

Stricken language would be deleted from and underlined language would be added to present law.
Act 299 of the Regular Session

State of Arkansas
90th General Assembly
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As Engrossed: S2/10/15 S2/12/15
A Bill

SENATE BILL 81

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

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

For An Act To Be Entitled

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

Subtitle

COMBINING THE OFFENSES OF DRIVING WHILE INTOXICATED AND BOATING WHILE INTOXICATED; CONCERNING THE OMNIBUS DWI ACT, THE UNDERAGE DUI LAW, SUSPENSIONS OF A PERSON'S DRIVER'S LICENSE, AND VEHICLE REGISTRATION.

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

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

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

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

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



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

follows:

CHAPTER 65

Driving or Boating While Intoxicated

Subchapter 1 – General Provisions

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

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

5-65-102. Definitions.

As used in this ~~act~~ chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Suspension for:

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

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

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

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

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

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

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

(iii) The ignition interlock restricted license

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

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

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

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

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

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

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

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

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

(i) In Arkansas; or

(ii) In another state; or

(B) ~~Any~~ A suspension or revocation of driving ~~privileges~~ privilege for an arrest for operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood under § 5-65-103 when the person was not subsequently acquitted of the criminal charges; ~~or.~~

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

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

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

(i) The additional charges are dismissed; or

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

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

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

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

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

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

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

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

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

5-65-106. Impoundment of license plate.

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

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

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

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

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

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

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

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

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

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

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

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

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

5-65-109. Presentencing report.

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

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

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

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

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

- (1) ~~the~~ The defendant's driving record;[;]
- (2) ~~an~~ An alcohol problem assessment;[;] and
- (3) ~~a~~ A victim impact statement, ~~when~~ if applicable.

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

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

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

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

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

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

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

~~(2) and the~~ The abstract shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

imprisonment in its written order or judgment:

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

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

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

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

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

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

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

5-65-112. Fines.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Both:

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

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

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

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

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

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

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

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

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

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

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

~~(b)(1)(A) If a person who is less than eighteen (18) years of age pleads guilty or nolo contendere to or is found guilty of driving while intoxicated under § 5-65-101 et seq., or of any criminal offense involving the illegal possession or use of controlled substances, or of any drug offense, in this state or any other state, or is found by a juvenile court to have committed such an offense, 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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The office shall establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~an ignition interlock device.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The department shall:

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

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

5-65-119. Distribution of fee.

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

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

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

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

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

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

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

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

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

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

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

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

5-65-120. Restricted driving permit.

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

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

~~(1) The person:~~

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

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

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

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

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

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

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

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

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

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

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

(A) The person:

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

(ii) Does not present a threat to the general

public; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A person commits the offense of unlawfully starting or attempting to start a motor vehicle equipped with an ignition interlock device for another person if he or she knowingly starts or attempts to start a motor vehicle equipped with an ignition interlock device for another person who is restricted from operating or being in actual physical control of a motor vehicle that does not have a functioning ignition interlock device.

(c) A person commits the offense of tampering with an ignition

interlock device if he or she knowingly tampers with or attempts to circumvent the operation of an ignition interlock device that has been installed in a motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

(ii) The driving privilege restriction is the result

of the offender's second or subsequent offense.

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

5-65-202. Implied consent.

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

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

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

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

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

SECTION 8. Arkansas Code § 5-65-203 is amended to read as follows:

5-65-203. Administration of a chemical test.

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

(0.08) or more in the person's breath or blood.

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

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

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

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

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

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

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

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

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

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

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

~~(1)(A)(i) Suspension for one hundred eighty (180) days for the first offense of refusing to submit to a chemical test of blood, breath,~~

~~saliva, or urine for the purpose of determining the alcohol or controlled substance content of the person's blood or breath.~~

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

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

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

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

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

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

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

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

(i) Suspended for one hundred eighty (180) days for

a first offense;

(ii) Suspended for two (2) years for a second offense occurring within five (5) years of the first offense;

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

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

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

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

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

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

~~(e) [Repealed.]~~

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

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

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

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

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

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

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

- (1) Six (6) months for a first offense; and
- (2) One (1) year for a second or subsequent offense.

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

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

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

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

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

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

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

or innocence of the defendant.

