

SB 902

THE STATE SENATE  
Monday, February 23, 2009

Senate Bill No. 902  
As Amended

SENATE BILL NO. 902 - By: Brown of the Senate and Ritze of the House.

[ boating safety - vessel operation - limiting liability -  
codification - effective date -  
emergency ]

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 4210, as last amended by Section 2, Chapter 95, O.S.L. 2008 (63 O.S. Supp. 2008, Section 4210), is amended to read as follows:

Section 4210. A. No person shall operate, manipulate or give permission to any person to operate or manipulate any parasails, water skis, surfboard, personal watercraft, or similar device, or any vessel in a reckless or negligent manner so as to endanger the life or property of any person.

B. No person shall lease or otherwise give permission to another person to operate any vessel on any waters of this state, except privately owned waters, while the operator is under the influence of alcohol or any substance included in the Uniform Controlled Dangerous Substances Act, ~~Section 2-101 et seq. of this title,~~ or any combination of alcohol and such substance.

1 C. Upon the immediate approach of an authorized emergency  
2 vessel making use of an audible or a visual signal or a combination  
3 thereof, the operator of every other vessel shall immediately stop  
4 his or her vessel whenever or wherever practical or otherwise yield  
5 the right-of-way until such authorized emergency vessel has passed,  
6 except when otherwise directed by a duly authorized peace officer of  
7 this state.

8 D. No person shall overload or give permission to overload a  
9 vessel with passengers or gear so as to exceed the posted capacity  
10 plate, United States Coast Guard standards, or the vessel  
11 manufacturer's recommended capacity.

12 E. No person shall operate or give permission to operate any  
13 vessel on the waters of this state for which the manufacturer has  
14 affixed a maximum horsepower capacity plate so as to exceed the  
15 posted capacity plate or to exceed the United States Coast Guard  
16 standards for maximum horsepower capacity; provided, this provision  
17 shall not apply to vessels operating in sanctioned events.

18 F. No person shall operate, drive or be in actual physical  
19 control of any vessel on any waters of this state, except privately  
20 owned waters, at speeds in excess of the speed limits established  
21 for those waters.

22 G. No person shall operate on the waters of this state, except  
23 privately owned waters, any vessel, including personal watercraft,

1 within fifty (50) feet in proximity to another vessel when running  
2 at speeds of over ten (10) miles per hour; provided, this  
3 prohibition shall not apply to vessels operating in sanctioned  
4 events.

5 H. No person shall cause, allow, authorize, or permit any child  
6 under twelve (12) years of age to operate and no child under twelve  
7 (12) years of age shall operate any vessel powered by a motor or  
8 combination of motors in excess of ten (10) horsepower, any personal  
9 watercraft, or any sail-powered vessel sixteen (16) feet or greater  
10 in length on any waters of this state, ~~unless accompanied on the~~  
11 ~~vessel by another person sixteen (16) years of age or older;~~  
12 ~~provided, this subsection shall not apply on privately owned waters~~  
13 except as otherwise provided in Section 4233 of this title.

14 I. Any violation of the provisions of this section shall  
15 constitute a misdemeanor and shall be punishable, upon conviction,  
16 by a fine of not less than Fifty Dollars (\$50.00) nor more than Two  
17 Hundred Fifty Dollars (\$250.00) and shall be subject to imprisonment  
18 in the county jail for a period not to exceed six (6) months.

19 SECTION 2. AMENDATORY 63 O.S. 2001, Section 4210A, as  
20 renumbered by Section 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp.  
21 2008, Section 4210.8), is amended to read as follows:

1 Section 4210.8 A. It shall be unlawful for any person to  
2 operate or be in actual physical control of a vessel upon the waters  
3 of this state, except privately owned waters, who:

4 1. Has a blood or breath alcohol concentration of ~~ten-~~  
5 ~~hundredths (0.10)~~ eight-hundredths (0.08) or more at the time of a  
6 test of the person's blood or breath;

7 2. Is under the influence of any other intoxicating substance  
8 to a degree which renders such person incapable of safely operating  
9 a vessel upon the waters of this state; or

10 3. Is under the influence of alcohol and any other intoxicating  
11 substance to a degree which renders such person incapable of safely  
12 operating a vessel upon the waters of this state.

