

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 357

By: Senator Files

For An Act To Be Entitled

AN ACT PERMITTING ADDITIONAL CHEMICAL TESTS FOR DRIVING WHILE INTOXICATED; OPERATING A MOTORBOAT WHILE INTOXICATED; OPERATING OR NAVIGATING AN AIRCRAFT WHILE INTOXICATED; AND UNDERAGE DRIVING UNDER THE INFLUENCE; CONCERNING DRIVER'S LICENSES, COMMERCIAL DRIVER'S LICENSES, AND HUNTING LICENSES; AND FOR OTHER PURPOSES.

Subtitle

PERMITTING ADDITIONAL CHEMICAL TESTS FOR THE OFFENSES OF DRIVING WHILE INTOXICATED AND RELATED OFFENSES; AND CONCERNING DRIVER'S LICENSES, COMMERCIAL DRIVER'S LICENSES, AND HUNTING LICENSES.

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

SECTION 1. Arkansas Code § 5-10-105(a)(1)(B), concerning the offense of negligent homicide, is amended to read as follows:

(B)(i) If at that time there is an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood based upon the definition of ~~breath, blood, and urine~~ alcohol concentration in § 5-65-204, as determined by a chemical test of the person's blood, urine, breath, saliva, or other bodily substance.

(ii) The method of the chemical analysis test of the person's blood, urine, saliva, ~~or breath, or other bodily substance~~ shall be made in accordance with §§ 5-65-204 and 5-65-206; or



SECTION 2. Arkansas Code § 5-65-103 is amended to read as follows:

5-65-103. Unlawful acts.

(a) It is unlawful and punishable as provided in this ~~act~~ chapter for any person who is intoxicated to operate or be in actual physical control of a motor vehicle.

(b) It is unlawful and punishable as provided in this ~~act~~ chapter for any person to operate or be in actual physical control of 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 ~~breath, blood, and urine~~ alcohol concentration in § 5-65-204.

SECTION 3. Arkansas Code § 5-65-119(a), concerning a fee to reinstate a suspended or revoked driving privilege, is amended to read as follows:

(a) 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 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:

SECTION 4. Arkansas Code § 5-65-202(a), concerning Arkansas's implied consent law, is amended to read as follows:

(a) Any person who operates a motor vehicle or is in actual physical control of 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:

SECTION 5. Arkansas Code § 5-65-203(b)(3), concerning the administration of a chemical test, is amended to read as follows:

(3) If any 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 ~~to make the chemical analysis~~ for the chemical test.

SECTION 6. Arkansas Code § 5-65-204(a)-(d)(2), concerning alcohol concentration and testing, are amended to read as follows:

5-65-204. Validity – Approved methods.

(a)(1) ~~“Alcohol~~ As used in this chapter, § 5-10-105, § 5-75-101 et seq., and § 5-76-101 et seq., "alcohol concentration" means either:

(A) Grams of alcohol per one hundred milliliters (100 ml) or one hundred cubic centimeters (100 cc) of blood; or

(B) Grams of alcohol per two hundred ten liters (210 l) of breath.

(2) The alcohol concentration of ~~other bodily substances~~ urine, saliva, or other bodily substance is based upon grams of alcohol per one hundred milliliters (100 ml) or one hundred cubic centimeters (100 cc) of blood, the same being percent weight per volume or percent alcohol concentration.

(b)(1)(A) A chemical ~~analysis test~~ made to determine the presence and amount of alcohol in a person's blood, urine, saliva, or breath to be considered valid under this chapter shall be performed according to a method approved by the Department of Health and State Board of Health or by an individual possessing a valid certificate issued by the department for this purpose.

(B) The department may:

(i) Approve satisfactory techniques or methods for the chemical ~~analysis test~~;

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

(iii) Issue a certificate that is subject to termination or revocation at the discretion of the department.

(C)(i) An auxiliary law enforcement officer appointed as a reserve law enforcement officer and certified by the department in the operation of an instrument used to determine the alcohol content of the breath may operate an instrument used to determine the alcohol content of the breath under this chapter.

(ii) The department shall promulgate rules to

implement subdivision (b)(1)(C)(i) of this section.

(2) However, a method of chemical analysis of a person's blood, urine, saliva, or other bodily substance made by the State Crime Laboratory for determining the presence of one (1) or more controlled substances or any intoxicant is exempt from approval by the ~~division~~ department or the State Board of Health.

~~(e) To be considered valid under the provisions of this section, a chemical analysis of a person's blood, urine, breath, or other bodily substance for determining the alcohol content of the blood or breath shall be performed according to a method approved by the board.~~

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

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

SECTION 7. Arkansas Code § 5-65-205(b)(1)(A)(i), concerning the criminal offense of refusal to submit, is amended to read 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.

SECTION 8. Arkansas Code § 5-65-205(b)(2)-(4), concerning the criminal offense of refusal to submit, is amended to read as follows:

(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 ~~purposes~~ 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.

SECTION 9. Arkansas Code § 5-65-208 is amended to read as follows:
5-65-208. Motor vehicle accidents – Testing required.

(a)~~(1)~~ When the driver of a motor vehicle 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 blood, breath, ~~blood, breath,~~ saliva, or urine shall be administered to the driver, even if fatally injured, to determine the presence of and percentage of alcohol concentration ~~of alcohol~~ or the presence of ~~drugs~~ a controlled substance, or both, in the driver'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 chemical test as soon as practicable.

