



33 person operates a motor vehicle in a criminally negligent manner causing the death of another and:

34 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the person  
35 has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

36 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and  
37 any drug to a degree that renders the person incapable of safely operating a vehicle; ~~or~~

38 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of  
39 operation~~[-]; or~~

40 (iv) has in his body any measurable amount of a Schedule I or Schedule II controlled  
41 substance as defined in Section 58-37-4.

42 (b) ~~[For the purpose of]~~ As used in this [section] Subsection (3), "criminally negligent"  
43 means criminal negligence as defined by Subsection 76-2-103(4).

44 ~~[(3)] (4)~~ The standards for chemical breath analysis as provided by Section 41-6-44.3 and  
45 the provisions for the admissibility of chemical test results as provided by Section 41-6-44.5 apply  
46 to determination and proof of blood alcohol content under this section.

47 ~~[(4)] (5)~~ Calculations of blood or breath alcohol concentration under this section shall be  
48 made in accordance with Subsection 41-6-44(2).

49 (6) (a) It is an affirmative defense to prosecution under Subsections (2)(a)(iv) and  
50 (3)(a)(iv) that the controlled substance was involuntarily ingested by the defendant or prescribed  
51 by a practitioner, as defined by Section 58-17a-102, for use by the defendant.

52 ~~[(5)] (b)~~ The fact that a person charged with violating any other provision of this section  
53 is or has been legally entitled to use alcohol or a drug is not a defense ~~[to any charge of violating~~  
54 ~~this section]~~.

55 ~~[(6)] (7)~~ Evidence of a defendant's blood or breath alcohol content or drug content is  
56 admissible except when prohibited by Rules of Evidence or the constitution.

57 ~~[(7) For purposes of this section, "motor vehicle" means any self-propelled vehicle and~~  
58 ~~includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.]~~

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**Legislative Review Note**  
**as of 9-26-02 1:06 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**