13 As used in this section, the term "other intoxicating substance"  
14 shall mean any controlled dangerous substance as defined in the  
15 Uniform Controlled Dangerous Substances Act or any other substance,  
16 other than alcohol, which is capable of being ingested, inhaled,  
17 injected or absorbed into the human body and is capable of adversely  
18 affecting the central nervous system, vision, hearing or other  
19 sensory or motor functions.

20 B. 1. Any person operating a vessel upon the waters of this  
21 state, except privately owned waters, shall be deemed to have given  
22 consent to a test or tests of such person's blood, breath, saliva or  
23 urine for the purpose of determining the presence and concentration

1 of alcohol or any other intoxicating substance. Such tests shall be  
2 performed within two (2) hours of an arrest and in the same manner  
3 as provided for in Section 752 of Title 47 of the Oklahoma Statutes.

4 2. Evidence that the person has refused to submit to a test or  
5 tests as required by this section shall be admissible upon the trial  
6 of any criminal action or proceeding arising out of acts alleged to  
7 have been committed in violation of the provisions of this section.

8 3. Any person refusing to submit to such test or tests shall be  
9 in violation of this section and subject to the fines provided for  
10 herein.

11 C. 1. Any person convicted of a violation of this section  
12 shall be guilty of a misdemeanor and fined in an amount not to  
13 exceed One Thousand Dollars (\$1,000.00). Any second or subsequent  
14 conviction shall be punishable by a fine in an amount of not less  
15 than One Thousand Dollars (\$1,000.00), nor more than Two Thousand  
16 Five Hundred Dollars (\$2,500.00).

17 2. A person arrested by a law enforcement officer for a  
18 violation of this section may be allowed to post a cash bail in an  
19 amount set by the arresting law enforcement officer not to exceed  
20 the maximum fine provided by this section, or deposit a valid  
21 license to operate a motor vehicle in exchange for an official  
22 receipt issued by the arresting officer as provided for in Section  
23 1111 et seq. of Title 22 of the Oklahoma Statutes.

1           SECTION 3.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 4210.9 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4           A.   1.   Any person who operates a vessel upon the waters of this  
5 state shall be deemed to have given consent to a test or tests of  
6 the blood or breath of the person, for the purpose of determining  
7 the alcohol concentration as defined in Section 7 of this act, and  
8 the blood, saliva or urine of the person for determining the  
9 presence or concentration of any other intoxicating substance, as  
10 defined in this section, therein if arrested for any offense arising  
11 out of acts alleged to have been committed while the person was  
12 operating or in actual physical control of a vessel upon the waters  
13 of this state while under the influence of alcohol or other  
14 intoxicating substance, or the combined influence of alcohol and any  
15 other intoxicating substance, or if the person is involved in a  
16 boating collision that resulted in the immediate death or serious  
17 injury of any person and is removed from the scene of the collision  
18 to a hospital or other health care facility outside this state  
19 before a law enforcement officer can effect an arrest.

20           2.   A law enforcement officer, having reasonable grounds to  
21 believe that such person was operating or in actual physical control  
22 of a vessel while under the influence may direct the administration  
23 of or administer the test or tests.

1           3. As used in this section, the term "other intoxicating  
2 substance" shall mean any controlled dangerous substance as defined  
3 in the Uniform Controlled Dangerous Substances Act and any other  
4 substance, other than alcohol, which is capable of being ingested,  
5 inhaled, injected or absorbed into the human body and is capable of  
6 adversely affecting the central nervous system, vision, hearing or  
7 other sensory or motor functions.

8           B. 1. The law enforcement agency by which the arresting  
9 officer is employed may designate, in accordance with the rules of  
10 the Board of Tests for Alcohol and Drug Influence, whether blood or  
11 breath is to be tested for the alcohol concentration thereof, and  
12 whether blood, saliva or urine is to be tested for the presence or  
13 concentration of any other intoxicating substance therein.

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

22           3. In the event the law enforcement agency does not designate  
23 the test to be administered, blood, saliva or urine shall be the

1 substance tested for the presence or concentration of any other  
2 intoxicating substance or the combination of alcohol and any other  
3 intoxicating substance.

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

8 D. 1. Any person who is unconscious or otherwise incapable of  
9 refusing to submit to a test of the blood or breath of the person to  
10 determine the alcohol concentration thereof, or to a test of the  
11 blood, saliva or urine of the person to determine the presence or  
12 concentration of any other intoxicating substance therein, shall be  
13 deemed not to have withdrawn the consent provided by subsection A of  
14 this section, and such test may be administered as provided herein.

