, suspension, disqualification, or denial of the
33 person's privilege to drive.

34 (B) If the results of a chemical test of blood, breath,
35 saliva, or urine are used as evidence in the suspension, revocation, or
36 disqualification of the person's driving privilege ~~to drive~~, then ~~the~~

1 ~~provisions of~~ § 5-65-206 shall apply in the circuit court proceeding.

2 (d)(1) ~~Any~~ A decision rendered at an administrative hearing held under
3 this section shall have no effect on any criminal case arising from ~~any~~ a
4 violation of § 3-3-203(a), § 5-27-503(a)(3), § 5-65-103, § 5-65-205, § 5-65-
5 303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5).

6 (2) Any decision rendered by a court of law for a criminal case
7 arising from any violation of § 3-3-203(a), § 5-27-503(a)(3), § 5-65-103, §
8 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or §
9 27-23-114(a)(5) shall affect the administrative suspension, disqualification,
10 or revocation of the ~~driver's license~~ driving privilege as follows:

11 (A) A plea of guilty or nolo contendere or a finding of
12 guilt by the court has no effect on ~~any~~ an administrative hearing held under
13 this section;

14 (B)(i) An acquittal on the charges or a dismissal of
15 charges serves to reverse the suspension, disqualification, or revocation of
16 the ~~driver's license~~ driving privilege suspended or revoked under this
17 section.

18 (ii) The office shall reinstate the person's
19 ~~driver's license~~ driving privilege at no cost to the person, and the charges
20 shall not be used to determine the number of previous offenses when
21 administratively suspending, disqualifying, or revoking the driving privilege
22 of ~~any~~ an arrested person in the future; and

23 (C) The office shall convert any initial administrative
24 suspension or revocation of a ~~driver's license~~ driving privilege for
25 violating § 5-65-103 to a suspension or revocation for violating § 5-65-303,
26 if the person is convicted of violating § 5-65-303 instead of § 5-65-103.

27 (e) ~~Any~~ A person whose privilege to drive has been denied, suspended,
28 disqualified, or revoked shall remain under the denial, suspension,
29 disqualification, or revocation and remain subject to penalties as provided
30 in § 5-65-105 until such time as that person applies for, and is granted by
31 the office, reinstatement of the privilege to drive.

32 (f) The administrative suspension, disqualification, or revocation of
33 a ~~driver's license~~ driving privilege as provided for by this section is
34 supplementary to and in addition to a suspension, disqualification, or
35 revocation of a ~~driver's license~~ driving privilege that is ordered by a court
36 of competent jurisdiction for an offense under §§ 5-64-710, 5-65-116, and 27-

1 16-914, or ~~any~~ other traffic or criminal offense in which a suspension,
 2 disqualification, or revocation of the ~~driver's license~~ driving privilege is
 3 a penalty for the violation.

4 ~~(g) [Repealed.]~~

5 ~~(h)(1)(A)~~ (g)(1)(A) A person whose ~~license~~ driving privilege is
 6 suspended or revoked ~~pursuant to~~ under this section shall:

7 (i) Both:

8 (a) Furnish proof of attendance at and
 9 completion of the alcoholism treatment program, alcohol education program, or
 10 alcohol and driving education program required by § 5-65-104(b)(1) or § 5-65-
 11 307(a)(1) and, if applicable, at a victim impact panel as provided in § 5-65-
 12 121 before reinstatement of his or her suspended or revoked ~~driver's license~~
 13 driving privilege; and

14 (b) Pay ~~any~~ a fee for reinstatement required
 15 under § 5-65-119, § 5-65-304, or, if applicable, § 5-65-121; or

16 (ii) Furnish proof of dismissal or acquittal of the
 17 charge on which the suspension or revocation is based.

18 (B) An application for reinstatement shall be made to the
 19 office.

20 (2) Even if a person has filed a de novo petition for review
 21 ~~pursuant to~~ under subsection (c) of this section, the person is entitled to
 22 reinstatement of driving privileges upon complying with this subsection and
 23 is not required to postpone reinstatement until the disposition of the de
 24 novo review in circuit court has occurred.

25 (3) A person whose driving privilege is suspended or revoked
 26 under this section may enroll in an alcohol education program prior to
 27 disposition of the offense by the circuit court, or district court, ~~or city~~
 28 ~~court~~, but is not entitled to ~~any~~ a refund of a fee paid if the charge is
 29 dismissed or if the person is acquitted of the charge.

30 ~~(i)~~ (h) Except as provided in subsection (a) of this section, this
 31 section shall not apply to juveniles subject to the Arkansas Juvenile Code of
 32 1989, § 9-27-301 et seq.

33
 34 SECTION 15. Arkansas Code § 5-65-403 is amended to read as follows:

35 5-65-403. Notice and receipt from arresting officer.

