

## SENATE AMENDMENT 1 TO SB242.

striking the title in its entirety and substituting therefor the following:

"AN ACT TO AMEND VARIOUS SECTIONS OF THE \_OMNIBUS DWI ACT\_ AND THE \_UNDERAGE DUI LAW\_ TO MAKE IT UNLAWFUL FOR ANY PERSON TO OPERATE A MOTOR VEHICLE IF AT THE TIME THE ALCOHOL CONCENTRATION IN THE PERSON\_S BLOOD IS EIGHT HUNDREDTHS OF ONE PERCENT (0.08%) OR GREATER; AND FOR OTHER PURPOSES."

AND

by striking the subtitle in its entirety and substituting therefor the following:

"TO AMEND VARIOUS SECTIONS OF THE \_OMNIBUS DWI ACT\_ AND THE \_UNDERAGE DUI LAW\_"

by adding the following new sections on line 31 of page 1

"SECTION 2. Arkansas Code Annotated § 5-65-104 is amended to read as follows:

"5-65-104. Seizure, suspension, and revocation of license - Temporary permits.

(a) (1) At the time of arrest for operating or being in actual physical control of a motor vehicle while intoxicated or while there was ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, § 5-65-103, or refusing to submit to a chemical test of blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood, § 5-65-202, the arrested person shall immediately surrender his license, permit, or other evidence of driving privilege to the arresting law enforcement officer. The 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.

(2) If the license, permit, or other evidence of driving privilege seized by the officer has not expired and otherwise appears valid to the officer, the 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 Department of Finance and Administration or its designee. This receipt shall be recognized as a license and shall authorize the arrested person to operate a motor vehicle for a period not to exceed thirty (30) days. The receipt form shall contain and shall constitute a notice of suspension or revocation of driving privileges by the Office of Driver Services of the Revenue Division of the Department of Finance and Administration, effective in thirty (30) days, notice of the right to a hearing within twenty (20) days, and as notice 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. The receipt shall also contain details and phone numbers of the Office of Driver Services telling how to request the hearing. If the Office of Driver Services is unable to conduct a hearing within the twenty-day period, a temporary permit shall be issued and shall be valid until the date of the hearing. 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 officer and shall be submitted by mail or in person to the Director of the Department of Finance and

Administration or his designated representative within seven (7) days of the issuance of the receipt. The failure of the arresting officer to timely file this report shall not affect the authority of the Office of Driver Services to suspend or revoke the driving privilege of the arrested person.

(3) Any notices from the Office of Driver Services required under this act which are not personally delivered shall be sent by certified mail and shall be deemed to have been delivered on the date when postmarked and shall be sent to the last known address on file with the Office of Driver Services. 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 of Driver Services shall not constitute nonreceipt of notice. For all notices which are personally delivered, the person shall be asked to sign a receipt acknowledging he received the required notice.

(4) The Office of Driver Services of the Revenue Division of the Department of Finance and Administration 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 when it receives a sworn report from the law enforcement officer that he had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while intoxicated or while there was ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, § 5-65-103, which is accompanied by a written chemical test report reflecting that the arrested person was intoxicated or had an alcohol concentration of ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more, or is accompanied by a sworn report that the arrested person refused to submit to a chemical test of blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood, as provided in § 5-65-202. The suspension or revocation shall be based on the number of previous offenses as follows:

(A)(i) Suspension for one hundred twenty (120) days for the first offense of operating or being in actual physical control of a motor vehicle while intoxicated or while there was ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, § 5-65-103;

(ii) Suspension for six (6) months for the first 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) Suspension for one hundred eighty (180) days for the first offense of refusing to submit to a chemical test of blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood, § 5-65-202;

(B)(i) Suspension for sixteen (16) months, during which no restricted permits may be issued, for a second offense of operating or being in actual physical control of a motor vehicle while intoxicated or while there was ~~one tenth of one percent~~

~~(0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, § 5-65-103, within three (3) years of the first offense;

(ii) Suspension for two (2) years, during which no restricted permits may be issued, for a second offense of refusing to submit to a chemical test of blood, breath, or urine for the purposes of determining the alcohol or controlled substance contents of the person's blood, § 5-65-202, within three (3) years of the first offense;

(C)(i) Suspension for thirty (30) months, during which no restricted permits may be issued, for the third offense of operating or being in actual physical control of a motor vehicle while intoxicated or while there was ~~one-tenth of one percent~~ ~~(0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, § 5-65-103, within three (3) years of the first offense;

(ii) Revocation for three (3) years, during which no restricted permits may be issued, for the third offense of refusing to submit to a chemical test of blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood, § 5-65-202, within three (3) years of the first offense;

(D)(i) 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 while intoxicated or while there was ~~one-tenth of one percent~~ ~~(0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, § 5-65-103, within a three-year period of the first offense.

