

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2534

By: Carey

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 2001, Sections 11-902, as last amended by Section 1, Chapter 189, O.S.L. 2005 and 11-906.4 (47 O.S. Supp. 2005, Section 11-902), which relate to reckless driving, driving while intoxicated, and negligent homicide; modifying time limitations for administration of certain test; amending 47 O.S. 2001, Sections 754, as last amended by Section 16, Chapter 394, O.S.L. 2005 and 756 (47 O.S. Supp. 2005, Section 754), which relate to chemical tests; modifying time limitations for administration of certain test; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 47 O.S. 2001, Section 11-902, as last amended by Section 1, Chapter 189, O.S.L. 2005 (47 O.S. Supp. 2005, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state, whether upon public roads, highways, streets, turnpikes, other public places or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings, who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of eight-hundredths (0.08) or more at the time of a test of such person's blood or breath administered within ~~two (2)~~ three (3) hours after the arrest of such person;
2. Is under the influence of alcohol;

3. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance which may render such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

C. 1. Any person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall follow all recommendations made in the assessment and evaluation and be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year. Any person convicted of a violation for a first offense shall be fined not more than One Thousand Dollars (\$1,000.00).

2. Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of any law of another state prohibiting the offense provided in subsection A of this section, is convicted of a second offense pursuant to the provisions of this section or has a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section and within ten (10) years of such municipal conviction is convicted pursuant to the provision of this section shall be deemed guilty of a felony and shall participate in

an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

- a. follow all recommendations made in the assessment and evaluation for treatment at the defendant's expense, or
- b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or
- c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph.

However, if the treatment in subparagraph a of this paragraph does not include residential or inpatient treatment for a period of not less than five (5) days, the person shall serve a term of imprisonment of at least five (5) days.

3. Any person who is convicted of a second felony offense pursuant to the provisions of this section shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

- a. follow all recommendations made in the assessment and evaluation for treatment at the defendant's expense, two hundred forty (240) hours of community service and use of an ignition interlock device, or
- b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed seven (7) years and a fine of not more than Five Thousand Dollars (\$5,000.00), or

- c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph.

However, if the treatment in subparagraph a of this paragraph does not include residential or inpatient treatment for a period of not less than ten (10) days, the person shall serve a term of imprisonment of at least ten (10) days.

4. Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this section shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

- a. follow all recommendations made in the assessment and evaluation for treatment at the defendant's expense, followed by not less than one (1) year of supervision and periodic testing at the defendant's expense, four hundred eighty (480) hours of community service, and use of an ignition interlock device for a minimum of thirty (30) days, or
- b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed ten (10) years and a fine of not more than Five Thousand Dollars (\$5,000.00), or
- c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph.

However, if the person does not undergo residential or inpatient treatment pursuant to subparagraph a of this paragraph the person shall serve a term of imprisonment of at least ten (10) days.

5. Any person who, within ten (10) years after a previous conviction of a violation of murder in the second degree or

manslaughter in the first degree in which the death was caused as a result of driving under the influence of alcohol or other intoxicating substance, is convicted of a violation of this section shall be deemed guilty of a felony.

6. Provided, however, a conviction from another state shall not be used to enhance punishment pursuant to the provisions of this subsection if that conviction is based on a blood or breath alcohol concentration of less than eight-hundredths (0.08).

7. In any case in which a defendant is charged with a second or subsequent driving under the influence of alcohol or other intoxicating substance offense within any municipality with a municipal court other than a court of record, the charge shall be presented to the county's district attorney and filed with the district court of the county within which the municipality is located.

D. Any person who is convicted of a violation of driving under the influence with a blood or breath alcohol concentration of fifteen-hundredths (0.15) or more pursuant to this section shall be deemed guilty of aggravated driving under the influence. A person convicted of aggravated driving under the influence shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall comply with all recommendations for treatment. Such person shall be sentenced to not less than one (1) year of supervision and periodic testing at the defendant's expense, four hundred eighty (480) hours of community service, and an ignition interlock device for a minimum of thirty (30) days. Nothing in this subsection shall preclude the defendant from being charged or punished as provided in paragraph 1, 2, 3, 4 or 5 of subsection C of this section.

E. When a person is sentenced to imprisonment in the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center or at a place determined by the Director of the Department of Corrections. The Department of Corrections shall classify and assign the person to one or more of the following:

1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section 612 of Title 57 of the Oklahoma Statutes; or

2. A correctional facility operated by the Department of Corrections with assignment to substance abuse treatment.

F. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked driving privilege when the person meets the statutory requirements which affect the existing driving privilege.

