

1 defined in this section, if arrested for any offense arising out of
2 acts alleged to have been committed while the person was operating
3 or in actual physical control of a motor vehicle upon the public
4 roads, highways, streets, turnpikes or other public place or upon
5 any private road, street, alley or lane which provides access to one
6 or more single or multi-family dwellings while under the influence
7 of alcohol or other intoxicating substance, or the combined
8 influence of alcohol and any other intoxicating substance, or if the
9 person is involved in a traffic accident that resulted in the
10 immediate death or serious injury of any person and is removed from
11 the scene of the accident to a hospital or other health care
12 facility outside the State of Oklahoma before a law enforcement
13 officer can effect an arrest.

14 2. A law enforcement officer, having reasonable grounds to
15 believe that such person was operating or in actual physical control
16 of a motor vehicle while under the influence may direct the
17 administration of or administer the test or tests.

18 As used in this title, the term "other intoxicating substance"
19 shall mean any controlled dangerous substance as defined in the
20 Uniform Controlled Dangerous Substances Act and any other substance,
21 other than alcohol, which is capable of being ingested, inhaled,
22 injected or absorbed into the human body and is capable of adversely

1 affecting the central nervous system, vision, hearing or other
2 sensory or motor functions.

3 B. The law enforcement agency by which the arresting officer is
4 employed may designate, in accordance with the rules of the Board of
5 Tests for Alcohol and Drug Influence, hereinafter referred to as the
6 Board, whether blood or breath is to be tested for the alcohol
7 concentration thereof, and whether blood, saliva or urine is to be
8 tested for the presence ~~and~~ or concentration of any other
9 intoxicating substance therein.

10 In the event the law enforcement agency does not designate the
11 test to be administered, breath shall be the substance tested for
12 alcohol concentration. Blood may also be tested to determine the
13 alcohol concentration thereof in the event that breath cannot be
14 tested to determine the alcohol concentration thereof because of the
15 lack of an approved device or qualified person to administer a
16 breath test or because such breath test for any other reason cannot
17 be administered in accordance with the rules of the Board.

18 In the event the law enforcement agency does not designate the
19 test to be administered, blood, saliva or urine shall be the
20 substance tested for the presence ~~and~~ or concentration of any other
21 intoxicating substance or the combination of alcohol and any other
22 intoxicating substance.

1 C. In the event the person is incapable of submitting to and
2 successfully completing, by reason of illness or injury or other
3 physical disability, the test to be administered, an alternate test
4 may be administered in accordance with the rules of the Board.

5 D. Any person who is unconscious or otherwise incapable of
6 refusing to submit to a test of such person's blood or breath to
7 determine the alcohol concentration thereof, or to a test of such
8 person's blood, saliva or urine to determine the presence ~~and~~ or
9 concentration of any other intoxicating substance therein, shall be
10 deemed not to have withdrawn the consent provided by subsection A of
11 this section, and such test may be administered as provided herein.

12 An unconscious person who has been issued a citation by a law
13 enforcement officer for one of the offenses listed in subsection A
14 of this section is arrested for purposes of this section. The
15 arresting officer must leave a copy of the citation with the
16 arrested person which may be accomplished by handing it to the
17 arrested person, or by leaving it with the personal effects of the
18 arrested party, so as to inform the unconscious person of the
19 arrest.

20 Any person who has been arrested for one of the offenses listed
21 in subsection A of this section who is unconscious or injured and
22 who requires immediate medical treatment as determined by a treating
23 physician may be released on the person's own recognizance for

1 medical reasons by the arresting officer. The arresting officer who
2 releases an arrested person on the person's own recognizance must
3 indicate the release on the face of the citation. Any person
4 released on his or her own recognizance for medical reasons shall
5 remain at liberty pending the filing of charges.

6 E. In addition to any test designated by the arresting officer,
7 the arrested person may also designate any additional test to be
8 administered to determine the concentration of alcohol, or the
9 presence or concentration any other intoxicating substance or the
10 combination of alcohol and any other intoxicating substance. The
11 cost of such additional test shall be at the expense of the arrested
12 person.

13 A sufficient quantity of any specimen obtained at the
14 designation of the arrested person shall be available to the law
15 enforcement agency employing the arresting officer. Such specimens
16 shall be treated in accordance with the rules applicable to the
17 specimens obtained by an arresting officer.