36 (a) At the time of arrest for violating § 5-65-103, § 5-65-303, § 27-

1 23-114(a)(1), or § 27-23-114(a)(2), the arresting law enforcement officer
2 shall provide written notice to the arrested person:

3 (1) That ~~if the arrested person's driving privileges have been~~
4 ~~suspended, disqualified, or revoked for violating § 5-65-103, § 5-65-303, §~~
5 ~~27-23-114(a)(1), or § 27-23-114(a)(2) in the previous five (5) years,~~ the
6 registration of ~~any~~ a motor vehicle owned by the arrested person is suspended
7 effective in thirty (30) days if the arrested person's driving privileges
8 have been suspended, disqualified, or revoked for violating § 5-65-103, § 5-
9 65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2) in the previous five (5)
10 years;

11 (2) Of the right to a hearing within twenty (20) days; and

12 (3) That ~~if a hearing is to be requested~~ the hearing request is
13 required to be made within seven (7) calendar days of the notice being given
14 if the arrested person wants to request a hearing.

15 (b) The receipt shall also contain phone numbers and the address of
16 the Office of Driver Services and inform the arrested person of the procedure
17 for requesting a hearing.

18 (c) If the office is unable to conduct a hearing within the twenty-day
19 period, a temporary permit shall be issued and is valid until the date of the
20 hearing.

21 (d)(1) The seized license, permit, or other evidence of driving
22 privilege and a copy of the receipt form issued to the arrested person shall
23 be:

24 (A) attached Attached to the sworn report of the arresting
25 law enforcement officer; and ~~shall be~~

26 (B) submitted Submitted by mail or in person to the
27 Director of the Department of Finance and Administration or his or her
28 designated representative within seven (7) days of the issuance of the
29 receipt.

30 (2) The failure of the arresting law enforcement officer to
31 timely file the sworn report does not affect the authority of the office to
32 suspend the registration of ~~any~~ a motor vehicle owned by the arrested person.

33 (e) ~~Any~~ A notice from the office required under this section that is
34 not personally delivered shall be sent as provided by § 5-65-402.

35 (f)(1) If the arrested person is a nonresident, the arrested person's
36 motor vehicle registration in Arkansas shall be suspended in the same manner

1 as that of a resident.

2 (2) The office shall notify the ~~office~~ out-of-state entity that
3 issued the nonresident's motor vehicle registration of the action taken by
4 the office.

5 (g) The hearing shall be held by the office at the conclusion of any
6 hearing under § 5-65-402 and the scope of the hearing is limited to:

7 (1) Determining if the arrested person's driving privileges had
8 been suspended, revoked, or disqualified for violation of § 5-65-103, § 5-65-
9 303, § 27-23-114(a)(1), or § 27-23-114(a)(2) in the five (5) years prior to
10 the current offense; and

11 (2) Determining if any motor vehicle is licensed or registered
12 in the arrested person's name as either owner or co-owner of the motor
13 vehicle.

14 (h)(1)(A) A person adversely affected by the hearing disposition order
15 of the office or its authorized agent may file a de novo petition for review
16 within thirty (30) days in the circuit court in the county where the offense
17 took place.

18 (B) The filing of a petition for review does not stay or
19 place in abeyance the decision of the office or its authorized agent.

20 (2) An administrative hearing held ~~pursuant to~~ under this
21 section is exempt from the Arkansas Administrative Procedure Act, § 25-15-201
22 et seq.

23 (3) ~~On review, the~~ The circuit court shall hear the case de novo
24 on review in order to determine whether, based on a preponderance of the
25 evidence, a ground ~~exist~~ exists for suspension of the person's motor vehicle
26 registration.

27 (i) The suspension ordered shall be equal to the suspension of driving
28 privileges ordered under § 5-65-402 or one (1) year, whichever is longer, but
29 shall not exceed five (5) years.

30 (j)(1)(A) Upon determination that a person is completely dependent on
31 the motor vehicle for the necessities of life, the Director of the Department
32 of Finance and Administration may grant a restricted registration to a family
33 member or co-owner of any immobilized motor vehicle.

34 (B) A restricted registration is not valid for use by the
35 person whose driving privileges have been suspended or revoked.

36 (2) Operation of a motor vehicle in a manner inconsistent with

1 the restricted registration or license plate has the same effect as operating
2 an unlicensed motor vehicle.

3 (k) If the director orders immobilization of a motor vehicle, notice
4 of immobilization shall be sent by first class mail to any persons, other
5 than the arrested person, listed as an owner or co-owner of the immobilized
6 motor vehicle in the records of the Office of Motor Vehicle.

7
8 SECTION 16. Arkansas Code Title 5, Chapter 76, is repealed.

