

Department of Finance and Administration

Legislative Impact Statement

Bill: SB81

Bill 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.

Basic Change : Sen. Hickey and Rep. Hickerson

This bill combines the criminal offense of driving while intoxicated (DWI) and boating while intoxicated (BWI) and makes changes to the Omnibus DWI Act, the underage DUI law, administrative suspensions of a person's driver's license and vehicle registration. Arkansas law requires courts to report convictions within 5 days. Federal law requires convictions to be posted to the driver's record within 10 days of conviction. This bill will change these requirements by allowing courts 30 days to prepare abstract and report convictions. If the conviction involves a commercial driver's license then the state would not be in compliance with federal law. Failure to comply with federal law could cause the Arkansas Highway and Transportation Department to lose federal highway funding.

Current law does not provide for a suspension of driving privilege for any offense of BWI, BUI or alcohol test refusal in a boat. This law would mandate suspension of driver's license for these offenses. This law would also require administrative hearings to be held for these offenses in addition to the criminal proceeding. Under current law, when a person receives a boating DUI, no action is taken against the person's driving privilege or vehicle registration. However, the conviction is posted to the driver's record and would be considered as a prior offense if that person later gets a DWI or DUI in a motor vehicle. This bill not only requires that the boating conviction be considered a prior offense, but would also require driver license and vehicle registration suspension. Both DWI or DUI in a motor vehicle and BWI DUI in a boat would be counted as prior DUI offenses in determining how long a person would lose driving privilege and vehicle registration.

Current law for DWI allows for the issuance of an interlock restricted license, but does not make it mandatory. Currently, if a person cannot afford the interlock device, they may choose not to drive. This bill makes the interlock device mandatory for a period of six (6) months on a first offense refusal to submit to a chemical test in a boat or a motor vehicle. By requiring the interlock device before a license can be issued, the interlock device now becomes a reinstatement requirement.

This bill would require driver license suspensions periods for DWI and BWI as follows:

- DWI and BWI will be: 1st offense 6 months. 2nd offense 2 years. 3rd offense 30 months. 4th offense 4 year revocation.
- Underage DUI and BUI will be: 1st offense 90 days. 2nd offense 1 year. 3rd or subsequent revocation until person is age 21 or 3 years, whichever is longer.
- Refusal and boating refusal adult –1st offense 180 days, 2nd offense 2 years, 3rd offense revocation for 3 years, 4th or subsequent lifetime revocation.
- Underage refusal and underage boating refusal –1st offense 90 days, 2nd offense 1 year, 3rd or subsequent revocation until age 21 or 3 years, whichever is longer.

This bill would mandate reinstatement requirements to be met prior to the reinstatement of a driver's license for both DWI and BWI as follows:

- DWI and BWI requirements – Alcohol rehabilitation class or treatment, Victim Impact Panel and a \$150.00 reinstatement fee.
- DUI and BUI – Alcohol Rehabilitation or Treatment Class, Victim Impact Panel and a \$25.00 reinstatement fee.
- Motor vehicle or boating refusal – Interlock restricted license for 6 months (1st offense refusal-boating and motor vehicle), Victim Impact Panel and \$150.00 reinstatement fee.

Department of Finance and Administration

Legislative Impact Statement

Bill: SB81

Bill 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.

- Underage motor vehicle or boating refusal- Victim impact Panel and \$25.00 reinstatement fee.

This bill authorizes state highway commission enforcement officers to enforce the BWI Act. The bill provides that either a motor vehicle or a motorboat may be subject to seizure and sale if a person pleads guilty or nolo contendere to a fourth offense occurring within five (5) years of the first offense.

Revenue Impact :

Revenue will not be significantly impacted since there were only 95 BWI convictions filed with the state during the three (3) year period of January 1, 2012 through December 31, 2014.

Taxpayer Impact :

Taxpayers would be impacted with greater penalties and reinstatement requirements.

Resources Required :

Programming changes will be required. The estimate is 560 hours at a cost of \$84,000.

Time Required :

There is no emergency clause on this bill. No additional time is required to implement this bill.

Procedural Changes :

Procedures will be developed to implement the new requirements.

Legal Analysis :

SB81 repeals §§ 5-76-101 through -108 of the Arkansas Criminal Code regarding Boating While Intoxicated (BWI) and Underage Boating while Under the Influence (BUI). SB81 combines BWI and BUI into the existing Driving While Intoxicated (DWI) and Underage Driving Under the Influence (DUI) provisions of §§ 5-65-101 through -403 to create the "Omnibus DWI or BWI Act." Under existing law, a BWI or BUI does not subject the arrested person to the administrative license suspension provisions and reinstatement requirements administered by DFA. Under SB81, a person arrested for BWI or BUI will now be subject to administrative license suspension, reinstatement requirements, and the administrative hearing process administered by DFA.