(ii) 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, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood, § 5-65-202, within three (3) years of the first offense; and

(5) If the person is a resident without a license or permit to operate a motor vehicle in this state, the Office of Driver Services shall, in addition to any other penalties provided for in this act, deny to that person the issuance of a license or permit for a period of six (6) months for a first offense. For a second or subsequent offense by a resident without a license or permit to operate a motor vehicle, the Office of Driver Services shall, in addition to any other penalties provided for in this act, deny to that person the issuance of a license or permit for a period of one (1) year.

(6)(A) If the person is a nonresident, such person's privilege to operate a motor vehicle in Arkansas shall be suspended in the same manner as that of a resident. The Office of Driver Services shall notify the office that issued the nonresident's motor vehicle license of the action taken by the Office of Driver Services.

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

(7) Upon the written request of a person whose privilege to drive has been

revoked, denied, or suspended, or who has received a notice of revocation, suspension, or denial by the arresting officer, the Office of Driver Services shall grant the person an opportunity to be heard provided the request is received by the Office of Driver Services within seven (7) calendar days after the notice of the revocation, suspension, or denial is given in accordance with this section or as otherwise provided in this act. Such a request shall not operate to stay the revocation, suspension, or denial by the Office of Driver Services until the disposition of said hearing.

(8) (A) The hearing shall be before the Office of Driver Services or its authorized agent, in the office of the Revenue Division of the Department of Finance and Administration nearest the county wherein the alleged events occurred for which the person was arrested, unless the Office of Driver Services or its authorized agent and the arrested person agree otherwise to the hearing being held in some other county or the Office of Driver Services or its authorized agent may schedule the hearing or any part thereof by telephone and conduct the hearing by telephone conference call. The hearing shall not be recorded. The scope of the hearing shall cover the issues of whether the officer had reasonable grounds to believe the person had been operating or was in actual physical control of a vehicle while intoxicated or while there was ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood or refused to submit to a chemical test of the blood, breath, or urine for the purpose of determining the alcohol or controlled substance contents of the person's blood and whether the person was placed under arrest. At the hearing, the burden of proof shall be on the state, and the decision shall be based on a preponderance of the evidence.

(B) If the revocation, suspension, or denial is based upon a chemical test result indicating that the person was intoxicated or there was ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, as provided in § 5-65-103, and a sworn report from a law enforcement officer, the scope of the hearing shall also cover the issues as to whether:

(i) The person was advised that his privilege to drive would be revoked, suspended, or denied if the test result reflected an alcohol concentration of ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more or the presence of other intoxicating substances or combination of intoxicating substances;

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

(iii) The testing procedures used were in accordance with existing rules; and

(iv) The test result in fact reflects an alcohol concentration, presence of other intoxicating substances, or a combination thereof.

(C) If the revocation, suspension, or denial is based upon the refusal of the person to submit to a chemical test as provided in § 5-65-202, reflected in a sworn report by a law enforcement officer, the scope of the hearing shall also include whether:

(i) The person refused to submit to the test or tests; and

(ii) The person was informed that his privilege to drive would be revoked, suspended, or denied if the person refused to submit to the test or tests.

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

(A) Any convictions for offenses of operating or being in actual physical control of a motor vehicle while intoxicated or while there is ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood under § 5-65-103 or refusing to submit to a chemical test under § 5-65-202 which occurred prior to July 1, 1996; and

(B) Any suspension or revocation of driving privileges for arrests for operating or being in actual physical control of a motor vehicle while intoxicated or while there is ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood under § 5-65-103 or refusing to submit to a chemical test under § 5-65-202 occurring on or after July 1, 1996, where the person was not subsequently acquitted of the criminal charges.