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

1           3. Any person who has been arrested for one of the offenses  
2 listed in subsection A of this section who is unconscious or injured  
3 and who requires immediate medical treatment as determined by a  
4 treating physician may be released by the arresting officer on the  
5 recognizance of the person for medical reasons. The arresting  
6 officer who releases an arrested person on the recognizance of the  
7 person must indicate the release on the face of the citation. Any  
8 person released on his or her own recognizance for medical reasons  
9 shall remain at liberty pending the filing of charges.

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

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

22          F. When a law enforcement officer has determined that the blood  
23 alcohol content of an individual is to be tested for the presence or

1 concentration of alcohol, other intoxicating substance, or the  
2 combination of alcohol and any other intoxicating substance, the law  
3 enforcement officer shall inform the individual to be tested that  
4 the withdrawal of blood shall only be performed by certain medical  
5 personnel as provided for in Section 4 of this act.

6 SECTION 4. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 4210.10 of Title 63, unless  
8 there is created a duplication in numbering, reads as follows:

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

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

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

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

8           3. Signed by a duly authorized peace officer that the person  
9 whose blood is to be withdrawn has been placed under arrest and that  
10 the officer has probable cause to believe that the person, while  
11 intoxicated, has operated a vessel in such manner as to have caused  
12 the death or serious physical injury of another person, or the  
13 person has been involved in a boating collision and has been removed  
14 from the scene of the collision that resulted in the death or great  
15 bodily injury of any person, as defined in subsection B of Section  
16 646 of Title 21 of the Oklahoma Statutes, to a hospital or other  
17 health care facility outside the State of Oklahoma before the law  
18 enforcement officer was able to effect an arrest for such offense;  
19 or

20           4. In the form of an order from a district court that blood be  
21 withdrawn, the person authorized to withdraw the blood and the  
22 hospital or other health care facility where the withdrawal occurs  
23 may rely on such a statement or order as evidence that the person

1 has consented to or has been required to submit to the clinical  
2 procedure and shall not require the person to sign any additional  
3 consent or waiver form. In such a case, the person authorized to  
4 perform the procedure, the employer of such person, and the hospital  
5 or other health care facility shall not be liable in any action  
6 alleging lack of consent or lack of informed consent.

7 C. No person specified in subsection A of this section, no  
8 employer of such a person, and no hospital or other health care  
9 facility where blood is withdrawn shall incur any civil or criminal  
10 liability as a result of the proper withdrawal of blood when acting  
11 at the request of a law enforcement officer by the provisions of  
12 Section 3 or 5 of this act, or when acting in reliance upon a signed  
13 statement or court order as provided in this section, if the act is  
14 performed in a reasonable manner according to generally accepted  
15 clinical practice. No person specified in subsection A of this  
16 section shall incur any civil or criminal liability as a result of  
17 the proper collection of breath, saliva or urine when acting at the  
18 request of a law enforcement officer under the provisions of Section  
19 3 or 5 of this act or when acting pursuant to a court order.

20 D. The blood, breath, saliva or urine specimens obtained shall  
21 be tested by the appropriate test as determined by the Board of  
22 Tests for Alcohol and Drug Influence, or tested by a laboratory that  
23 is exempt from the Board rules pursuant to Section 759 of Title 47

1 of the Oklahoma Statutes, to determine the alcohol concentration  
2 thereof, or the presence and concentration of any other intoxicating  
3 substance which might have affected the ability of the person tested  
4 to operate a vessel safely.

5 E. When blood is withdrawn or saliva or urine is collected for  
6 testing of its alcohol concentration or other intoxicating substance  
7 presence or concentration, at the request of a law enforcement  
8 officer, a sufficient quantity of the same specimen shall be  
9 obtained to enable the tested person, at his or her own option and  
10 expense, to have an independent analysis made of such specimen. The  
11 excess blood, saliva or urine specimen shall be retained by a  
12 laboratory approved by the Board of Tests for Alcohol and Drug  
13 Influence, in accordance with the rules and regulations of the  
14 Board, or by a laboratory that is exempt from the Board rules  
15 pursuant to Section 759 of Title 47 of the Oklahoma Statutes, for  
16 sixty (60) days from the date of collection. At any time within  
17 that period, the tested person or his or her attorney may direct  
18 that such blood, saliva or urine specimen be sent or delivered to a  
19 laboratory of his or her own choosing and approved by the Board for  
20 an independent analysis. Neither the tested person, nor any agent  
21 of such person, shall have access to the additional blood, saliva or  
22 urine specimen prior to the completion of the independent analysis,

1 except the analyst performing the independent analysis and agents of  
2 the analyst.