9
10 Chapter 76

11 ~~Operation of Motorboats While Intoxicated~~

12
13 ~~5-76-101. Definitions.~~

14 ~~As used in this chapter:~~

15 (1) ~~“Controlled substance” means a drug, substance, or immediate~~
16 ~~precursor in Schedules I-VI of the Uniform Controlled Substances Act, § 5-64-~~
17 ~~101 et seq.;~~

18 (2) ~~“Intoxicated” means influenced or affected by the ingestion~~
19 ~~of alcohol, a controlled substance, any intoxicant, or any combination of~~
20 ~~alcohol, a controlled substance, or intoxicant, to such a degree that the~~
21 ~~operator’s reactions, motor skills, and judgment are substantially altered~~
22 ~~and the operator constitutes a clear and substantial danger of physical~~
23 ~~injury or death to himself, herself, or others;~~

24 (3)(A) ~~“Motorboat” means any vessel operated upon water and that~~
25 ~~is propelled by machinery, whether or not the machinery is the principal~~
26 ~~source of propulsion.~~

27 (B) ~~“Motorboat” includes personal watercraft as defined in~~
28 ~~§ 27-101-103(10);~~

29 (4) ~~“Operator” means a person who is controlling the speed and~~
30 ~~direction of a motorboat or a person who is in direct physical control of the~~
31 ~~motorboat;~~

32 (5) ~~“Underage” means any person who is under twenty one (21)~~
33 ~~years of age and may not legally consume alcoholic beverages in Arkansas; and~~

34 (6) ~~“Waters” means any public waters within the territorial~~
35 ~~limits of the State of Arkansas.~~

1 ~~5-76-102. Unlawful acts.~~

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

4 ~~(1) Intoxicated; or~~

5 ~~(2) There is an alcohol concentration in the person's breath or~~
6 ~~blood of eight hundredths (0.08) or more based upon the definition of breath,~~
7 ~~blood, and urine concentration in § 5-65-204.~~

8 ~~(b)(1) In the case of a motorboat or device, only if the certified law~~
9 ~~enforcement officer has probable cause to believe that the operator of the~~
10 ~~motorboat is operating while intoxicated or operating while there is an~~
11 ~~alcohol concentration of eight hundredths (0.08) in the person's breath or~~
12 ~~blood, the certified law enforcement officer may administer and may test the~~
13 ~~operator at the scene by using a portable breathtesting instrument or other~~
14 ~~approved method to determine if the operator may be operating a motorboat or~~
15 ~~device in violation of this section.~~

16 ~~(2) The consumption of alcohol or the possession of an open~~
17 ~~container aboard a vessel does not in and of itself constitute probable~~
18 ~~cause.~~

19 ~~(c)(1)(A) For a first offense, a person violating this section shall~~
20 ~~be punished by imprisonment in the county or municipal jail for not more than~~
21 ~~one (1) year or by a fine of not less than two hundred fifty dollars (\$250)~~
22 ~~nor more than one thousand dollars (\$1,000) or by both fine and imprisonment.~~

23 ~~(B) In addition, the court shall order the person not to~~
24 ~~operate a motorboat for a period of ninety (90) days.~~

25 ~~(2)(A)(i) For a second offense within a three-year period, a~~
26 ~~person violating this section shall be punished by a fine of not less than~~
27 ~~five hundred dollars (\$500) nor more than two thousand five hundred dollars~~
28 ~~(\$2,500) and by imprisonment in the county or municipal jail for not more~~
29 ~~than one (1) year.~~

30 ~~(ii) The sentence shall include a mandatory sentence~~
31 ~~that is not subject to suspension or probation of imprisonment in the county~~
32 ~~or municipal jail for not less than forty-eight (48) consecutive hours or~~
33 ~~community service for not less than twenty (20) days.~~

34 ~~(B) In addition, the court shall order the person not to~~
35 ~~operate a motorboat for a period of one (1) year.~~

36 ~~(3)(A) For a third or subsequent offense within a three-year~~

1 ~~period, a person violating this section shall be punished by a fine of not~~
2 ~~less than one thousand dollars (\$1,000) nor more than five thousand dollars~~
3 ~~(\$5,000) and by imprisonment in the county or municipal jail for not less~~
4 ~~than sixty (60) days nor more than one (1) year, to include a minimum of~~
5 ~~sixty (60) days which shall be served in the county or municipal jail and~~
6 ~~that shall not be probated or suspended.~~

7 ~~(B) In addition, the court shall order the person not to~~
8 ~~operate a motorboat for a period of three (3) years.~~

9 ~~(4) Any person who operates a motorboat on the waters of this~~
10 ~~state in violation of a court order issued pursuant to this section shall be~~
11 ~~imprisoned for ten (10) days.~~

12 ~~(d) A person who has been arrested for violating this section shall~~
13 ~~not be released from jail, under bond or otherwise, until the alcohol~~
14 ~~concentration is less than eight hundredths (0.08) in the person's breath or~~
15 ~~blood and the person is no longer intoxicated.~~

16 ~~(e)(1) In any criminal prosecution of a person charged with violating~~
17 ~~subsection (a) of this section, the amount of alcohol in the defendant's~~
18 ~~blood at the time of or within four (4) hours of the alleged offense, as~~
19 ~~shown by chemical analysis of the defendant's blood, urine, breath, or other~~
20 ~~bodily substance, gives rise to the following:~~