G. Any person who is found guilty of a violation of the provisions of this section shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation and assessment program offered by a certified assessment agency or certified assessor for the purpose of evaluating and assessing the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the agency or assessor for the evaluation and assessment. The fee for an evaluation and assessment shall be the amount provided in subsection C of Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation and assessment shall be conducted at a certified assessment agency, the office of a certified assessor or at another location as ordered by the court. The agency or assessor shall, within seventy-two (72) hours from the time the person is evaluated and assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. If such report indicates that the evaluation and assessment shows that the defendant would benefit

from a ten-hour or twenty-four-hour alcohol and drug substance abuse course or a treatment program or both, the court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to follow all recommendations identified by the evaluation and assessment and ordered by the court. No person, agency or facility operating an evaluation and assessment program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated and assessed pursuant to this section for any treatment program or substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or substance abuse service offered by such person, agency or facility. If a person is sentenced to imprisonment in the custody of the Department of Corrections and the court has received a written evaluation report pursuant to the provisions of this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation and assessment report submitted to the court pursuant to the provisions of this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation and assessment required by this subsection. If the defendant fails or refuses to comply with an order of the court to obtain the evaluation and assessment, the Department of Public Safety shall not reinstate driving privileges until the defendant has complied in full with such order. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence and any

other sanction authorized by law for failure or refusal to comply with an order of the court.

H. Any person who is found guilty of a violation of the provisions of this section may be required by the court to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars (\$25.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

I. Any person who is found guilty of a second or subsequent violation of the provisions of this section, shall be ordered by the court to have installed, after the conclusion of the mandatory revocation period pursuant to Section 6-205.1 of this title, on every motor vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person pursuant to Sections 754.1 and 755 of this title, an ignition interlock device approved by the Board of Tests for Alcohol and Drug Influence at the person's own expense for a period of not less than six (6) months nor more than three (3) years. The person shall pay the monthly maintenance fee for each ignition interlock device installed pursuant to this subsection. The installation of an ignition interlock device, as required by this subsection, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

J. Any person who is found guilty of a felony violation of the provisions of this section may be required to submit to electronic monitoring as authorized and defined by Section 991a of Title 22 of the Oklahoma Statutes.

K. Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to

the provisions of law of another state prohibiting the offense provided in subsection A of this section or a violation of a municipal ordinance prohibiting the offense provided in subsection A of this section, pleads guilty or nolo contendere or is convicted of a violation of this section shall not be required to undergo the alcohol and drug substance evaluation program required by subsection G of this section. The court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to participate in and successfully complete all recommendations from the evaluation, such as an alcohol and drug substance abuse treatment program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes.

L. Any person who is found guilty of a violation of the provisions of this section who has been sentenced by the court to perform any type of community service shall not be permitted to pay a fine in lieu of performing the community service.

M. When a person is found guilty of a violation of the provisions of this section, the court shall order, in addition to any other penalty, the defendant to pay a one-hundred-dollar assessment to be deposited in the Drug Abuse Education and Treatment Revolving Fund created in Section 2-503.2 of Title 63 of the Oklahoma Statutes, upon collection.

N. In any case in which a person is convicted of violating the provisions of this section and who was transporting in the motor vehicle a child fifteen (15) years of age or younger, the fine shall be enhanced to double the amount of the whole sum otherwise prescribed.

SECTION 2. AMENDATORY 47 O.S. 2001, Section 11-906.4, is amended to read as follows:

Section 11-906.4 A. It is unlawful, and punishable as provided in subsection B of this section, for any person under twenty-one

(21) years of age to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has any measurable quantity of alcohol in the person's blood or breath at the time of a test administered within ~~two~~ (2) three (3) hours after an arrest of the person;

2. Exhibits evidence of being under the influence of any other intoxicating substance as shown by analysis of a specimen of the person's blood, breath, saliva, or urine in accordance with the provisions of Sections 752 and 759 of this title; or

3. Exhibits evidence of the combined influence of alcohol and any other intoxicating substance.

B. Any person under twenty-one (21) years of age who violates any provision of this section shall be subject to the seizure of the driver license of that person at the time of arrest or detention and the person, upon conviction, shall be guilty of operating or being in actual physical control of a motor vehicle while under the influence while under age and shall be punished:

1. For a first offense, by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by assignment to and completion of twenty (20) hours of community service, or by requiring the person to attend and complete a treatment program, or by any combination of fine, community service, or treatment;

2. Upon a second conviction, by:

- a. assignment to and completion of not less than two hundred forty (240) hours of community service, and
- b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device for a period of not less than thirty (30) days, as ordered by the court, on every vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person,

pursuant to Section 754.1 or 755 of this title. The installation of an ignition interlock device, as required by this subparagraph, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

In addition, a second conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection D of this section, or by both; or

3. Upon a third or subsequent conviction, by:

- a. assignment to and completion of not less than four hundred eighty (480) hours of community service, and
- b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device for a period of not less than thirty (30) days, as ordered by the court, on every vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person, pursuant to Section 754.1 or 755 of this title. The installation of an ignition interlock device, as required by this subparagraph, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

In addition, a third or subsequent conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection D of this section, or by both.

C. The court may assess additional community service hours in lieu of any fine specified in this section.

D. In addition to any penalty or condition imposed pursuant to the provisions of this section, the person shall be subject to:

1. Upon a first conviction:

- a. the cancellation or denial of driving privileges as ordered by the court pursuant to Section 6-107.1 of this title, and
- b. the mandatory revocation of driving privileges pursuant to Section 6-205.1, 753 or 754 of this title, which revocation period may be modified as provided by law; and

2. Upon a second or subsequent conviction:

- a. the cancellation or denial of driving privileges for a period of two (2) years or until the person attains eighteen (18) years of age, whichever is longer, pursuant to subsection B of Section 6-107.2 of this title,
- b. the mandatory revocation of driving privileges pursuant to Section 6-205.1, 753 or 754 of this title, which period may be modified as provided by law, and
- c. an assessment of the person's degree of alcohol abuse, in the same manner as prescribed in subsection H of Section 11-902 of this title, which may result in treatment as deemed appropriate by the court.

E. Nothing in this section shall be construed to prohibit the filing of charges pursuant to Section 761 or 11-902 of this title when the facts warrant.

F. As used in this section:

1. The term "conviction" includes a juvenile delinquency adjudication by a court; and

2. The term "revocation" includes the cancellation or denial of driving privileges by the Department.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 754, as last amended by Section 16, Chapter 394, O.S.L. 2005 (47 O.S. Supp. 2005, Section 754), is amended to read as follows:

Section 754. A. Any arrested person who is under twenty-one (21) years of age and has any measurable quantity of alcohol in the person's blood or breath, or any person twenty-one (21) years of age or older whose alcohol concentration is eight-hundredths (0.08) or more as shown by a breath test administered according to the provisions of this title, or any arrested person who has refused to submit to a breath or blood test, shall immediately surrender his or her driver license, permit or other evidence of driving privilege to the arresting law enforcement officer. The officer shall seize any driver license, permit, or other evidence of driving privilege surrendered by or found on the arrested person during a search.

B. If the evidence of driving privilege surrendered to or seized by the officer has not expired and otherwise appears valid, the officer shall issue to the arrested person a dated receipt for that driver license, permit, or other evidence of driving privilege on a form prescribed by the Department of Public Safety. This receipt shall be recognized as a driver 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 constitute a notice of revocation of driving privilege by the Department effective in thirty (30) days. The 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 officer and shall be submitted by mail or in person to the Department within seventy-two (72) hours of the issuance of the receipt. The failure of the officer to timely file this report shall not affect the

authority of the Department to revoke the driving privilege of the arrested person.

C. Upon receipt of a written blood or breath test report reflecting that the arrested person, if under twenty-one (21) years of age, had any measurable quantity of alcohol in the person's blood or breath, or, if the arrested person is twenty-one (21) years of age or older, a blood or breath alcohol concentration of eight-hundredths (0.08) or more, accompanied by a sworn report from a law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while under the influence of alcohol as prohibited by law, the Department shall revoke or deny the driving privilege of the arrested person for a period as provided by Section 6-205.1 of this title. Revocation or denial of the driving privilege of the arrested person shall become effective thirty (30) days after the arrested person is given written notice thereof by the officer as provided in this section or by the Department as provided in Section 2-116 of this title.