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

(c) A person adversely affected by the hearing disposition order of the Office of Driver Services of the Revenue Division of the Department of Finance and Administration 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. The filing of a petition for review will not stay or place in abeyance the decision of the Office of Driver Services or its authorized agent. The administrative hearings held pursuant to this section shall be exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq. On review, the circuit court shall hear the case de novo in order to determine whether, based on a preponderance of the evidence, grounds exist for revocation, suspension, or denial of the person's privilege to drive.

(d) (1) Any decision rendered at an administrative hearing held under this section shall have no effect on any criminal case arising from any violation of § 5-65-103 or § 5-65-202.

(2) Any decision rendered by a court of law for a criminal case arising from any violation of § 5-65-103 or § 5-65-202 shall affect the administrative suspensions or revocation of the driver's license as follows:

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

(B) An acquittal on the charges or a dismissal of charges will serve to

reverse the suspension or revocation of the driver's license suspended or revoked under this section.

(3) If a person is acquitted of the charges of violating § 5-65-103 or § 5-65-202, or if the charges are dismissed, the Office of Driver Services shall reinstate the person's driver license at no cost to the person, and the charges shall not be used to determine the number of previous offenses when administratively suspending or revoking the driving privilege of any arrested person in the future.

(e) Any person whose privilege to drive has been denied, suspended, or revoked shall remain under such denial, suspension or revocation, until such time that person applies to and is granted by the Office of Driver Services for reinstatement of such privilege to drive, and remains subject to penalties as provided in § 5-65-105 or until he is acquitted of violating § 5-65-103.

(f) The administrative suspension or revocation of a driver's license as provided for by this section shall be supplementary to and in addition to the suspensions or revocations of driver licenses which are ordered by a court of competent jurisdiction for offenses under §§ 5-64-710, 5-65-116, and 27-16-914, or any other traffic or criminal offense wherein a suspension or revocation of the driver's license is a penalty for the violation.

(g) For all arrests or offenses occurring before July 1, 1996, but which have not reached a final disposition as to judgment in court, the offenses shall be decided under the law in effect at the time the offense occurred, and any defendant shall be subject to the penalty provisions in effect at that time and not under the provisions of this section.

(h) Any person whose license is suspended or revoked pursuant to this section shall be required to complete an alcohol education program as prescribed and approved by the Arkansas Highway Safety Program or an alcohol education program as approved by the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health. Such alcohol education program may collect a program fee of up to fifty dollars (\$50.00) per enrollee to offset program costs. A person required to complete an alcohol education program under this section may be required to pay, in addition to the costs collected for education, a fee of up to twenty-five dollars (\$25.00) to the alcohol education program, to offset the additional costs associated with reporting requirements under this subchapter. The alcohol education program shall report semiannually to the Arkansas Highway Safety Program all revenue derived from this fee.

(i) A person whose license is suspended or revoked pursuant to this section shall furnish proof of attendance at, and completion of, the alcoholism treatment or education program before reinstatement of his or her suspended or revoked driver s license.

(j) Notwithstanding the fact that a person adversely affected by a hearing or disposition order has filed a de novo petition for review pursuant to subsection (c) of this section, the person shall be entitled to reinstatement of driving privileges upon complying with subsections (h) and (i) only once for each administrative suspension or

revocation received pursuant to this section and shall not be required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred."

SECTION 3. Arkansas Code Annotated § 5-65-119 is amended to read as follows:

"5-65-119. Distribution of fee.

The Office of Driver Services shall charge a fee of seventy-five dollars (\$75.00) for reinstating a driving privilege suspended or revoked because of an arrest for operating or being in actual physical control of a motor vehicle while intoxicated or while there was ~~one tenth of one percent (0.1%)~~ eight hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, § 5-65-103, or refusing to submit to a chemical test of blood, breath, or urine, for the purpose of determining the alcohol or controlled substance contents of the person's blood, § 5-65-202, which shall be distributed as follows:

(1) Fourteen percent (14%) of the revenues derived from this fee shall be deposited in the State Treasury as special revenues and credited to the Public Health Fund to be used exclusively for the Department of Health's Blood Alcohol Program;

(2) Sixty-six percent (66%) of the revenues derived from this fee shall be deposited as special revenues in 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 of the Revenue Division of the Department of Finance and Administration for use in supporting the administrative driver's licensing revocation and sanctions programs provided for in this subchapter; and

(3) Twenty percent (20%) of the revenues derived from this fee shall be deposited in 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."