21 ~~(A) If there was at that time an alcohol concentration of~~
22 ~~four hundredths (0.04) or less in the defendant's blood, urine, breath, or~~
23 ~~other bodily substance, it is presumed that the defendant was not under the~~
24 ~~influence of intoxicating liquor; and~~

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

31 ~~(2) The provisions of subdivision (e)(1) of this section shall~~
32 ~~not be construed as limiting the introduction of any other relevant evidence~~
33 ~~bearing upon the question of whether or not the defendant was intoxicated.~~

34 ~~(3)(A) A record or report of a certification, rule, evidence~~
35 ~~analysis, or other document pertaining to work performed by the Office of~~
36 ~~Alcohol Testing of the Department of Health under the authority of this~~

1 ~~chapter shall be received as competent evidence as to the matters contained~~
2 ~~in the record or report in a court of this state, subject to the applicable~~
3 ~~rules of criminal procedure, when duly attested to by the Director of the~~
4 ~~Department of Health or his or her assistant, in the form of an original~~
5 ~~signature or by certification of a copy.~~

6 ~~(B) A document described in subdivision (c)(3)(A) of this~~
7 ~~section is self-authenticating.~~

8 ~~(f) The fact that any person charged with violating subsection (a) of~~
9 ~~this section is or has been legally entitled to use alcohol or a controlled~~
10 ~~substance does not constitute a defense against any charge of violating~~
11 ~~subsection (a) of this section.~~

12 ~~(g) Any fine for a violation of this chapter shall be remitted to the~~
13 ~~issuing law enforcement office to be used by the law enforcement office for~~
14 ~~the administration and enforcement of this chapter.~~

15 ~~(h) Neither reckless operation of a motorboat nor any other boating or~~
16 ~~water safety infraction is a lesser included offense under a charge in~~
17 ~~violation of this section.~~

18
19 ~~5-76-103. Penalties.~~

20 ~~(a) In addition to any other penalty provided in § 5-76-102, any~~
21 ~~person who pleads guilty or nolo contendere to or who is found guilty of~~
22 ~~violating § 5-76-102 is required to complete an alcohol education program as~~
23 ~~prescribed and approved by the Arkansas Highway Safety Program or an~~
24 ~~alcoholism treatment program as approved by the Division of Behavioral Health~~
25 ~~Services.~~

26 ~~(b) The alcohol education program may collect a program fee of up to~~
27 ~~fifty dollars (\$50.00) per enrollee to offset program costs.~~

28 ~~(c)(1) A person ordered to complete an alcoholism treatment program~~
29 ~~under this section may be required to pay, in addition to the costs collected~~
30 ~~for treatment, a fee of up to twenty five dollars (\$25.00) to offset the~~
31 ~~additional costs associated with reporting requirements under this chapter.~~

32 ~~(2) The alcohol education program shall report semiannually to~~
33 ~~the Arkansas Highway Safety Program all revenue derived from this fee.~~

34 ~~(d)(1) Within ten (10) days after the conviction or forfeiture of bail~~
35 ~~of a person upon a charge of violating any provision of this subchapter,~~
36 ~~every magistrate or judge of a court not of record or clerk of the court of~~

1 ~~record in which the conviction was had or bail was forfeited shall prepare~~
2 ~~and forward to the Office of Driver Services an abstract of the record of the~~
3 ~~court covering the case in which the person was convicted or forfeited bail~~
4 ~~for the purpose of determining the number of previous offenses under § 5-65-~~
5 ~~104(a)(4).~~

6 ~~(2) The abstract described in subdivision (d)(1) of this section~~
7 ~~shall be certified to be true and correct by the magistrate, judge, or clerk~~
8 ~~of the court required to prepare it.~~

9
10 ~~5-76-104. Implied consent.~~

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

17 ~~(A) The person is arrested for any offense arising out of~~
18 ~~an act alleged to have been committed while the person was operating a~~
19 ~~motorboat while intoxicated or operating a motorboat while there was an~~
20 ~~alcohol concentration of at least eight hundredths (0.08) in the person's~~
21 ~~breath or blood;~~

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

24 ~~(C) At the time the person is arrested for operating a~~
25 ~~motorboat while intoxicated, the law enforcement officer has reasonable cause~~
26 ~~to believe that the person, while operating a motorboat, is intoxicated or~~
27 ~~has an alcohol concentration of eight hundredths (0.08) or more in his or her~~
28 ~~breath or blood.~~

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

34 ~~(3)(A) When a person operating a motorboat is involved in an~~
35 ~~accident resulting in loss of human life or when there is reason to believe~~
36 ~~that death may result, a law enforcement officer shall request and the person~~

1 shall submit to a chemical test of the person's blood, breath, saliva, or
2 urine for the purpose of determining the alcohol concentration or controlled
3 substance content of his or her breath or blood.

4 (B) The law enforcement officer shall cause the chemical
5 test to be administered to the person, including a person fatally injured.