18 F. When a law enforcement officer has determined that the blood
19 alcohol content of an individual is to be tested for the presence
20 ~~and~~ or concentration of alcohol, other intoxicating substance, or
21 the combination of alcohol and any other intoxicating substance, the
22 law enforcement officer shall inform the individual to be tested

1 that the withdrawal of blood shall only be performed by certain
2 medical personnel as provided for in Section 752 of this title.

3 SECTION 2. AMENDATORY 47 O.S. 2001, Section 752, as last
4 amended by Section 15, Chapter 394, O.S.L. 2005 (47 O.S. Supp. 2005,
5 Section 752), is amended to read as follows:

6 Section 752. A. Only a licensed medical doctor, licensed
7 osteopathic physician, licensed chiropractic physician, registered
8 nurse, licensed practical nurse, physician's assistant, certified by
9 the State Board of Medical Licensure and Supervision, an employee of
10 a hospital or other health care facility authorized by the hospital
11 or health care facility to withdraw blood, or other qualified person
12 authorized by the Board of Tests for Alcohol and Drug Influence
13 acting at the request of a law enforcement officer may withdraw
14 blood for purpose of having a determination made of its
15 concentration of alcohol or presence or concentration of other
16 intoxicating substance. Only qualified persons authorized by the
17 Board may collect breath, saliva or urine, or administer tests of
18 breath under the provisions of this title.

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

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

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

4 3. Signed by a duly authorized peace officer that the person
5 whose blood is to be withdrawn has been placed under arrest and that
6 the officer has probable cause to believe that the person, while
7 intoxicated, has operated a motor vehicle in such manner as to have
8 caused the death or serious physical injury of another person, or
9 the person has been involved in a traffic accident and has been
10 removed from the scene of the accident that resulted in the death or
11 great bodily injury, as defined in subsection B of Section 646 of
12 Title 21 of the Oklahoma Statutes, of any person to a hospital or
13 other health care facility outside the State of Oklahoma before the
14 law enforcement officer was able to effect an arrest for such
15 offense; or

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

1 or other health care facility shall not be liable in any action
2 alleging lack of consent or lack of informed consent.

3 C. No person specified in subsection A of this section, no
4 employer of such person, and no hospital or other health care
5 facility where blood is withdrawn shall incur any civil or criminal
6 liability as a result of the proper withdrawal of blood when acting
7 at the request of a law enforcement officer by the provisions of
8 Section 751 or 753 of this title, or when acting in reliance upon a
9 signed statement or court order as provided in this section, if the
10 act is performed in a reasonable manner according to generally
11 accepted clinical practice. No person specified in subsection A of
12 this section shall incur any civil or criminal liability as a result
13 of the proper collection of breath, saliva or urine when acting at
14 the request of a law enforcement officer under the provisions of
15 Section 751 or 753 of this title or when acting pursuant to a court
16 order.

17 D. The blood, breath, saliva or urine specimens obtained shall
18 be tested by the appropriate test as determined by the Board, or
19 tested by a laboratory that is exempt from the Board rules pursuant
20 to Section 759 of this title, to determine the alcohol concentration
21 thereof, or the presence and concentration of any other intoxicating
22 substance which might have affected the ability of the person tested
23 to operate a motor vehicle safely.

1 E. When blood is withdrawn or saliva or urine is collected for
2 testing of its alcohol concentration or other intoxicating substance
3 presence or concentration, at the request of a law enforcement
4 officer, a sufficient quantity of the same specimen shall be
5 obtained to enable the tested person, at his or her own option and
6 expense, to have an independent analysis made of such specimen. The
7 excess blood, saliva or urine specimen shall be retained by a
8 laboratory approved by the Board, in accordance with the rules and
9 regulations of the Board, or by a laboratory that is exempt from the
10 Board rules pursuant to Section 759 of this title, for sixty (60)
11 days from the date of collection. At any time within that period,
12 the tested person or his or her attorney may direct that such blood,
13 saliva or urine specimen be sent or delivered to a laboratory of his
14 or her own choosing and approved by the Board for an independent
15 analysis. Neither the tested person, nor any agent of such person,
16 shall have access to the additional blood, saliva or urine specimen
17 prior to the completion of the independent analysis, except the
18 analyst performing the independent analysis and agents of the
19 analyst.