SECTION 4. Arkansas Code Annotated § 5-65-202 is amended to read as follows:

"5-65-202. Implied consent.

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

(1) The driver is arrested for any offense arising out of acts alleged to have been committed while the person was driving while intoxicated or driving while there was ~~one tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) or more of alcohol in the person's blood; or

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

(3) At the time the person is arrested for driving while intoxicated, the law enforcement officer has reasonable cause to believe that the person, while operating or in actual physical control of a motor vehicle, is intoxicated or has ~~one tenth of one percent~~

~~(0.10%)~~ eight hundredths of one percent (0.08%) or more of alcohol in his or her blood.

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

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

"5-65-203. Administration.

(a) The chemical test or tests 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 motor vehicle while intoxicated or while there was ~~one tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) or more of alcohol in the person's blood.

(b) The law enforcement agency by which that officer is employed shall designate which of the aforesaid tests shall be administered, and the agency shall be responsible for paying all expenses incurred in conducting the tests.

(1) If the person tested requests that additional tests be made, as authorized in § 5-65-204(e), the cost of the additional tests shall be borne by the person tested.

(2) If any person shall object to the taking of his blood for a test, as authorized herein, the breath or urine of the person may be used to make the analysis."

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

"5-65-206. Evidence in prosecution.

(a) In any criminal prosecution of a person charged with the offense of driving while intoxicated, the amount of alcohol in the defendant's blood at the time or within two (2) hours of the alleged offense, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance shall give rise to the following:

(1) If there was at that time one-twentieth of one percent (0.05%) or less by weight of alcohol in the defendant's blood, urine, breath, or other bodily substance, it shall be presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at the time in excess of one-twentieth of one percent (0.05%) but less than ~~one tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) by weight of alcohol in the defendant's blood, urine, breath, or other bodily substance, such fact shall 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.

(b) The foregoing provisions shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question 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) The records and reports of certifications, rules, evidence analysis, or other

documents pertaining to work performed by the blood alcohol program of the Department of Health under the authority of this chapter shall be received as competent evidence as to the matters contained therein in the courts of this state subject to the applicable rules of criminal procedure when duly attested to by the program director or his assistant, in the form of an original signature or by certification of a copy. These documents shall be self-authenticating.

(1) However, the machine performing the chemical analysis shall have been duly certified at least once in the last three (3) months preceding arrest and the operator thereof shall have been properly trained and certified.

(2) Nothing in this section shall be deemed to abrogate a defendant's right of cross-examination of the person calibrating the machine, the operator of the machine, or any person performing work in the blood alcohol program of the Department of Health, who shall be made available by the state if notice of intention to cross-examine is given ten (10) days prior to the date of hearing or trial.

(3) The testimony of the appropriate analyst or official may be compelled by the issuance of a proper subpoena, in which case, the records and reports shall be admissible through the analyst or official, who shall be subject to cross-examination by the defendant or his counsel."

SECTION 7. Arkansas Code Annotated § 5-65-207 is amended to read as follows:

"5-65-207. Blood alcohol testing devices.

(a) Every machine or instrument used to determine the alcohol content of the breath or blood of any person by analysis of the breath of the person for the purpose of determining if the person was operating a motor vehicle while intoxicated or with a blood alcohol content of ~~one-tenth of one percent (0.10%)~~ eight hundredths of one percent (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 machine or instrument, and without any adjustment or other action of the person administering the analysis, and the machine shall be so constructed that the blood alcohol content is shown by visible digital display on the machine and on an automatic readout.

(b) Any such breath analysis made by or through the use of a machine or instrument that does not conform to the requirements prescribed herein shall be inadmissible in any criminal or civil proceeding.

(c) The State Board of Health is authorized to adopt appropriate rules and regulations to carry out the intent and purposes of this section, and only machines or instruments approved by the board as meeting the requirements of this section and regulations of the board shall be used for making the breath analysis for determining blood alcohol content. The Department of Health is specifically authorized to limit by its rules the types or models of testing devices which may be approved for use in Arkansas for the purposes set forth in this section. The approved types or models will be specified by manufacturer's name and model.