6 (b)(1) If a court determines that a law enforcement officer had
7 reasonable cause to believe an arrested person had been operating a motorboat
8 in violation of § 5-76-102(a) and the person refused to submit to a chemical
9 test upon request of the law enforcement officer, the court shall levy a fine
10 of not less than one thousand dollars (\$1,000) and not to exceed two thousand
11 five hundred dollars (\$2,500) and suspend the operating privileges of the
12 person for a period of six (6) months, in addition to any other suspension
13 imposed for violating § 5-76-102(a).

14 (2) If a person operating a motorboat is involved in an accident
15 resulting in loss of human life and the person refuses to submit to a
16 chemical test upon the request of the law enforcement officer, the court
17 shall levy a fine of not less than two thousand five hundred dollars (\$2,500)
18 and not to exceed five thousand dollars (\$5,000) and suspend the operating
19 privileges of the person for a period of two (2) years, in addition to any
20 other suspension imposed for violating § 5-76-102(a).

21 (c)(1) 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 a motorboat while intoxicated or while there is an alcohol
24 concentration of eight hundredths (0.08) or more in the person's breath or
25 blood.

26 (2)(A) The law enforcement agency employing the law enforcement
27 officer shall designate which chemical test is administered, and the law
28 enforcement agency is responsible for paying any expense incurred in
29 conducting the chemical test.

30 (B) If a person tested requests that an additional
31 chemical test be made, as authorized in subsection (g) of this section, the
32 cost of the additional chemical test shall be borne by the person tested.

33 (3) If any person objects to the taking of his or her blood for
34 a chemical test, as authorized in this section, the breath or urine of the
35 person may be used to make the chemical analysis.

36 (d)(1) To be considered valid under the provisions of this chapter, a

1 ~~chemical analysis of a person's blood, urine, or breath shall be performed~~
2 ~~according to a method approved by the State Board of Health or by an~~
3 ~~individual possessing a valid permit issued by the Department of Health for~~
4 ~~that purpose.~~

5 ~~(2) The department may:~~

6 ~~(A) Approve a satisfactory technique or method for the~~
7 ~~chemical analysis;~~

8 ~~(B) Ascertain the qualifications and competence of an~~
9 ~~individual to conduct the chemical analysis; and~~

10 ~~(C) Issue a permit to conduct the chemical analysis that~~
11 ~~is subject to termination or revocation at the discretion of the division.~~

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

15 ~~(2) The limitation provided in subdivision (e)(1) of this~~
16 ~~section does not apply to the taking of a breath or urine specimen.~~

17 ~~(3)(A) No person, institution, or office in this state that~~
18 ~~withdraws blood for the purpose of determining alcohol or controlled~~
19 ~~substance content of the blood at the request of a law enforcement officer~~
20 ~~under a provision of this chapter shall be held liable for violating any~~
21 ~~criminal law of this state in connection with the withdrawing of the blood.~~

22 ~~(B) No physician, institution, or person acting under the~~
23 ~~direction or supervision of a physician shall be held liable in tort for the~~
24 ~~withdrawal of the blood unless the person is negligent in connection with the~~
25 ~~withdrawal of the blood or the blood is taken over the objections of the~~
26 ~~subject.~~

27 ~~(f) Upon the request of a person who submits to a chemical test at the~~
28 ~~request of a law enforcement officer, full information concerning the~~
29 ~~chemical test shall be made available to the person or his or her attorney.~~

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

34 ~~(2) The law enforcement officer shall advise the person of the~~
35 ~~right provided in subdivision (g)(1) of this section.~~

36 ~~(3) The refusal or failure of a law enforcement officer to~~

1 ~~advise the person of the right provided in subdivision (g)(1) of this section~~
2 ~~and to permit and assist the person to obtain the chemical test precludes the~~
3 ~~admission of evidence relating to a chemical test taken at the direction of a~~
4 ~~law enforcement officer.~~

5
6 ~~5-76-105. Chemical analysis.~~

7 ~~(a)(1) Any instrument used to determine the alcohol content of the~~
8 ~~breath for the purpose of determining if the person was operating a motorboat~~
9 ~~while intoxicated or with an alcohol concentration of eight hundredths (0.08)~~
10 ~~or more shall be so constructed that the analysis is made automatically when~~
11 ~~a sample of the person's breath is placed in the instrument and without any~~
12 ~~adjustment or other action of the person administering the analysis, and the~~
13 ~~instrument shall be so constructed that the alcohol content is shown by~~
14 ~~visible digital display on the instrument and on an automatic readout.~~

15 ~~(2) The instrument performing the chemical analysis shall have~~
16 ~~been certified at least one (1) time in the last three (3) months preceding~~
17 ~~arrest, and the operator of the instrument shall have been properly trained~~
18 ~~and certified.~~

19 ~~(3) Any breath analysis made by or through the use of an~~
20 ~~instrument that does not conform to the requirements prescribed in this~~
21 ~~subsection is inadmissible in any criminal or civil proceeding.~~

