STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 585 By: Helton of the Senate

and

Seikel of the House

COMMITTEE SUBSTITUTE

An Act relating to blood alcohol tests; amending 3 O.S. 1991, Section 303, as amended by Section 1, Chapter 382, O.S.L. 192 (3 O.S. Supp. 1998, Section 303), which relates to collection of specimens for operating aircraft under the influence of intoxicants; removing requirement for excess sample; amending 47 O.S. 1991, Sections 752, as amended by Section 8, Chapter 382, O.S.L. 1992 and 754, as last amended by Section 1, Chapter 227, O.S.L. 1997 (47 O.S. Supp. 1998, Sections 752 and 754), which relate to administration of tests and seizure of driver licenses for driving under the influence; removing requirement for excess sample; modifying issues to be covered at certain hearings; and declaring an emergency.

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

SECTION 1. AMENDATORY 3 O.S. 1991, Section 303, as amended by Section 1, Chapter 382, O.S.L. 1992 (3 O.S. Supp. 1998, Section 303), is amended to read as follows:

Section 303. A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, certified by the State Board of Medical Licensure and Supervision, an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer may withdraw blood for purpose of having a determination made of its

concentration of alcohol or other intoxicant. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of Sections 301 through 308 of this title.

B. No person specified in subsection A of this section, no employer of such a person, and no hospital or other health care facility where blood is withdrawn, shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer pursuant to the provisions of Section 302 or 304 of this title, if the withdrawal of blood is performed in a reasonable manner according to generally accepted clinical practice. If the person specified in subsection A of this section is presented with a written statement by the person whose blood is to be withdrawn or a duly authorized peace officer that the person whose blood is to be withdrawn has agreed to the withdrawal of blood or an order from a court of competent jurisdiction that blood be withdrawn, the person authorized to withdraw the blood and the hospital or other health care facility where the withdrawal occurs may rely on such a statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person specified in subsection A of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer under the provisions of Section 302 or 304 of this title or when acting pursuant to court order.

C. The blood, breath, saliva or urine specimens obtained shall be tested by the appropriate test as determined by the Board to

determine the alcohol concentration thereof, or the presence and concentration of any other intoxicant which might have affected the ability of the person tested to operate an aircraft safely.

D. When blood is withdrawn or saliva or urine is collected for the appropriate test as determined by the Board of its alcohol or other intoxicant concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, saliva or urine specimen shall be retained by a laboratory approved by the Board, in accordance with the rules ~~and regulations~~ of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, saliva or urine specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional blood, saliva or urine specimen prior to the completion of the independent analysis, except the analyst performing the independent analysis and agents of the analyst.

E. ~~When a test of breath is performed for the purpose of determining the alcohol concentration thereof, except when such test is performed by means of an automated analyzer as designated by the Board, a sufficient quantity of breath, or of the alcohol content of a fixed or measured quantity of breath, shall be obtained, in accordance with the rules and regulations of the Board, to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess specimen of breath, or of its alcohol content, shall be retained by the law enforcement agency employing the arresting officer, in accordance with the rules and regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the~~

~~tested person, or his or her attorney, may direct that such specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional specimen of breath, or of its alcohol content, prior to the completion of the independent analysis thereof, except the analyst performing the independent analysis and agents of the analyst.~~

~~F.~~ The costs of collecting blood, breath, saliva or urine specimens for the purpose of determining the alcohol or other intoxicant thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer. The cost of collecting, retaining and sending or delivering to an independent laboratory the excess specimens of blood, ~~breath,~~ saliva or urine for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such specimen of blood, ~~breath,~~ saliva or urine shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

~~G.~~ F. Tests pursuant to the provisions of Sections 301 through 308 of this title, whether administered by or at the direction of a law enforcement officer or administered independently, at the option of the tested person, on the excess specimen of such person's blood, ~~breath,~~ saliva or urine, to be considered valid and admissible in evidence under the provisions of this section and Section 305 of this title, shall have been administered or performed in accordance with the rules ~~and regulations~~ of the Board.

~~H.~~ G. Any person who has been arrested for any offense arising out of acts alleged to have been committed while the person was

under the influence of an intoxicant and was operating an aircraft, who is not requested by a law enforcement officer to submit to a test shall be entitled to have an independent test of his or her blood, breath, saliva or urine ~~which~~ whichever is appropriate as determined by the Board for the purpose of determining its alcohol concentration or of any other intoxicant therein, performed by a person of his or her own choosing who is qualified as stipulated in this section. The arrested person shall bear the responsibility for making all necessary arrangements for the administration of such independent test and for the independent analysis of any specimens obtained, and bear all costs thereof. The failure or inability of the arrested person to obtain an independent test shall not preclude the admission of other competent evidence bearing upon the question of whether such person was under the influence of an intoxicant.