(2)(A) The ~~medical personnel who conducted~~ person who conducts the chemical test under subsection (a) of this section of the driver's blood, breath, saliva, or urine 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 ~~analyses~~ 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 the percentage of alcohol concentration involved;

(ii) ~~Drugs~~ Controlled substances were found to be a factor, listing the class of ~~drugs~~ controlled substances so found and their amounts; and

(iii) Both alcohol and ~~drugs~~ controlled substances were found to be factors, with the percentage of alcohol concentration involved, and listing the class of ~~drugs~~ controlled substances so found and their amounts.

(c) The results of the ~~analyses~~ chemical tests required by this section shall be reported to the department and may be used by state and local officials for statistical purposes that do not reveal the identity of the deceased person or for any law enforcement purpose, including prosecution for the violation of any law.

SECTION 10. Arkansas Code § 5-65-309(a), concerning the implied consent law, is amended to read as follows:

(a) Any underage person who operates a motor vehicle or is in actual physical control of a motor vehicle 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:

SECTION 11. Arkansas Code § 5-65-402(a)(4)(A)(iii)(b), concerning the surrender of a license or permit to an arresting officer, is amended to read as follows:

(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 12. Arkansas Code § 5-65-402(a)(8)(D)(ii), concerning the surrender of a license or permit to an arresting officer, 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;

SECTION 13. Arkansas Code § 5-65-402(a)(8)(F)(i)(b), concerning the surrender of a license or permit to an arresting officer, is amended to read as follows:

(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;

SECTION 14. Arkansas Code § 5-65-402(c)(4)(B), concerning the surrender of a license or permit to an arresting officer, is amended to read as follows:

(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 privilege to drive, then the provisions of § 5-65-206 shall apply in the circuit court proceeding.

SECTION 15. Arkansas Code § 5-75-103(a), concerning Arkansas's implied consent law, is amended to read as follows:

(a) Any person who operates or navigates any aircraft or is in actual physical control of any aircraft in this state is deemed to have given consent, subject to the provisions of § 5-75-104, 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:

SECTION 16. Arkansas Code § 5-75-104(b)(3), concerning the administration of a chemical test is amended to read as follows:

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

SECTION 17. Arkansas Code § 5-76-104(a)(1), concerning Arkansas's implied consent law, is amended to read as follows:

(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:

SECTION 18. Arkansas Code § 5-76-104(a)(3)(A), concerning Arkansas's

implied consent law, is amended to read as follows:

(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.

SECTION 19. Arkansas Code § 15-42-127 is amended to read as follows:
15-42-127. Implied consent.

(a)(1) Subject to the provisions of subsection (c) of this section, any person who purchases a hunting license for use in the State of Arkansas or engages in hunting privileges in this state shall be deemed to have given consent to a chemical test or 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 blood, breath, saliva, or urine if the person is involved in a shooting accident while hunting.

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

(3)(A) When a person who is hunting in this state is involved in a shooting accident resulting in loss of human life or serious bodily injury, a law enforcement officer shall request and the person or persons shall submit to a chemical test or tests 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 blood, breath, saliva, or urine.

(B) The law enforcement officer shall cause the chemical test or tests to be administered to the person or persons involved in the shooting accident, including the person injured by the shooting and the person who caused the injury by shooting another person.

(b) If a person who is hunting is involved in a shooting accident resulting in loss of human life or serious bodily injury and the person refuses to submit to a chemical test under this section upon the request of

the law enforcement officer, the person shall be guilty of a violation for refusal to submit, and upon conviction:

(1) The court shall levy a fine of not less than two thousand five hundred dollars (\$2,500) and not greater than five thousand dollars (\$5,000); and

(2) The Arkansas State Game and Fish Commission may suspend or revoke the person's hunting privileges or eligibility to purchase a hunting license for life.

(c)(1) The chemical tests required under this section shall be administered at the direction of a law enforcement officer having reasonable cause to believe the person to have been hunting while under the influence of alcohol or a controlled substance.

(2)(A) The law enforcement agency by which the officer referred to in subdivision (c)(1) of this section is employed shall designate which chemical tests authorized by this section shall be administered, and the law enforcement agency shall be responsible for paying all expenses incurred in conducting the chemical tests.

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

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

(d)(1) To be considered valid under the provisions of this section, ~~chemical analyses~~ a chemical test of a person's blood, breath, saliva, or urine must be performed according to methods 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 ~~is authorized to~~ may:

(A) Approve satisfactory techniques or methods for the ~~chemical analysis~~ test of a person's blood, breath, saliva, or urine;

(B) Ascertain the qualifications and competence of individuals to conduct the ~~analysis~~ chemical test; and

(C) Issue permits that shall be subject to termination or

revocation at the discretion of the department.

(e)(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 of subdivision (e)(1) of this section shall not apply to the taking of breath, saliva, or urine specimens.

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

(B) A physician, institution, or person acting under the direction or supervision of a physician shall not be held liable in tort for the withdrawal of the blood unless the person or institution is negligent in connection with the withdrawal of 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 ~~or tests~~ at the request of a law enforcement officer under this section, full information concerning the chemical test ~~or tests~~ shall be made available to the person or the person's 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 this right.

(3) If a law enforcement officer refuses or fails to advise the person of this right and to permit and assist the person to obtain the chemical test, then the results of the chemical test ~~or tests~~ taken at the direction of the law enforcement officer under this section shall not be admissible into evidence.

SECTION 20. Arkansas Code § 27-23-115(a), concerning Arkansas's implied consent law for commercial motor vehicle drivers, is amended to read as follows:

(a) A person who drives a commercial motor vehicle within this state

shall be deemed to have given consent, subject to the provisions of § 5-65-202, to take a test or tests of that person's blood, breath, saliva, or urine for the purpose of determining that person's blood alcohol concentration or the presence of other drugs.

SECTION 21. Arkansas Code § 27-101-205(c), concerning procedures when there is a collision or accident involving 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, ~~barbituate~~ 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.