(b) The provisions ~~in~~ of subsection (a) of this section shall not ~~be construed as limiting~~ limit the introduction of ~~any~~ other relevant evidence ~~bearing upon the question of~~ offered to show whether or not the defendant was intoxicated.

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

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

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

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

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

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

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

(iii) A representative of the office.

~~(4)(B)(i) The testimony of the appropriate analyst or official may be compelled by the issuance of a proper subpoena by the party who wishes to call the appropriate analyst or official given ten (10) days prior to the date of hearing or trial, in which case the record or report is~~

~~admissible through the analyst or official, who is subject to cross-examination by the defendant or his or her counsel.~~ The prosecuting attorney or the defendant may compel the testimony of a person listed in subdivision (d)(3)(A) of this section by a subpoena issued to that person at least ten (10) days before the date of the hearing or trial.

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

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

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

5-65-207. Alcohol testing devices.

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

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

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

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

(b) ~~Any~~ A breath analysis made by or through the use of an instrument

that does not conform to the requirements ~~prescribed in~~ of this section is inadmissible in ~~any~~ a criminal or civil proceeding.

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

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

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

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

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

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

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

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

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

(A) The law enforcement agency investigating the accident;

(B) The physician in attendance; or

(C) Other person designated by state law.

(2)(A) The person who conducts the chemical test ~~under subsection (a) of this section~~ of the driver's or operator's blood, breath, saliva, or urine under this section shall forward the results of the chemical

test to the Department of Arkansas State Police, and the department shall establish and maintain the results of the chemical tests required by subsection (a) of this section in a database.

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

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

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

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

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

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

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

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

Subchapter 3 – Underage Driving or Boating Under the Influence Law

5-65-301. Title.

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

~~5-65-302. Definitions.~~

~~As used in this subchapter:~~

(1) ~~“Influence” means being controlled or affected by the ingestion of an alcoholic beverage or similar intoxicant, or any combination~~

~~of an alcoholic beverage or similar intoxicant, to such a degree that the driver's reactions, motor skills, and judgment are altered or diminished, even to the slightest scale, and the underage driver, therefore, due to inexperience and lack of skill, constitutes a danger of physical injury or death to himself or herself and other motorists or pedestrians; and~~

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

5-65-303. Conduct proscribed Driving or boating under the influence while underage.

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

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

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

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

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

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

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

(a) At the time of arrest for violating § 5-65-303, the arresting law

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

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

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

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

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

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

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

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

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

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

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

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

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

310.

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

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

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

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

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

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

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

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

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

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

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

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

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

27-16-808.

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

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

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

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

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

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

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

(c) The Division of Behavioral Health Services may promulgate rules

reasonably necessary to carry out the purposes of this section regarding the approval and monitoring of the alcohol and driving education programs.

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

(i) Both:

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

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

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

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

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

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

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

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

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

~~(a)(1) Section 16-93-301 et seq. allows a circuit court judge, district court judge, or city court judge to place on probation a first~~

~~offender who plead guilty or nolo contendere prior to an adjudication of guilt, and upon successful completion of probation, the circuit court judge, district court judge, or city court judge may discharge the accused without a court adjudication of guilt and expunge the record.~~

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

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

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

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

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

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

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

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

(1) The ultimate resolution of the case; and

(2) The sentence and fine, if applicable.

~~(c) Within thirty (30) days after sentencing a person who has been found guilty or pleaded guilty or nolo contendere on a charge of violating any provision of this subchapter, any magistrate of the~~

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

(2) The abstract shall be:

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

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

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

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

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

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

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

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

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

5-65-309. Implied consent.

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

(1) The underage person is arrested for any offense arising out

of an act alleged to have been committed while the underage person was driving or boating while under the influence or driving or boating while there was an alcohol concentration of two-hundredths (0.02) but less than eight-hundredths (0.08) in his or her breath, ~~or~~ blood, saliva, or urine;

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

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

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

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

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

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

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

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

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

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

~~(2) The office shall suspend the person's driving privileges as~~

follows:

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

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

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

(A) Suspension for ninety (90) days for a first offense;

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

(C) Revocation for a third or subsequent offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f)(1)(A) A driving privilege that is suspended under this section may be reinstated by the office upon payment of twenty-five dollars (\$25.00) for each occurrence of an offense that resulted in an order of administrative suspension under § 5-65-310.

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

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

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

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

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

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

5-65-311. Relationship to other laws.