~~I.~~ H. A written report of the results of the test administered by or at the direction of the law enforcement officer shall be made available to the tested person, or his or her attorney, to the law enforcement agency employing the arresting officer, the district attorney of the county in which the alleged violation of Section 301 of this title occurred, and to the Federal Aviation Administration Flight Standards District Office having jurisdiction over the county in which the alleged violation of Section 301 of this title occurred. The results of the tests provided for in this title shall be admissible in civil actions.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 752, as amended by Section 8, Chapter 382, O.S.L. 1992 (47 O.S. Supp. 1998, Section 752), is amended to read as follows:

Section 752. A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, certified by the State Board of Medical Licensure and Supervision, an employee of a hospital or other health care facility authorized by the hospital

or health care facility to withdraw blood, or other qualified person authorized by the Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer may withdraw blood for purpose of having a determination made of its concentration of alcohol or other intoxicating substance. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of this title.

B. If the person authorized to withdraw blood as specified in subsection A of this section is presented with a written statement:

1. Authorizing blood withdrawal signed by the person whose blood is to be withdrawn;

2. Signed by a duly authorized peace officer that the person whose blood is to be withdrawn has agreed to the withdrawal of blood;

3. Signed by a duly authorized peace officer that the person whose blood is to be withdrawn has been placed under arrest and that the officer has probable cause to believe that the person, while intoxicated, has operated a motor vehicle in such manner as to have caused the death or serious physical injury of another person; or

4. In the form of an order from a district court that blood be withdrawn, the person authorized to withdraw the blood and the hospital or other health care facility where the withdrawal occurs may rely on such a statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

C. No person specified in subsection A of this section, no employer of such person, and no hospital or other health care

facility where blood is withdrawn shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer by the provisions of Section 751 or 753 of this title, or when acting in reliance upon a signed statement or court order as provided in this section, if the act is performed in a reasonable manner according to generally accepted clinical practice. No person specified in subsection A of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer under the provisions of Section 751 or 753 of this title or when acting pursuant to a court order.

D. The blood, breath, saliva or urine specimens obtained shall be tested by the appropriate test as determined by the Board to determine the alcohol concentration thereof, or the presence and concentration of any other intoxicating substance which might have affected the ability of the person tested to operate a motor vehicle safely.

E. When blood is withdrawn or saliva or urine is collected for the appropriate test as determined by the Board of its alcohol or other intoxicating substance concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, saliva or urine specimen shall be retained by a laboratory approved by the Board, in accordance with the rules ~~and regulations~~ of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, saliva or urine specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have

access to the additional blood, saliva or urine specimen prior to the completion of the independent analysis, except the analyst performing the independent analysis and agents of the analyst.

F. ~~When a test of breath is performed for the purpose of determining the alcohol concentration thereof, except when such test is performed by means of an automated analyzer as designated by the Board, a sufficient quantity of breath, or of the alcohol content of a fixed or measured quantity of breath, shall be obtained, in accordance with the rules and regulations of the Board, to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess specimen of breath, or of its alcohol content, shall be retained by the law enforcement agency employing the arresting officer, in accordance with the rules and regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person, or his or her attorney, may direct that such specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional specimen of breath, or of its alcohol content, prior to the completion of the independent analysis thereof, except the analyst performing the independent analysis and agents of the analyst.~~

~~G.~~ The costs of collecting blood, breath, saliva or urine specimens for the purpose of determining the alcohol or other intoxicating substance thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer. The cost of collecting, retaining and sending or delivering to an independent laboratory the excess specimens of blood, ~~breath,~~ saliva or urine for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such

specimen of blood, ~~breath,~~ saliva or urine shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

~~H.~~ G. Tests of blood or breath for the purpose of determining the alcohol concentration thereof, and tests of blood, saliva or urine for the purpose of determining the presence and concentration of any other intoxicating substance therein, under the provisions of this title, whether administered by or at the direction of a law enforcement officer or administered independently, at the option of the tested person, on the excess specimen of such person's blood, ~~breath,~~ saliva or urine, to be considered valid and admissible in evidence under the provisions of this title, shall have been administered or performed in accordance with the rules ~~and regulations~~ of the Board.