20 F. When a test of breath is performed for the purpose of
21 determining the alcohol concentration thereof, except when such test
22 is performed by means of an automated analyzer as designated by the
23 Board, a sufficient quantity of breath, or of the alcohol content of

1 a fixed or measured quantity of breath, shall be obtained, in
2 accordance with the rules and regulations of the Board, to enable
3 the tested person, at his or her own option and expense, to have an
4 independent analysis made of such specimen. The excess specimen of
5 breath, or of its alcohol content, shall be retained by the law
6 enforcement agency employing the arresting officer, in accordance
7 with the rules and regulations of the Board, for sixty (60) days
8 from the date of collection. At any time within that period, the
9 tested person, or his or her attorney, may direct that such specimen
10 be sent or delivered to a laboratory of his or her own choosing and
11 approved by the Board for an independent analysis. Neither the
12 tested person, nor any agent of such person, shall have access to
13 the additional specimen of breath, or of its alcohol content, prior
14 to the completion of the independent analysis thereof, except the
15 analyst performing the independent analysis and agents of the
16 analyst.

17 G. The costs of collecting blood, breath, saliva or urine
18 specimens for the purpose of determining the alcohol or other
19 intoxicating substance thereof, by or at the direction of a law
20 enforcement officer, shall be borne by the law enforcement agency
21 employing such officer. The cost of collecting, retaining and
22 sending or delivering to an independent laboratory the excess
23 specimens of blood, breath, saliva or urine for independent analysis

1 at the option of the tested person shall also be borne by such law
2 enforcement agency. The cost of the independent analysis of such
3 specimen of blood, breath, saliva or urine shall be borne by the
4 tested person at whose option such analysis is performed. The
5 tested person, or his or her agent, shall make all necessary
6 arrangements for the performance of such independent analysis other
7 than the forwarding or delivery of such specimen.

8 H. Tests of blood or breath for the purpose of determining the
9 alcohol concentration thereof, and tests of blood, saliva or urine
10 for the purpose of determining the presence ~~and~~ or concentration of
11 any other intoxicating substance therein, under the provisions of
12 this title, whether administered by or at the direction of a law
13 enforcement officer or administered independently, at the option of
14 the tested person, on the excess specimen of such person's blood,
15 breath, saliva or urine, to be considered valid and admissible in
16 evidence under the provisions of this title, shall have been
17 administered or performed in accordance with the rules and
18 regulations of the Board, or performed by a laboratory that is
19 exempt from the Board rules pursuant to Section 759 of this title.

20 I. Any person who has been arrested for any offense arising out
21 of acts alleged to have been committed while the person was
22 operating or in actual physical control of a motor vehicle while
23 under the influence of alcohol, any other intoxicating substance or

1 the combined influence of alcohol and any other intoxicating
2 substance who is not requested by a law enforcement officer to
3 submit to a test shall be entitled to have an independent test of
4 his or her blood, breath, saliva or urine which is appropriate as
5 determined by the Board for the purpose of determining its alcohol
6 concentration or the presence or concentration of any other
7 intoxicating substance therein, performed by a person of his or her
8 own choosing who is qualified as stipulated in this section. The
9 arrested person shall bear the responsibility for making all
10 necessary arrangements for the administration of such independent
11 test and for the independent analysis of any specimens obtained, and
12 bear all costs thereof. The failure or inability of the arrested
13 person to obtain an independent test shall not preclude the
14 admission of other competent evidence bearing upon the question of
15 whether such person was under the influence of alcohol, or any other
16 intoxicating substance or the combined influence of alcohol and any
17 other intoxicating substance.

18 J. Any agency or laboratory certified by the Board or any
19 agency or laboratory that is exempt from the Board rules pursuant to
20 Section 759 of this title, which analyses breath, blood, or urine
21 shall make available a written report of the results of the test
22 administered by or at the direction of the law enforcement officer
23 to:

- 1 1. The tested person, or his or her attorney;
- 2 2. The Commissioner of Public Safety; and
- 3 3. The Fatality Analysis Reporting System (FARS) analyst of the
- 4 state, upon request.