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

1           G. The costs of collecting blood, breath, saliva or urine  
2 specimens for the purpose of determining the alcohol or other  
3 intoxicating substance thereof, by or at the direction of a law  
4 enforcement officer, shall be borne by the law enforcement agency  
5 employing such officer. The cost of collecting, retaining and  
6 sending or delivering to an independent laboratory the excess  
7 specimens of blood, breath, saliva or urine for independent analysis  
8 at the option of the tested person shall also be borne by such law  
9 enforcement agency. The cost of the independent analysis of such  
10 specimen of blood, breath, saliva or urine shall be borne by the  
11 tested person at whose option such analysis is performed. The  
12 tested person, or his or her agent, shall make all necessary  
13 arrangements for the performance of such independent analysis other  
14 than the forwarding or delivery of such specimen.

15           H. Tests of blood or breath for the purpose of determining the  
16 alcohol concentration thereof, and tests of blood, saliva or urine  
17 for the purpose of determining the presence or concentration of any  
18 other intoxicating substance therein, under the provisions of this  
19 section, whether administered by or at the direction of a law  
20 enforcement officer or administered independently, at the option of  
21 the tested person, on the excess specimen of such person's blood,  
22 breath, saliva or urine, to be considered valid and admissible in  
23 evidence under the provisions of this section, shall have been

1 administered or performed in accordance with the rules and  
2 regulations of the Board of Tests for Alcohol and Drug Influence, or  
3 performed by a laboratory that is exempt from the Board rules  
4 pursuant to Section 759 of Title 47 of the Oklahoma Statutes.

5 I. Any person who has been arrested for any offense arising out  
6 of acts alleged to have been committed while the person was  
7 operating or in actual physical control of a vessel while under the  
8 influence of alcohol, any other intoxicating substance or the  
9 combined influence of alcohol and any other intoxicating substance,  
10 who is not requested by a law enforcement officer to submit to a  
11 test, shall be entitled to have an independent test of his or her  
12 blood, breath, saliva or urine, which is appropriate as determined  
13 by the Board of Tests for Alcohol and Drug Influence for the purpose  
14 of determining its alcohol concentration or the presence or  
15 concentration of any other intoxicating substance therein, performed  
16 by a person of his or her own choosing who is qualified as  
17 stipulated in this section. The arrested person shall bear the  
18 responsibility for making all necessary arrangements for the  
19 administration of such independent test and for the independent  
20 analysis of any specimens obtained, and bear all costs thereof. The  
21 failure or inability of the arrested person to obtain an independent  
22 test shall not preclude the admission of other competent evidence  
23 bearing upon the question of whether such person was under the

1 influence of alcohol, or any other intoxicating substance or the  
2 combined influence of alcohol and any other intoxicating substance.

3 J. Any agency or laboratory certified by the Board of Tests for  
4 Alcohol and Drug Influence or any agency or laboratory that is  
5 exempt from the Board rules pursuant to Section 759 of Title 47 of  
6 the Oklahoma Statutes, which analyzes breath, blood, or urine shall  
7 make available a written report of the results of the test  
8 administered by or at the direction of the law enforcement officer  
9 to:

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

14 The results of the tests provided for in this section shall be  
15 admissible in civil actions.

16 SECTION 5. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 4210.11 of Title 63, unless  
18 there is created a duplication in numbering, reads as follows:

19 If a conscious person under arrest refuses to submit to testing  
20 of his or her blood or breath for the purpose of determining the  
21 alcohol concentration thereof, or to a test of his or her blood,  
22 saliva or urine for the purpose of determining the presence or  
23 concentration of any other intoxicating substance, or the combined

1 influence of alcohol and any other intoxicating substance, none  
2 shall be given, unless the investigating officer has probable cause  
3 to believe that the person under arrest, while intoxicated, has  
4 operated a vessel in such a manner as to have caused the death or  
5 serious physical injury of any other person or persons. In that  
6 event, the test otherwise authorized by law may be made in the same  
7 manner as if a search warrant had been issued for the test or tests.  
8 The sample shall be taken in a medically acceptable manner at a  
9 hospital or other suitable health care facility.