~~I.~~ H. Any person who has been arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance who is not requested by a law enforcement officer to submit to a test shall be entitled to have an independent test of his or her blood, breath, saliva or urine ~~which~~ whichever is appropriate as determined by the Board for the purpose of determining its alcohol concentration or of any other intoxicating substance therein, performed by a person of his or her own choosing who is qualified as stipulated in this section. The arrested person shall bear the responsibility for making all necessary arrangements for the administration of such independent test and for the independent analysis of any specimens obtained, and bear all costs thereof. The failure or inability of the arrested person to obtain

an independent test shall not preclude the admission of other competent evidence bearing upon the question of whether such person was under the influence of alcohol, or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance.

~~J.~~ I. A written report of the results of the test administered by or at the direction of the law enforcement officer shall be made available to the tested person, or his or her attorney, and to the Commissioner of Public Safety. The results of the tests provided for in this title shall be admissible in civil actions.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 754, as last amended by Section 1, Chapter 227, O.S.L. 1997 (47 O.S. Supp. 1998, 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 ten-hundredths (0.10) 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 for alcohol concentration, shall immediately surrender his or her license, permit or other evidence of driving privilege to the arresting law enforcement officer. The officer shall seize any license, permit, or other evidence of driving privilege surrendered by the arrested person or found on the arrested person during a search.

B. If the license, permit, or other evidence of driving privilege seized by the officer has not expired and otherwise appears valid to the officer, the officer shall issue to the arrested person a dated receipt for that 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 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 of Public Safety effective in thirty (30) days. The seized license, permit, or other 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 arresting officer and shall be submitted by mail or in person to the Commissioner of Public Safety or a designated representative within seventy-two (72) hours of the issuance of the receipt. The failure of the arresting 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 had any measurable quantity of alcohol in the person's blood or breath, if the person is under twenty-one (21) years of age, or, if the arrested person is twenty-one (21) years of age or older, an alcohol concentration of ten-hundredths (0.10) 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 driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol as prohibited by law, the Commissioner of Public Safety shall revoke the privilege to drive of the arrested person and any nonresident operating privilege for a period as provided by Section 6-205.1 of this title. Revocation of the license of the arrested person shall become effective thirty (30) days after the arrested person is given written notice thereof by the arresting officer as hereinbefore provided or by the Department as provided in Section 2-116 of this title.

D. Upon the written request of a person whose privilege to drive has been revoked or denied, the Commissioner of Public Safety

shall grant the person an opportunity to be heard if the request is received by the Department within fifteen (15) days after the notice of the revocation is given in accordance with this section or Section 2-116 of this title. The request shall also operate to stay the revocation or denial by the Department until the disposition of the hearing unless the person is under suspension or revocation for some other reason. The Department may issue a temporary driving permit pending disposition of the hearing. If the hearing request is not timely filed, the revocation 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 such report is deemed relevant by either party, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders such person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the OSBI for analysis, and such 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 such 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 said 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 shall be before the Commissioner of Public Safety or an authorized agent, in the troop headquarters of the Oklahoma Highway Patrol nearest the county wherein the alleged events occurred for which the person was arrested, unless the Commissioner of Public Safety or an authorized agent directs the hearing be held in some other county; or, the Commissioner or an authorized agent may schedule the hearing by telephone and conduct the hearing 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 driving 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. the testing procedures used were in accordance with existent rules of the Board of Tests for Alcohol and Drug Influence,

b. the person was not denied a timely requested breath or blood test,

c. the breath or blood specimen was obtained from the person within two (2) hours ~~of~~ after the arrest of the person,

d. the person, if under twenty-one (21) years of age, was advised that the privilege to drive would be revoked or denied if the test result reflected the presence of any measurable quantity of alcohol,

e. ~~the person was informed that a separate testing of the sample taken by the breathalyzer can be analyzed by the person at his or her own expense within sixty (60) days of the test date,~~

~~f.~~ the person, if twenty-one (21) years of age or older, was advised that the privilege to drive would be revoked or denied if the test result reflected an alcohol concentration of ten-hundredths (0.10) or more, and

~~g.~~ f. the test result in fact reflects such 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 the privilege to drive 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 an authorized agent shall order the revocation or denial rescinded or sustained.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

47-1-6758 LAC 6/11/15