5 The results of the tests provided for in this title shall be
6 admissible in civil actions.

7 SECTION 3. AMENDATORY 47 O.S. 2001, Section 753, is
8 amended to read as follows:

9 Section 753. If a conscious person under arrest refuses to
10 submit to testing of his or her blood or breath for the purpose of
11 determining the alcohol concentration thereof, or to a test of his
12 or her blood, saliva or urine for the purpose of determining the
13 presence or concentration of any other intoxicating substance, or
14 the combined influence of alcohol and any other intoxicating
15 substance, none shall be given, unless the investigating officer has
16 probable cause to believe that the person under arrest, while
17 intoxicated, has operated the motor vehicle in such a manner as to
18 have caused the death or serious physical injury of any other person
19 or persons. In such event, such test otherwise authorized by law
20 may be made in the same manner as if a search warrant had been
21 issued for such test or tests. The sample shall be taken in a
22 medically acceptable manner at a hospital or other suitable health
23 care facility. The Commissioner of Public Safety, upon the receipt

1 of a sworn report of the law enforcement officer that the officer
2 had reasonable grounds to believe the arrested person had been
3 driving or was in actual physical control of a motor vehicle upon
4 the public roads, highways, streets, turnpikes or other public place
5 of this state while under the influence of alcohol, any other
6 intoxicating substance, or the combined influence of alcohol and any
7 other intoxicating substance and that the person had refused to
8 submit to the test or tests, shall revoke the license to drive and
9 any nonresident operating privilege for a period as provided by
10 Section 6-205.1 of this title. If the person is a resident or a
11 nonresident without a license or permit to operate a motor vehicle
12 in this state, the Commissioner of Public Safety shall deny to the
13 person the issuance of a license or permit for a period as provided
14 by Section 6-205.1 of this title subject to a review as provided in
15 Section 754 of this title. The revocation or denial shall become
16 effective thirty (30) days after the arrested person is given
17 written notice thereof by the officer or by the Department as
18 provided in Section 754 of this title.

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

21 Section 756. A. Upon the trial of any criminal action or
22 proceeding arising out of acts alleged to have been committed by any
23 person while driving or in actual physical control of a motor

1 vehicle while under the influence of alcohol or any other
2 intoxicating substance, or the combined influence of alcohol and any
3 other intoxicating substance, evidence of the alcohol concentration
4 in the blood or breath of the person as shown by analysis of the
5 blood or breath of the person performed in accordance with the
6 provisions of Sections 752 and 759 of this title or evidence of the
7 presence ~~and~~ or concentration of any other intoxicating substance as
8 shown by analysis of such person's blood, breath, saliva, or urine
9 specimens in accordance with the provisions of Sections 752 and 759
10 of this title is admissible. Evidence that the person has refused
11 to submit to either of said analyses is also admissible. For the
12 purpose of this title, when the person is under the age of twenty-
13 one (21) years, evidence that there was, at the time of the test,
14 any measurable quantity of alcohol is prima facie evidence that the
15 person is under the influence of alcohol in violation of Section 11-
16 906.4 of this title. For persons twenty-one years of age or older:

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

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

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

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

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

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

1 SECTION 5. AMENDATORY 47 O.S. 2001, Section 759, as last
2 amended by Section 24, Chapter 418, O.S.L. 2004 (47 O.S. Supp. 2005,
3 Section 759), is amended to read as follows:

4 Section 759. A. There is hereby re-created, to continue until
5 July 1, 2006, in accordance with the provisions of the Oklahoma
6 Sunset Law, Section 3901 et seq. of Title 74 of the Oklahoma
7 Statutes, the Board of Tests for Alcohol and Drug Influence to be
8 composed of the Dean of the University of Oklahoma College of
9 Medicine, or the Dean's designee who shall receive an appointment in
10 writing, as Chairman, and the Commissioner of Public Safety or a
11 designee, the Director of the Oklahoma State Bureau of Investigation
12 or a designee, the State Commissioner of Health or a designee, the
13 Director of the Council on Law Enforcement Education and Training or
14 a designee, one certified peace officer who is a member of a local
15 law enforcement agency selected by the Oklahoma Sheriffs and Peace
16 Officers Association and one person selected by the Oklahoma
17 Association of Chiefs of Police, as members, to serve without pay
18 other than reimbursement of necessary and actual expenses as
19 provided in the State Travel Reimbursement Act, Section 500.1 et
20 seq. of Title 74 of the Oklahoma Statutes. Each designee shall
21 receive an appointment in writing which shall become a permanent
22 part of the records of the Board. The Board is authorized to
23 appoint a State Director of Tests for Alcohol and Drug Influence, an