(d) All law enforcement agencies which conduct blood alcohol testing shall be in full compliance with the provisions of this section by June 28, 1989."

SECTION 8. Arkansas Code Annotated § 5-65-303 is amended to read as follows:

"5-65-303. Conduct proscribed.

(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 one-fiftieth of one percent (0.02%) but less than ~~one tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) by weight of alcohol in the person's blood as determined by a chemical test of the person's blood or breath or other bodily substance."

SECTION 9. Arkansas Code Annotated § 5-65-309 is amended to read as follows:

"5-65-309. Implied consent.

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

(1) The driver is arrested for any offense arising out of acts alleged to have been committed while the underage person was driving while under the influence or driving while there was one-fiftieth of one percent (0.02%) but less than ~~one tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) of alcohol in the person's blood; or

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

(3) The underage person is stopped by a law enforcement officer who has reasonable cause to believe that the person, while operating or in actual physical control of a motor vehicle, is under the influence or has one-fiftieth of one percent (0.02%) but less than ~~one tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) of alcohol in his or her blood.

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

SECTION 10. Arkansas Code Annotated § 5-65-310 is amended to read as follows:

"5-65-310. Refusal to submit.

(a) 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 in § 5-65-309, none shall be given, and the person's driver's license shall be seized by the law enforcement officer, and the officer shall immediately deliver to the person from

whom the license was seized a temporary driving permit which shall expire on the date of arraignment.

(b) The arresting officer shall remit the seized driver's license to the court, and, upon an arraignment, the judge shall issue that person a temporary permit to expire on the date of trial.

(c) If the judge determines that the law enforcement officer had reasonable cause to believe the arrested underage person had been driving under the influence or while there was one-fiftieth of one percent (0.02%) but less than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) of alcohol in the person's blood, and the underage person refused to submit to the test upon the request of the law enforcement officer, the judge shall order the Office of Driver Services to suspend the person's driver's license as follows:

(1) Suspension for not less than ninety (90) days nor more than one hundred eighty (180) days if the underage person had not previously refused the test while underage and if the underage person had not been convicted of driving while under the influence or driving while there was one-fiftieth of one percent (0.02%) but less than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) of alcohol in the person's blood while underage;

(2) Suspension for not less than one (1) year nor more than eighteen (18) months if the underage person had previously refused the test while underage or if the underage person had been convicted of driving while under the influence or driving while there was one-fiftieth of one percent (0.02%) but less than ~~one-tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) of alcohol in the person's blood while underage.

(d) If the underage person is a resident without a license or permit to operate a motor vehicle in this state, the Office of Driver Services shall deny to the person the issuance of a license or permit for a period of two (2) years after the date of the arrest.

(e) (1) If the person is a nonresident, that person's privilege of operating a motor vehicle in Arkansas shall be suspended for not less than six (6) months.

(2) When a nonresident's privilege to operate a motor vehicle in this state has been suspended, the Office of Driver Services shall notify the office of issuance of that person's nonresident motor vehicle license of action taken by the Office of Driver Services."

SECTION 11. Arkansas Code Annotated § 5-65-311 is amended to read as follows:

"5-65-311. Relationship to other laws.

(a) Penalties prescribed in this subchapter for underage driving under the influence shall be in addition to all other penalties prescribed by law for the offenses under other laws of the State of Arkansas.

(b) For the purposes of this subchapter, there is no presumption, as there is found in § 5-65-206, that a person is not under the influence of an intoxicating substance, such

as alcohol or a similar intoxicant, if the person's blood alcohol concentration is five hundredths of one percent (0.05%) or less.

(c) The administration of the chemical tests for blood alcohol, the machines and instruments used to administer those tests, the procedures used to calibrate and maintain those machines and instruments, and the use of the test results as evidence shall be the same as for those tests and machines and instruments used for testing blood alcohol concentrations under the Omnibus DWI Act, § 5-65-101 et seq.

(d) If there is evidence of more than one-twentieth of one percent (0.05%) but less than ~~one tenth of one percent (0.10%)~~ eight hundredths of one percent (0.08%) by weight of alcohol in a person's blood, breath, or other bodily substances, this fact shall not preclude a person under twenty-one (21) years of age from being prosecuted for driving while intoxicated under § 5-65-101 et seq."

AND

by appropriately renumbering subsequent sections of the bill.