D. Upon the written request of a person whose driving privilege has been revoked or denied by notice given in accordance with this section or Section 2-116 of this title, the Department shall grant the person an opportunity to be heard if the request is received by the Department within fifteen (15) days after the notice. The sworn report of the officer, together with the results of any test or tests, shall be deemed true, absent any facial deficiency, should the requesting person fail to appear at the scheduled hearing. A timely request shall stay the order of the Department until the disposition of the hearing unless the person is under cancellation, denial, suspension or revocation for some other reason. The Department may issue a temporary driving permit pending disposition of the hearing, if the person is otherwise eligible. If the hearing

request is not timely filed, the revocation or denial shall be sustained.

E. 1. At any hearing held relevant to this section, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the person by the Commissioner or an authorized representative at least five (5) days prior to the hearing, with reference to all or part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If the report is deemed relevant by either party, the court shall admit the report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders the person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the OSBI for analysis, and the analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of the substance shall be released to any other person or laboratory absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

3. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in the report may be produced by the testimony of any person having prepared a report. The hearing shall

be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

4. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

F. The hearing before the Commissioner of Public Safety or a designated hearing officer shall be conducted in the county of arrest or may be conducted by telephone conference call. The hearing may be recorded and its scope 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 upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance as prohibited by law, and whether the person was placed under arrest.

1. If the revocation or denial is based upon a breath or blood test result and a sworn report from a law enforcement officer, the scope of the hearing shall also cover the issues as to whether:

- a. if timely requested by the person, the person was not denied a breath or blood test,
- b. the specimen was obtained from the person within ~~two~~ three (3) hours of the arrest of the person,
- c. the person, if under twenty-one (21) years of age, was advised that driving privileges would be revoked or denied if the test result reflected the presence of any measurable quantity of alcohol,

- d. the person, if twenty-one (21) years of age or older, was advised that driving privileges would be revoked or denied if the test result reflected an alcohol concentration of eight-hundredths (0.08) or more, and
- e. the test result in fact reflects the alcohol concentration.

2. If the revocation or denial is based upon the refusal of the person to submit to a breath or blood test, reflected in a sworn report by a law enforcement officer, the scope of the hearing shall also include whether:

- a. the person refused to submit to the test or tests, and
- b. the person was informed that driving privileges would be revoked or denied if the person refused to submit to the test or tests.

G. After the hearing, the Commissioner of Public Safety or a designated hearing officer shall order the revocation or denial either rescinded or sustained.

SECTION 4. AMENDATORY 47 O.S. 2001, Section 756, is amended to read as follows:

Section 756. A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol or any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, evidence of the alcohol concentration in the blood or breath of the person as shown by analysis of the blood or breath of the person performed in accordance with the provisions of Sections 752 and 759 of this title or evidence of the presence and concentration of any other intoxicating substance as shown by analysis of such person's blood, breath, saliva, or urine specimens in accordance with the provisions of Sections 752 and 759 of this title is admissible. Evidence that the person has refused

to submit to either of said analyses is also admissible. For the purpose of this title, when the person is under the age of twenty-one (21) years, evidence that there was, at the time of the test, any measurable quantity of alcohol is prima facie evidence that the person is under the influence of alcohol in violation of Section 11-906.4 of this title. For persons twenty-one years of age or older:

1. Evidence that there was, at the time of the test, an alcohol concentration of five-hundredths (0.05) or less is prima facie evidence that the person was not under the influence of alcohol;

2. Evidence that there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than eight-hundredths (0.08) is relevant evidence that the person's ability to operate a motor vehicle was impaired by alcohol.

However, no person shall be convicted of the offense of operating or being in actual physical control of a motor vehicle while such person's ability to operate such vehicle was impaired by alcohol solely because there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than eight-hundredths (0.08) in the blood or breath of the person in the absence of additional evidence that such person's ability to operate such vehicle was affected by alcohol to the extent that the public health and safety was threatened or that said person had violated a state statute or local ordinance in the operation of a motor vehicle; and

3. Evidence that there was, at the time of the test, an alcohol concentration of eight-hundredths (0.08) or more shall be admitted as prima facie evidence that the person was under the influence of alcohol.

B. For purposes of this title, "alcohol concentration" means grams of alcohol per one hundred (100) milliliters of blood if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

C. To be admissible in a proceeding, the evidence must first be qualified by establishing that the test was administered to the person within ~~two (2)~~ three (3) hours after the arrest of the person.

SECTION 5. This act shall become effective November 1, 2006.

50-2-7725            GRS            01/17/06