

Act 928 of the 1989 Regular Session.

Act 928

HB1335

By: Representative Gilbert
Representative Mahony

"AN ACT TO AMEND TITLE 5, CHAPTER 65, SUBCHAPTER 2 TO PROVIDE THAT CERTIFIED DOCUMENTS FROM THE BLOOD ALCOHOL PROGRAM OF THE ARKANSAS DEPARTMENT OF HEALTH SHALL BE ADMISSIBLE AS EVIDENCE IN THE COURTS OF THIS STATE; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code 5-65-206 is hereby 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%) 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 Arkansas 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 Arkansas 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 2. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: March 24, 1989