For general purposes, SB81 directly affects DFA in the following ways:

(1) DFA will need to update and print its Administrative License Suspension (ALS) forms it provides to Arkansas law enforcement agencies to incorporate the BWI and BUI offenses. If SB81 becomes law, existing ALS forms will become obsolete and would be required to be discarded. Alternatively, DFA could create a separate ALS form for BWI and BUI offenses.

(2) With the addition of BWI and BUI to DFA's license suspension process, DFA will experience an increased workload of processing ALS forms and instituting license suspension proceedings. In addition, DFA will experience an increased workload to provide administrative hearings to persons that contest the suspension of driving privileges or to request restricted driving permits or an ignition interlock device license.

(3) Programming changes will be required to add BWI and BUI offenses to the administrative license suspension process.

A concern of SB81 is that an arrest for first offense Refusal to Submit (Refusal) will require the person to have an ignition interlock device installed on the person's vehicle for a period of six months prior to reinstatement of driving privileges at the conclusion of the suspension period. See Section 9, Page 34, lines 11-14. This provision causes two areas of concern to DFA:

- (1) Issuance of an ignition interlock device license is prohibited by existing law to persons arrested for

Department of Finance and Administration

Legislative Impact Statement

Bill: SB81

Bill 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.

the offense of DWI – Drugs pursuant to § 5-65-104(a)(2)(A)(ii), (B)(iii), and (C)(iii). Therefore, if a person was arrested for DWI – Drugs and Refusal – 1st Offense, SB81 would require the person to have an interlock device installed in their vehicle prior to reinstatement but DFA would be prohibited from issuing an interlock license by reason that the person was also arrested for DWI – Drugs.

(2) Installation of an ignition interlock device for a six month period requires a financial cost of approximately \$500 to the licensee. In addition, many persons are physically unable to use an ignition interlock device due to medical conditions such as asthma, chronic obstructive pulmonary disorder (COPD), among other respiratory conditions. DFA may potentially be subject to complaints regarding the interlock requirement from persons that are financially unable to afford the interlock device as well as persons that suffer from the above-referenced medical conditions. To avoid these concerns, SB81 should be amended that use of an ignition interlock device should be voluntary and not mandatory for driver's license reinstatement purposes.

SB81 also presents a procedural conflict that may pose confusion and ambiguity among prosecuting attorneys and Arkansas criminal court judges. Under the amendment to § 5-65-107(a) under SB81, a DWI or BWI "shall not be reduced or dismissed by the prosecuting attorney." A prosecuting attorney does not have the authority to "dismiss" a criminal charge. Instead, a prosecutor has the option to "nolle prosequi" (choose not to prosecute) a charge, which must be approved by the trial judge by court order. Therefore, it is recommended that SB81's changes to § 5-65-107(a) be amended to state, "(a) A charge brought under § 5-65-103 shall be tried on those charges or plead guilty to those charges, and shall not be reduced or dismissed."

Another concern of SB81 amends § 5-65-117(a)(1), which limits the seizure and sale of a motor vehicle or motorboat for only the fourth offense within five (5) years. Because other code sections discuss more than the fourth offense in that time period, amending SB81 to provide for "fourth or subsequent" offenses would be appropriate.

Another concern of SB81 relates to restricted work permits issued by DFA pursuant to § 5-65-120. Under SB81, § 5-65-120(d) would state, "A restricted driving permit issued under this section shall not be granted to a person whose driving privilege was suspended or revoked for [an offense of DWI, BWI, Refusal, DUI, BUI, or Underage Refusal] *for a second or subsequent time.*" Use of "second or subsequent time" creates ambiguity in whether DFA can issue a restricted a restricted permit to a person that has had a previous offense within the past five (5) years or whether the permit prohibition would apply if the person had a prior offense during their lifetime. It is recommended that SB81 clarify this issue.

Another concern of SB81 is that it may conflict with § 16-10-205 with regards to the deadline for courts to report a conviction to the Office of Driver Services (ODS). § 16-20-205(d)(1)(C)(ii) requires Arkansas courts to report a conviction to ODS within five (5) business days after a conviction for a violation of any law regulating the operation of a vehicle. On Page 11, Lines 14-15, a court has thirty (30) days to report to ODS a DWI conviction to ODS. On Page 47, Lines 4-6, a court has thirty (30) days to report to ODS a DUI conviction. This conflict may result in ambiguity and confusion among courts as to the correct time period in which to report a DWI or DUI conviction to ODS.

SB81 contains a typographical error on Page 15, Line 25, which states, "(B) Not less than three (2) years but no more than ten". This error must be corrected by amendment to SB81.