10 SECTION 6. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 4210.12 of Title 63, unless  
12 there is created a duplication in numbering, reads as follows:

13 A. At any proceeding held relevant to this act, a report of the  
14 findings of the laboratory of the Oklahoma State Bureau of  
15 Investigation, the medical examiner's report of investigation or  
16 autopsy report, or a laboratory report from a forensic laboratory  
17 operated by the State of Oklahoma or any political subdivision  
18 thereof, which has been made available by the Oklahoma Tax  
19 Commission to the person or an authorized representative at least  
20 five (5) days prior to the hearing, with reference to all or part of  
21 the evidence submitted, when certified as correct by the persons  
22 making the report shall be received as evidence of the facts and  
23 findings stated, if relevant and otherwise admissible in evidence.

1 If the report is deemed relevant by either party, the court shall  
2 admit the report without the testimony of the person making the  
3 report, unless the court, pursuant to this subsection, orders the  
4 person to appear.

5 B. When any alleged controlled dangerous substance has been  
6 submitted to the laboratory of the Oklahoma State Bureau of  
7 Investigation for analysis, and the analysis shows that the  
8 submitted material is a controlled dangerous substance, the  
9 distribution of which constitutes a felony under the laws of this  
10 state, no portion of the substance shall be released to any other  
11 person or laboratory absent an order of a district court. The  
12 defendant shall additionally be required to submit to the court a  
13 procedure for transfer and analysis of the subject material to  
14 ensure the integrity of the sample and to prevent the material from  
15 being used in any illegal manner.

16 C. The court, upon motion of either party, shall order the  
17 attendance of any person preparing a report submitted as evidence in  
18 the hearing when it appears there is a substantial likelihood that  
19 material evidence not contained in the report may be produced by the  
20 testimony of any person having prepared a report. The hearing shall  
21 be held and, if sustained, an order issued not less than five (5)  
22 days prior to the time when the testimony shall be required.

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

8 SECTION 7. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 4210.13 of Title 63, unless  
10 there is created a duplication in numbering, reads as follows:

11 A. Upon the trial of any criminal action or proceeding arising  
12 out of acts alleged to have been committed by any person while  
13 operating or in actual physical control of a vessel while under the  
14 influence of alcohol or any other intoxicating substance, or the  
15 combined influence of alcohol and any other intoxicating substance,  
16 evidence of the alcohol concentration in the blood or breath of the  
17 person as shown by analysis of the blood or breath of the person  
18 performed in accordance with the provisions of Section 4 of this act  
19 and Section 759 of Title 47 of the Oklahoma statutes or evidence of  
20 the presence or concentration of any other intoxicating substance as  
21 shown by analysis of such person's blood, breath, saliva, or urine  
22 specimens in accordance with the provisions of Section 4 of this act  
23 and Section 759 of Title 47 of the Oklahoma Statutes shall be

1 admissible. Evidence that the person has refused to submit to  
2 either of said analyses is also admissible. For the purpose of this  
3 section, when the person is under the age of twenty-one (21) years,  
4 evidence that there was, at the time of the test, any measurable  
5 quantity of alcohol is prima facie evidence that the person is under  
6 the influence of alcohol in violation of Section 3 of this act. For  
7 persons twenty-one years of age or older:

8 1. Evidence that there was, at the time of the test, an alcohol  
9 concentration of seven-hundredths (0.07) or less is prima facie  
10 evidence that the person was not under the influence of alcohol; and

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

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

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

1           SECTION 8.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 4210.14 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4           The provisions of Sections 3 through 7 of this act do not limit  
5 the introduction of any other competent evidence bearing on the  
6 question of whether the person was under the influence of alcohol or  
7 any other intoxicating substance, or the combined influence of  
8 alcohol and any other intoxicating substance.

9           SECTION 9. This act shall become effective July 1, 2009.

10          SECTION 10. It being immediately necessary for the preservation  
11 of the public peace, health and safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-18-09 - DO  
15 PASS, As Amended and Coauthored.