1 Administrative Assistant to the Board, and other employees,
2 including but not limited to persons to conduct training and provide
3 administrative assistance as necessary for the performance of its
4 functions, subject to available funding and authorized full-time
5 equivalent employee limitations. The Board may expend appropriated
6 funds for purposes consistent with Sections 751 through 761 of this
7 title and Sections 301 through 308 of Title 3 of the Oklahoma
8 Statutes. The Legislature shall appropriate funds to the Department
9 of Public Safety for the support of the Board of Tests For Alcohol
10 and Drug Influence and its employees, if any. Upon the transfer of
11 any employees from the Alcohol Drug Countermeasures Unit of the
12 Department of Public Safety to the Board of Tests For Alcohol and
13 Drug Influence on ~~the effective date of this act~~ July 1, 2003, all
14 funds of the Unit appropriated and budgeted shall be transferred to
15 the Board, and may be budgeted and expended to support the functions
16 and personnel of the Board.

17 B. Collection and analysis of a person's blood, breath, saliva
18 or urine, to be considered valid and admissible in evidence, whether
19 performed by or at the direction of a law enforcement officer or at
20 the request of the tested person, shall have been performed in
21 compliance with the rules adopted by the Board of Tests for Alcohol
22 and Drug Influence and by an individual possessing a valid permit
23 issued by the Board for this purpose or shall have been performed by

1 a laboratory accredited in Toxicology by the American Society of
2 Crime Laboratory Directors/Laboratory Accreditation Board
3 (ASCLD/LAB) or accredited by the American Board of Forensic
4 Toxicology (ABFT).

5 C. The Board of Tests for Alcohol and Drug Influence is
6 authorized to approve laboratories for the analysis, provided by the
7 provisions of this title, of specimens of blood, breath, saliva and
8 urine, and to administer a program for regular monitoring of such
9 laboratories. The Board is authorized to prescribe uniform
10 standards and conditions for, and to approve satisfactory methods,
11 procedures, techniques, devices, equipment and records for tests and
12 analyses and to prescribe and approve the requisite education and
13 training for the performance of such tests and analyses. The Board
14 shall establish standards for and ascertain the qualifications and
15 competence of individuals to administer and conduct such tests and
16 analyses, and to issue permits to laboratories and to individuals
17 which shall be subject to suspension or revocation at the discretion
18 of the Board. The Board is authorized to prescribe uniform
19 standards, conditions, methods, procedures, techniques, devices,
20 equipment and records for the collection, handling, retention,
21 storage, preservation and delivery of specimens of blood, breath,
22 saliva and urine obtained for the purpose of determining the alcohol
23 concentration thereof or the presence ~~and~~ or concentration of any

1 other intoxicating substance therein. The Board may take such other
2 actions as may be reasonably necessary or appropriate to effectuate
3 the purposes of Sections 751 through 761 of this title and Sections
4 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt,
5 amend and repeal such other rules consistent with this chapter as
6 the Board shall determine proper. Laboratories accredited in
7 Toxicology by the American Society of Crime Laboratory
8 Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited
9 by the American Board of Forensic Toxicology (ABFT) are exempt from
10 the provisions of this subsection.

11 D. The Board may set rules and charge appropriate fees for
12 operations incidental to its required duties and responsibilities.

13 E. There is hereby created in the State Treasury a revolving
14 fund for the Board of Tests for Alcohol and Drug Influence to be
15 designated the "Board of Tests for Alcohol and Drug Influence
16 Revolving Fund". The fund shall be a continuing fund, not subject
17 to fiscal year limitations, and shall consist of monies received
18 pursuant to the provisions of subsection D of this section and any
19 funds previously deposited in the Board of Tests for Alcohol and
20 Drug Influence Revolving Fund. All monies accruing to the credit of
21 the fund are hereby appropriated and may be budgeted and expended by
22 the Board of Tests for Alcohol and Drug Influence for operating
23 expenses of the Board. Expenditures from the funds shall be made

1 upon warrants issued by the State Treasurer against claims filed as
2 prescribed by law with the Director of State Finance for approval
3 and payment.

4 SECTION 6. This act shall become effective July 1, 2006.

5 SECTION 7. It being immediately necessary for the preservation
6 of the public peace, health and safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-06 - DO
10 PASS, As Coauthored.