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

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

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

- (1) The administration of a chemical test for breath or blood alcohol;
 - (2) The instrument used to administer the chemical test;
 - (3) The procedure used to calibrate and maintain the instrument;
- and
- (4) The use of the chemical test results as evidence.

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

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

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

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

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

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

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

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

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

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

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

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

for requesting a hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provided by § 3-3-203(e); and

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

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

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

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

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

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

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

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

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

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

(B) The hearing shall not be recorded.

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

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

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

(a) Intoxicated or impaired;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(g) [Repealed.]~~

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

(i) Both:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

as that of a resident.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Chapter 76~~

~~Operation of Motorboats While Intoxicated~~

~~5-76-101. Definitions.~~

~~As used in this chapter:~~

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

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

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

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

~~(4) "Operator" means a person who is controlling the speed and direction of a motorboat or a person who is in direct physical control of the motorboat;~~

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

~~(6) "Waters" means any public waters within the territorial limits of the State of Arkansas.~~

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

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

~~(1) Intoxicated; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~5-76-103. Penalties.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(c)(1) A chemical test shall be administered at the direction of a law enforcement officer having reasonable cause to believe the person to have been operating a motorboat while intoxicated or while there is an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood.~~

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

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

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

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

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

~~(2) The department may:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) Intoxicated; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (C) Section 5-75-101 et seq.;
- ~~(D) Section 5-76-101 et seq.;~~
- ~~(E)~~(D) Section 27-23-114; or
- ~~(F)~~(E) Section 15-42-127;

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

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

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

(1) A person who is charged in district court ~~or city court~~ with committing an offense, excluding a violation of the Omnibus DWI or BWI Act, § 5-65-101 et seq., or the Underage DUI or BUI Law, § 5-65-301 et seq., or any other offense for which a court appearance is mandatory, may waive appearance and trial and plead guilty or nolo contendere by a signed statement;

SECTION 23. Arkansas Code § 16-87-218(c)(4), concerning the schedule of costs for public defenders, is amended to read as follows:

(4) A Class C felony, Class D felony, unclassified felony, or driving or boating while intoxicated, § 5-65-103, third offense:

SECTION 24. Arkansas Code § 16-90-703(5)(A)(iii), concerning the definition of "criminally injurious conduct" under the Crime Victims Reparations Act, is amended to read as follows:

(iii) ~~This term shall~~ "Criminally injurious conduct" does not include acts arising out of the operation of motor vehicles, boats, or aircraft unless the acts were committed with the intent to inflict injury or death or unless the acts involve any of the following:

- (a) Injury or death intentionally inflicted

through the use of a motor vehicle, boat, or aircraft;

(b) A violation of the Omnibus DWI or BWI Act, § 5-65-101 et seq.; or

(c) A violation of § 27-53-101.

SECTION 25. Arkansas Code § 16-90-1302(a)(1)(E), concerning applicable felonies in relation to earned discharge and completion of a person's sentence:

(E) Driving or boating while intoxicated, § 5-65-103; and

SECTION 26. Arkansas Code § 19-6-201(39), regarding certain general revenues, is amended to read as follows:

(39) ~~That portion of DWI operator's license~~ That portion of the reinstatement fees, § 5-65-119(a)(3) under § 5-65-119(a)(2)(C), and that portion of the reinstatement fees under "Underage DUI Law" driver's license reinstatement fees, §§ 5-65-304(d) and 5-65-310(f);

SECTION 27. Arkansas Code § 19-6-301(120), regarding certain special revenues, is amended to read as follows:

(120) That portion of driver's license reinstatement fees for the Office of Driver Services, ~~§ 5-65-119(a)(2)~~ § 5-65-119(a)(2)(B);

SECTION 28. Arkansas Code § 19-6-301(155), regarding certain special revenues, is amended to read as follows:

(155) That portion of driver's license reinstatement fees for the Office of Alcohol Testing of the Department of Health, ~~§ 5-65-119(a)(1)~~ § 5-65-119(a)(2)(A), § 5-65-304(d), and § 5-65-310(f);

SECTION 29. Arkansas Code § 19-6-301(218), regarding certain special revenues, is amended to read as follows:

(218) That portion of an operator's ~~driving while intoxicated~~ driver's license reinstatement fees, ~~§ 5-65-119(a)(4)~~ § 5-65-119(a)(2)(D);

