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91st General Assembly
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As Engrossed: H3/15/17
A Bill

HOUSE BILL 2248

By: Representative Gazaway

For An Act To Be Entitled

AN ACT TO AMEND THE IMPLIED CONSENT LAW IN RELATION
TO THE OFFENSE OF DRIVING OR BOATING WHILE
INTOXICATED; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE IMPLIED CONSENT LAW IN
RELATION TO THE OFFENSE OF DRIVING OR
BOATING WHILE INTOXICATED.

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

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

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who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn the consent provided by subsection (a) of this section, and one (1) or more chemical tests may be administered subject to § 5-65-203.

(c) A test of a person's blood under this section to determine the person's alcohol concentration, controlled substance content, or other intoxicating substance content in his or her blood requires a warrant based on probable cause that the person was operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated.

SECTION 2. Arkansas Code § 5-65-204(c), concerning a blood test under the implied consent law, is amended to read as follows:

(c)(1) When a person submits to a blood test at the request of a law enforcement officer under a provision of this section or because a warrant has been issued to take a sample of the person's blood, blood may be drawn by a physician or a person acting under the direction and supervision of a physician.

(2) The limitation in subdivision (c)(1) of this section does not apply to the taking of a breath, saliva, 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.

SECTION 3. Arkansas Code § 5-65-204(e), concerning a chemical test under the implied consent law, is amended to read as follows:

(e) Upon the request of the person who submits to a chemical test at the request of a law enforcement officer or because a warrant has been issued to take a sample of the person's blood, full information concerning the chemical test shall be made available to the person or to his or her attorney.

SECTION 4. Arkansas Code § 5-65-205(b), concerning the offense of refusal to submit to a chemical test, is amended to read as follows:

(b)(1) The Office of Driver Services shall suspend or revoke the driving privilege of an arrested person who refuses to submit to a chemical test under this subchapter.

(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.

SECTION 5. 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, 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) *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 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, including the percentage of alcohol concentration involved;*

(ii) *Controlled substances were found to be a factor, 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 substance were found to be factors, including the percentage of alcohol concentration involved, as well as a list of the controlled substances found and the amount.*

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

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

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

(d) A test of a person's blood under this section to determine the person's alcohol concentration, controlled substance content, or other intoxicating substance content in his or her blood requires a warrant based on probable cause that the person was operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated.

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

5-65-309. Implied consent.

(a) 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 § 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, 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) 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 § 5-65-203.

(c) A test of a person's blood under this section to determine the person's alcohol concentration, controlled substance content, or other intoxicating substance content in his or her blood requires a warrant based

on probable cause that the person was operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated.

SECTION 7. Arkansas Code § 5-65-402(a)(4)(A)(iii), concerning an administrative driver's license suspension for a person charged with refusing to submit to a chemical test, is amended to read as follows:

(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).

SECTION 8. Arkansas Code § 5-65-402(a)(8)(D)(ii), concerning a hearing for an administrative driver's license suspension for a person charged with refusing to submit to a chemical test, is amended to read as follows:

(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;

/s/Gazaway

APPROVED: 04/06/2017