

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

SENATE BILL 130

By: Senator G. Stubblefield

For An Act To Be Entitled

AN ACT CONCERNING THE OFFENSE OF DRIVING OR BOATING WHILE INTOXICATED; CONCERNING OPERATION OF A MOTOR VEHICLE OR BOAT UNDER THE INFLUENCE OF MARIJUANA; ESTABLISHING A LEVEL OF MARIJUANA IN A PERSON'S BODILY FLUIDS THAT LEADS TO A PRESUMPTION OF INTOXICATION; TO BE KNOWN AS "SEBASTIAN'S LAW"; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE OMNIBUS DWI OR BWI ACT;
CONCERNING OPERATION OF A MOTOR VEHICLE
OR BOAT UNDER THE INFLUENCE OF MARIJUANA;
AND ESTABLISHING A PRESUMPTIVE LEVEL OF
INTOXICATION DUE TO MARIJUANA IN A
PERSON'S BODILY FLUIDS.

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

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

(a)(1) A person commits negligent homicide if he or she negligently causes the death of another person, not constituting murder or manslaughter, as a result of operating a vehicle, an aircraft, or a watercraft:

(A) While intoxicated;

(B)(i) If, as determined by a chemical test of the person's blood, urine, breath, saliva, or other bodily substance, at that time there is:



(a) ~~an~~ An alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood based upon the definition of alcohol concentration in § 5-65-204, ~~as determined by a chemical test of the person's blood, urine, breath, saliva, or other bodily substance;~~ or

(b) A THC concentration of five nanograms (5 ng) or more in the person's blood based upon the definition of THC concentration in § 5-65-102.

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

(C) While passing a stopped school bus in violation of § 27-51-1004; or

(D) While fatigued.

(2) A person who violates subdivision (a)(1) of this section upon conviction is guilty of a Class B felony.

SECTION 2. Arkansas Code § 5-13-202(a)(3), concerning the elements of one of the possible ways to commit the offense of battery in the second degree, is amended to read as follows:

(3) The person recklessly causes serious physical injury to another person:

(A) By means of a deadly weapon; or

(B) While operating or in actual physical control of a motor vehicle or motorboat if at the time:

(i) The person is intoxicated; ~~or~~

(ii) The alcohol concentration in the person's breath or blood is eight-hundredths (0.08) or more based upon the definition of alcohol concentration in § 5-65-204; or

(iii) The THC concentration in the person's blood is five nanograms (5 ng) or more based upon the definition of THC concentration in § 5-65-102; or

SECTION 3. Arkansas Code § 5-65-102, concerning definitions under the Omnibus DWI or BWI Act, is amended to add an additional definition to read as follows:

(10) "THC concentration" means grams of delta-9-tetrahydrocannabinol per milliliter of blood.

SECTION 4. Arkansas Code § 5-65-103 is amended to read as follows:

5-65-103. Driving or boating while intoxicated.

(a)(1) It is unlawful and punishable as provided in this chapter for 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.

(2) It is unlawful and punishable as provided in this chapter for 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:

(A) alcohol ~~alcohol~~ 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-; or

(B) THC concentration in the person's blood was five nanograms (5 ng) or more.

(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.

(c) An alcohol-related offense under this section is a strict liability offense.

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

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~~ § 5-65-103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-103(a)(2)(B), 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~~ § 5-65-103(a)(2)(A).

(b) If the ~~Office of Driver Services~~ office 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~~ § 5-65-103(a)(2)(A), 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~~ § 5-65-103(a)(2)(A), 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) of this section 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~~ § 5-65-103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-103(a)(2)(B), 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 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) 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, § 5-65-103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-103(a)(2)(B), including a violation of § 5-10-105(a)(1)(A) or § 5-10-105(a)(1)(B), that occurred:

- (i) In Arkansas; or
- (ii) In another state; or

(B) A suspension or revocation of driving 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, § 5-65-103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-103(a)(2)(B),~~ when the person was not subsequently acquitted of the criminal charges.

(b)(1)(A) A person whose driving privilege is suspended or revoked under this section is required to complete an alcohol education program or an alcohol treatment program as approved by the 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 driving privilege is suspended or revoked under this section shall furnish proof of:

(A) Attendance at and completion of the alcohol education program or the alcohol treatment program required under subdivision (b)(1)(A)

of this section before reinstatement of his or her suspended or revoked driving privilege; or

(B) 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 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.

SECTION 6. 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, § 5-65-103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-103(a)(2)(B);

(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, § 5-65-103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-103(a)(2)(B).

(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.

SECTION 7. 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, § 5-65-103(a)(2)(A), or while there was a THC concentration of five nanograms (5 ng) or more in the person's blood, § 5-65-103(a)(2)(B).

(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 an additional chemical test or chemical tests be made as authorized in § 5-65-204(d), 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 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 8. Arkansas Code § 5-65-204(b)(1)(A), concerning the validity of a chemical test to determine the presence and amount of alcohol in a person's blood, urine, saliva, or breath, is amended to read as follows:

(b)(1)(A) A To be considered valid under this chapter, a chemical 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, or to determine the presence and amount of delta-9-tetrahydrocannabinol in a person's blood, shall be performed according to a method approved by the

Department of Health and the State Board of Health or by an individual possessing a valid certificate issued by the department for this purpose.

SECTION 9. Arkansas Code § 5-65-206(a), concerning the presumptive limits indicating intoxication ascertained through a chemical test that may be used as evidence in prosecution, is amended to read as follows:

(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:

(A) alcohol ~~alcohol~~ Alcohol concentration of the person's blood, urine, breath, saliva, 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; or

(B) THC concentration of the person's blood is less than two nanograms (2 ng) by weight as shown by chemical analysis at the time of the alleged offense.

(2) A Although the following facts may be considered with other competent evidence in determining the guilt or innocence of the person, a presumption does not exist if at the time of the alleged offense the person has:

(A) an 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~~ person'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; or~~

(B) A THC concentration of two nanograms (2 ng) or more but less than five nanograms (5 ng) by weight in the person's blood.

SECTION 10. Arkansas Code § 5-65-402(a)(8), concerning a hearing on the suspension, revocation, or disqualification of a person's driving privilege of an arrested person, is amended to read as follows:

(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(a)(2)~~ § 5-65-103(a)(2)(A);

(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; or

(e) The THC concentration in the person's blood by weight was equal to or greater than the THC concentration prohibited by § 5-65-103(a)(2)(B); or

(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~~ content 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, any 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 or THC 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 or THC concentration, the presence of other intoxicating substances, or a combination of alcohol concentration ~~or~~ and other intoxicating ~~substance~~ substances.

(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.