SECTION 30. Arkansas Code § 20-13-1106(b)(32), concerning disqualifying offenses for emergency medical services, is amended to read as follows:

(32) ~~Fourth or subsequent driving while intoxicated violations that constitute felony offenses under § 5-65-111(b)(3) and (4)~~ Driving or boating while intoxicated, § 5-65-103, that is a:

(A) Felony; and

(B) Fourth or subsequent offense;

SECTION 31. Arkansas Code § 23-13-217(b), concerning the authority of a state highway commission enforcement officer, is amended to read as follows:

(b) The enforcement officers shall have authority to enforce § 27-50-308 and the Omnibus DWI or BWI Act, § 5-65-101 et seq., and shall have authority to make arrests for violation of any of the provisions of this subchapter, orders, rules, and regulations of the commission and to serve any notice, order, or subpoena issued by any court, the commission, its secretary, or any employee authorized to issue same, and to this end shall have full authority with jurisdiction within the entire State of Arkansas.

SECTION 32. Arkansas Code § 23-13-258(c), concerning the operation of a motor vehicle under the Motor Carrier Act, is amended to read as follows:

(c) ~~Nothing in this section is intended to~~ This section does not abrogate any of the provisions of the Omnibus DWI or BWI Act, § 5-65-101 et seq., and any person violating ~~any of the provisions of~~ subsection (a) of this section who may be charged with a violation of the Omnibus DWI or BWI Act, § 5-65-101 et seq., shall be ~~se~~ charged with a violation of that act rather than with a violation of this section.

SECTION 33. Arkansas Code § 25-9-106(b), concerning transfer of community alcohol safety programs to the Division of Behavioral Health Services, is amended to read as follows:

(b) ~~For the purposes of this section the term~~ As used in this section, "funds" ~~shall mean~~ means all funds derived from the State Administration of Justice Fund ~~pursuant to~~ under § 16-10-310 for usage by the state alcohol program, education fees paid by offenders of the Omnibus DWI or BWI Act, § 5-65-101 et seq., and the appropriation for community alcohol safety.

SECTION 34. Arkansas Code § 27-23-103(16)(B), concerning the

definition of "driving a commercial motor vehicle under the influence of alcohol" under the Arkansas Uniform Commercial Driver License Act, is amended to read as follows:

(B) Driving or boating while intoxicated in violation of § 5-65-103;
or

SECTION 35. Arkansas Code § 27-23-114(c)(1), concerning intoxication under the Arkansas Uniform Commercial Driver's License Act, is amended to read as follows:

(c)(1) A law enforcement officer having reasonable cause to believe the person to have been driving a commercial motor vehicle while intoxicated or driving a commercial motor vehicle while the person's blood alcohol concentration was four hundredths of one percent (0.04%) or more shall have the authority to administer or have administered a chemical test to determine the person's blood alcohol concentration. The chemical test authorized shall be identical to and under the same standards of the test given to persons under the Omnibus DWI or BWI Act, § 5-65-101 et seq.

SECTION 36. Arkansas Code § 27-101-205(c), concerning a collision or accident in a watercraft, is amended to read as follows:

~~(c) When a person operating a vessel is involved in a collision, accident, or other casualty resulting in loss of human life or when there is reason to believe death may result, or a law enforcement officer has reasonable cause to believe that the person while operating a vessel is intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana or while under any physical or mental disability so as to be incapable of operating the vessel safely under the prevailing circumstances, a law enforcement officer shall request and the person shall submit to a chemical test of the person's blood, breath, saliva, or urine in accordance with the provisions of § 5-76-104, even if the person is fatally injured, for the purpose of determining the alcohol concentration or controlled substance content of his or her blood, breath, saliva, or urine. A law enforcement officer shall request and a person shall submit to a chemical test of the person's blood, breath, saliva, or urine as required by § 5-65-208, even if the person is fatally injured, for the purpose of determining the alcohol concentration or controlled substance content of his or her blood, breath,~~

saliva, or urine if:

(1) The person is operating a vessel and is involved in a collision, accident, or other casualty resulting in loss of human life or when there is reason to believe death may result; or

(2) The law enforcement officer has reasonable cause to believe that the person was operating a vessel while:

(A) Intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana; or

(B) Under any physical or mental disability so as to be incapable of operating the vessel safely under the prevailing circumstances.

/s/Hickey

APPROVED: 03/03/2015