22 ~~(b)(1) Nothing in this section is deemed to abrogate a defendant's~~
23 ~~right of cross-examination of the person who performs the calibration test or~~
24 ~~check on the instrument, the operator of the instrument, or a representative~~
25 ~~of the Office of Alcohol Testing of the Division of Health of the Department~~
26 ~~of Health and Human Services.~~

27 ~~(2) The testimony of the appropriate analyst or official may be~~
28 ~~compelled by a subpoena given ten (10) days prior to the date of hearing or~~
29 ~~trial, in which case, the records and reports are admissible through the~~
30 ~~analyst or official, who is subject to cross-examination by the defendant or~~
31 ~~his or her counsel.~~

32
33 ~~5-76-106. Authority of State Board of Health.~~

34 ~~(a) The State Board of Health may adopt appropriate regulations to~~
35 ~~carry out the intent and purposes of this chapter, and only an instrument~~
36 ~~approved by the board as meeting the requirements of this section and § 5-76-~~

1 ~~105 and regulations of the board shall be used for making a breath analysis~~
2 ~~for determining blood alcohol content.~~

3 ~~(b)(1) The board specifically may limit by its regulations the types~~
4 ~~or models of testing devices that may be approved for use in Arkansas for the~~
5 ~~purposes set forth in this chapter.~~

6 ~~(2) The approved types or models shall be specified by~~
7 ~~manufacturer's name and model.~~

8
9 ~~5-76-107. Unlawful acts by underage operator.~~

10 ~~(a) No underage person shall operate any motorboat on the waters of~~
11 ~~this state while:~~

12 ~~(1) Intoxicated; or~~

13 ~~(2) There is an alcohol concentration in the underage person's~~
14 ~~breath or blood of two hundredths (0.02) but less than eight hundredths~~
15 ~~(0.08) based upon the definition of breath, blood, and urine concentration in~~
16 ~~§ 5-65-204.~~

17 ~~(b)(1) A certified law enforcement officer may test an underage person~~
18 ~~who operates a motorboat using a portable breath testing instrument or other~~
19 ~~approved method to determine if the underage person may be operating a~~
20 ~~motorboat or device in violation of this section only if the certified law~~
21 ~~enforcement officer has probable cause to believe that:~~

22 ~~(A) The underage person is operating the motorboat while~~
23 ~~intoxicated; or~~

24 ~~(B) The underage person is operating the motorboat while~~
25 ~~there is an alcohol concentration of two hundredths (0.02) but less than~~
26 ~~eight hundredths (0.08) in the underage person's breath or blood.~~

27 ~~(2) The consumption of alcohol or the possession of an open~~
28 ~~container of an alcoholic beverage aboard a vessel does not alone constitute~~
29 ~~probable cause.~~

30
31 ~~5-76-108. Fines for violating § 5-76-107.~~

32 ~~(a) Any person who pleads guilty or nolo contendere to or is found~~
33 ~~guilty of violating § 5-76-107 shall be fined not less than:~~

34 ~~(1) One hundred dollars (\$100) and not more than five hundred~~
35 ~~dollars (\$500) for the first offense;~~

36 ~~(2) Two hundred dollars (\$200) and not more than one thousand~~

1 ~~dollars (\$1,000) for the second offense; and~~

2 ~~(3) Five hundred dollars (\$500) and not more than two thousand~~
3 ~~dollars (\$2,000) for the third or subsequent offense.~~

4 ~~(b) For the purpose of determining the amount of a fine under this~~
5 ~~section, an underage person who has one (1) or more previous convictions for~~
6 ~~a violation of § 5-76-102 is deemed to have a conviction for a violation of §~~
7 ~~5-76-107 for each conviction for a violation of § 5-76-102.~~

8
9 SECTION 17. Arkansas Code § 16-10-211(a)(1)(F), concerning record
10 retention under the Arkansas District Courts Accounting Law, is amended to
11 read as follows:

12 (F) Files concerning convictions under the Omnibus DWI or
13 BWI Act, § 5-65-101 et seq.; and

14
15 SECTION 18. Arkansas Code § 16-10-305(a)(1)(A)-(F), concerning circuit
16 court costs, is amended to read as follows:

- 17 (A) The Omnibus DWI or BWI Act, § 5-65-101 et seq.;
- 18 (B) The Underage DUI or BUI Law, § 5-65-301 et seq.;
- 19 (C) Section 5-75-101 et seq.;
- 20 ~~(D) Section 5-76-101 et seq.;~~
- 21 ~~(E)(D)~~ Section 27-23-114; or
- 22 ~~(F)(E)~~ Section 15-42-127;

23
24 SECTION 19. Arkansas Code § 16-10-305(a)(2)(A)-(F), concerning
25 district court costs, is amended to read as follows:

- 26 (A) The Omnibus DWI or BWI Act, § 5-65-101 et seq.;
- 27 (B) The Underage DUI or BUI Law, § 5-65-301 et seq.;
- 28 (C) Section 5-75-101 et seq.;
- 29 ~~(D) Section 5-76-101 et seq.;~~
- 30 ~~(E)(D)~~ Section 27-23-114; or
- 31 ~~(F)(E)~~ Section 15-42-127;

32
33 SECTION 20. Arkansas Code § 16-10-305(a)(3)(A)-(F), concerning circuit
34 and district court costs, is amended to read as follows:

- 35 (A) The Omnibus DWI or BWI Act, § 5-65-101 et seq.;
- 36 (B) The Underage DUI or BUI Law, § 5-65-301 et seq.;

1 (C) Section 5-75-101 et seq.;

2 ~~(D) Section 5-76-101 et seq.;~~

3 ~~(E)(D)~~ Section 27-23-114; or

4 ~~(F)(E)~~ Section 15-42-127;

5

6 SECTION 21. Arkansas Code § 16-10-305(a)(5)(A)-(F), concerning circuit
7 and district court costs, is amended to read as follows:

8 (A) The Omnibus DWI or BWI Act, § 5-65-101 et seq.;

9 (B) The Underage DUI or BUI Law, § 5-65-301 et seq.;

10 (C) Section 5-75-101 et seq.;

11 ~~(D) Section 5-76-101 et seq.;~~

12 ~~(E)(D)~~ Section 27-23-114; or

13 ~~(F)(E)~~ Section 15-42-127;

14

15 SECTION 22. Arkansas Code § 16-17-136(1), concerning waiver of
16 appearance and entry of plea for a traffic violation, is amended to read as
17 follows:

18 (1) A person who is charged in district court ~~or city court~~ with
19 committing an offense, excluding a violation of the Omnibus DWI or BWI Act, §
20 5-65-101 et seq., or the Underage DUI or BUI Law, § 5-65-301 et seq., or any
21 other offense for which a court appearance is mandatory, may waive appearance
22 and trial and plead guilty or nolo contendere by a signed statement;

23

24 SECTION 23. Arkansas Code § 16-87-218(c)(4), concerning the schedule
25 of costs for public defenders, is amended to read as follows:

26 (4) A Class C felony, Class D felony, unclassified felony, or
27 driving or boating while intoxicated, § 5-65-103, third offense:

28

29 SECTION 24. Arkansas Code § 16-90-703(5)(A)(iii), concerning the
30 definition of "criminally injurious conduct" under the Crime Victims
31 Reparations Act, is amended to read as follows:

32 (iii) ~~This term shall~~ "Criminally injurious conduct"
33 does not include acts arising out of the operation of motor vehicles, boats,
34 or aircraft unless the acts were committed with the intent to inflict injury
35 or death or unless the acts involve any of the following:

36 (a) Injury or death intentionally inflicted

1 through the use of a motor vehicle, boat, or aircraft;

2 (b) A violation of the Omnibus DWI or BWI Act,
3 § 5-65-101 et seq.; or

4 (c) A violation of § 27-53-101.

5
6 SECTION 25. Arkansas Code § 16-90-1302(a)(1)(E), concerning applicable
7 felonies in relation to earned discharge and completion of a person's
8 sentence:

9 (E) Driving or boating while intoxicated, § 5-65-103; and

10
11 SECTION 26. Arkansas Code § 19-6-201(39), regarding certain general
12 revenues, is amended to read as follows:

13 (39) ~~That portion of DWI operator's license~~ That portion of the
14 reinstatement fees, § 5-65-119(a)(3) under § 5-65-119(a)(2)(C), and that
15 portion of the reinstatement fees under "Underage DUI Law" driver's license
16 reinstatement fees, §§ 5-65-304(d) and 5-65-310(f);

17
18 SECTION 27. Arkansas Code § 19-6-301(120), regarding certain special
19 revenues, is amended to read as follows:

20 (120) That portion of driver's license reinstatement fees for
21 the Office of Driver Services, ~~§ 5-65-119(a)(2)~~ § 5-65-119(a)(2)(B);

22
23 SECTION 28. Arkansas Code § 19-6-301(155), regarding certain special
24 revenues, is amended to read as follows:

25 (155) That portion of driver's license reinstatement fees for
26 the Office of Alcohol Testing of the Department of Health, ~~§ 5-65-119(a)(1)~~ §
27 5-65-119(a)(2)(A), § 5-65-304(d), and § 5-65-310(f);

28
29 SECTION 29. Arkansas Code § 19-6-301(218), regarding certain special
30 revenues, is amended to read as follows:

31 (218) That portion of an operator's ~~driving while intoxicated~~
32 driver's license reinstatement fees, § 5-65-119(a)(4) § 5-65-119(a)(2)(D);

33
34 SECTION 30. Arkansas Code § 20-13-1106(b)(32), concerning
35 disqualifying offenses for emergency medical services, is amended to read as
36 follows:

1 (32) ~~Fourth or subsequent driving while intoxicated violations~~
2 ~~that constitute felony offenses under § 5-65-111(b)(3) and (4)~~ Driving or
3 boating while intoxicated, § 5-65-103, that is a:

4 (A) Felony; and

5 (B) Fourth or subsequent offense;

6
7 SECTION 31. Arkansas Code § 23-13-217(b), concerning the authority of
8 a state highway commission enforcement officer, is amended to read as
9 follows:

10 (b) The enforcement officers shall have authority to enforce § 27-50-
11 308 and the Omnibus DWI or BWI Act, § 5-65-101 et seq., and shall have
12 authority to make arrests for violation of any of the provisions of this
13 subchapter, orders, rules, and regulations of the commission and to serve any
14 notice, order, or subpoena issued by any court, the commission, its
15 secretary, or any employee authorized to issue same, and to this end shall
16 have full authority with jurisdiction within the entire State of Arkansas.

17
18 SECTION 32. Arkansas Code § 23-13-258(c), concerning the operation of
19 a motor vehicle under the Motor Carrier Act, is amended to read as follows:

20 (c) ~~Nothing in this section is intended to~~ This section does not
21 abrogate any of the provisions of the Omnibus DWI or BWI Act, § 5-65-101 et
22 seq., and any person violating ~~any of the provisions of~~ subsection (a) of
23 this section who may be charged with a violation of the Omnibus DWI or BWI
24 Act, § 5-65-101 et seq., shall be ~~se~~ charged with a violation of that act
25 rather than with a violation of this section.

26
27 SECTION 33. Arkansas Code § 25-9-106(b), concerning transfer of
28 community alcohol safety programs to the Division of Behavioral Health
29 Services, is amended to read as follows:

30 (b) ~~For the purposes of this section the term~~ As used in this section,
31 "funds" ~~shall mean~~ means all funds derived from the State Administration of
32 Justice Fund ~~pursuant to~~ under § 16-10-310 for usage by the state alcohol
33 program, education fees paid by offenders of the Omnibus DWI or BWI Act, § 5-
34 65-101 et seq., and the appropriation for community alcohol safety.

35
36 SECTION 34. Arkansas Code § 27-23-103(16)(B), concerning the

1 definition of "driving a commercial motor vehicle under the influence of
2 alcohol" under the Arkansas Uniform Commercial Driver License Act, is amended
3 to read as follows:

4 (B) Driving or boating while intoxicated in violation of § 5-65-103;
5 or

6
7 SECTION 35. Arkansas Code § 27-23-114(c)(1), concerning intoxication
8 under the Arkansas Uniform Commercial Driver's License Act, is amended to
9 read as follows:

10 (c)(1) A law enforcement officer having reasonable cause to believe
11 the person to have been driving a commercial motor vehicle while intoxicated
12 or driving a commercial motor vehicle while the person's blood alcohol
13 concentration was four hundredths of one percent (0.04%) or more shall have
14 the authority to administer or have administered a chemical test to determine
15 the person's blood alcohol concentration. The chemical test authorized shall
16 be identical to and under the same standards of the test given to persons
17 under the Omnibus DWI or BWI Act, § 5-65-101 et seq.

18
19 SECTION 36. Arkansas Code § 27-101-205(c), concerning a collision or
20 accident in a watercraft, is amended to read as follows:

21 ~~(c) When a person operating a vessel is involved in a collision,~~
22 ~~accident, or other casualty resulting in loss of human life or when there is~~
23 ~~reason to believe death may result, or a law enforcement officer has~~
24 ~~reasonable cause to believe that the person while operating a vessel is~~
25 ~~intoxicated or under the influence of any narcotic drug, barbiturate, or~~
26 ~~marijuana or while under any physical or mental disability so as to be~~
27 ~~incapable of operating the vessel safely under the prevailing circumstances,~~
28 ~~a law enforcement officer shall request and the person shall submit to a~~
29 ~~chemical test of the person's blood, breath, saliva, or urine in accordance~~
30 ~~with the provisions of § 5-76-104, even if the person is fatally injured, for~~
31 ~~the purpose of determining the alcohol concentration or controlled substance~~
32 ~~content of his or her blood, breath, saliva, or urine. A law enforcement~~
33 ~~officer shall request and a person shall submit to a chemical test of the~~
34 ~~person's blood, breath, saliva, or urine as required by § 5-65-202, even if~~
35 ~~the person is fatally injured, for the purpose of determining the alcohol~~
36 ~~concentration or controlled substance content of his or her blood, breath,~~

1 saliva, or urine if:

2 (1) The person is operating a vessel and is involved in a
3 collision, accident, or other casualty resulting in loss of human life or
4 when there is reason to believe death may result; or

5 (2) The law enforcement officer has reasonable cause to believe
6 that the person was operating a vessel while:

7 (A) Intoxicated or under the influence of any narcotic
8 drug, barbiturate, or marijuana; or

9 (B) Under any physical or mental disability so as to be
10 incapable of operating the vessel safely under the prevailing circumstances.

11

12 */s/Hickey*

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