

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 902

By: Brown

4  
5  
6 AS INTRODUCED

7 An Act relating to boating safety; amending 63 O.S.  
8 2001, Sections 4210, as last amended by Section 2,  
Chapter 95, O.S.L. 2008 and 4210A, as renumbered by  
9 Section 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp.  
2008, Sections 4210 and 4210.8), which relate to  
10 vessel operation; limiting certain vessel usage;  
modifying alcohol concentration amounts; allowing for  
11 certain tests to determine substance concentration;  
defining terms; authorizing test type; providing  
12 consequences; allowing for medical exceptions;  
authorizing use of test specimens; qualifying persons  
13 authorized to administer tests; limiting liability;  
providing for independent test analysis; allowing  
14 admission of test results in civil actions; allowing  
for exceptions to test refusal; authorizing use of  
15 laboratory findings; defining levels of alcohol  
concentration for evidence purposes; allowing for use  
16 of all evidence; providing for codification;  
providing an effective date; and declaring an  
17 emergency.

18  
19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. AMENDATORY 63 O.S. 2001, Section 4210, as  
21 last amended by Section 2, Chapter 95, O.S.L. 2008 (63 O.S. Supp.  
22 2008, Section 4210), is amended to read as follows:

23 Section 4210. A. No person shall operate, manipulate or give  
24 permission to any person to operate or manipulate any parasails,

1 water skis, surfboard, personal watercraft, or similar device, or  
2 any vessel in a reckless or negligent manner so as to endanger the  
3 life or property of any person.

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

10 C. Upon the immediate approach of an authorized emergency  
11 vessel making use of an audible or a visual signal or a combination  
12 thereof, the operator of every other vessel shall immediately stop  
13 his or her vessel whenever or wherever practical or otherwise yield  
14 the right-of-way until such authorized emergency vessel has passed,  
15 except when otherwise directed by a duly authorized peace officer of  
16 this state.

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

21 E. No person shall operate or give permission to operate any  
22 vessel on the waters of this state for which the manufacturer has  
23 affixed a maximum horsepower capacity plate so as to exceed the  
24 posted capacity plate or to exceed the United States Coast Guard

1 standards for maximum horsepower capacity; provided, this provision  
2 shall not apply to vessels operating in sanctioned events.

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

7 G. No person shall operate on the waters of this state, except  
8 privately owned waters, any vessel, including personal watercraft,  
9 within fifty (50) feet in proximity to another vessel when running  
10 at speeds of over ten (10) miles per hour; provided, this  
11 prohibition shall not apply to vessels operating in sanctioned  
12 events.

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

22 I. Any violation of the provisions of this section shall  
23 constitute a misdemeanor and shall be punishable, upon conviction,  
24 by a fine of not less than Fifty Dollars (\$50.00) nor more than Two

1 Hundred Fifty Dollars (\$250.00) and shall be subject to imprisonment  
2 in the county jail for a period not to exceed six (6) months.

3 SECTION 2. AMENDATORY 63 O.S. 2001, Section 4210A, as  
4 renumbered by Section 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp.  
5 2008, Section 4210.8), is amended to read as follows:

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

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

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

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

18 As used in this section, the term "other intoxicating substance"  
19 shall mean any controlled dangerous substance as defined in the  
20 Uniform Controlled Dangerous Substances Act or 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  
23 affecting the central nervous system, vision, hearing or other  
24 sensory or motor functions.

1 B. 1. Any person operating a vessel upon the waters of this  
2 state, except privately owned waters, shall be deemed to have given  
3 consent to a test or tests of such person's blood, breath, saliva or  
4 urine for the purpose of determining the presence and concentration  
5 of alcohol or any other intoxicating substance. Such tests shall be  
6 performed within two (2) hours of an arrest and in the same manner  
7 as provided for in Section 752 of Title 47 of the Oklahoma Statutes.

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

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

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

21 2. A person arrested by a law enforcement officer for a  
22 violation of this section may be allowed to post a cash bail in an  
23 amount set by the arresting law enforcement officer not to exceed  
24 the maximum fine provided by this section, or deposit a valid

1 license to operate a motor vehicle in exchange for an official  
2 receipt issued by the arresting officer as provided for in Section  
3 1111 et seq. of Title 22 of the Oklahoma Statutes.

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

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

23 2. A law enforcement officer, having reasonable grounds to  
24 believe that such person was operating or in actual physical control

1 of a vessel while under the influence may direct the administration  
2 of or administer the test or tests.

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

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

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

24

1           3. In the event the law enforcement agency does not designate  
2 the test to be administered, blood, saliva or urine shall be the  
3 substance tested for the presence or concentration of any other  
4 intoxicating substance or the combination of alcohol and any other  
5 intoxicating substance.

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

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

17          2. An unconscious person who has been issued a citation by a  
18 law enforcement officer for one of the offenses listed in subsection  
19 A of this section is arrested for purposes of this section. The  
20 arresting officer must leave a copy of the citation with the  
21 arrested person which may be accomplished by handing it to the  
22 arrested person, or by leaving it with the personal effects of the  
23 arrested party, so as to inform the unconscious person of the  
24 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  
24 concentration of alcohol, other intoxicating substance, or the

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

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

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

22 B. If the person authorized to withdraw blood as specified in  
23 subsection A of this section is presented with a written statement:  
24

- 1           1. Authorizing blood withdrawal signed by the person whose  
2 blood is to be withdrawn;
- 3           2. Signed by a duly authorized peace officer that the person  
4 whose blood is to be withdrawn has agreed to the withdrawal of  
5 blood;
- 6           3. Signed by a duly authorized peace officer that the person  
7 whose blood is to be withdrawn has been placed under arrest and that  
8 the officer has probable cause to believe that the person, while  
9 intoxicated, has operated a vessel in such manner as to have caused  
10 the death or serious physical injury of another person, or the  
11 person has been involved in a boating collision and has been removed  
12 from the scene of the collision that resulted in the death or great  
13 bodily injury of any person, as defined in subsection B of Section  
14 646 of Title 21 of the Oklahoma Statutes, to a hospital or other  
15 health care facility outside the State of Oklahoma before the law  
16 enforcement officer was able to effect an arrest for such offense;  
17 or
- 18           4. In the form of an order from a district court that blood be  
19 withdrawn, the person authorized to withdraw the blood and the  
20 hospital or other health care facility where the withdrawal occurs  
21 may rely on such a statement or order as evidence that the person  
22 has consented to or has been required to submit to the clinical  
23 procedure and shall not require the person to sign any additional  
24 consent or waiver form. In such a case, the person authorized to

1 perform the procedure, the employer of such person, and the hospital  
2 or other health care facility shall not be liable in any action  
3 alleging lack of consent or lack of informed consent.

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

17 D. The blood, breath, saliva or urine specimens obtained shall  
18 be tested by the appropriate test as determined by the Board of  
19 Tests for Alcohol and Drug Influence, or tested by a laboratory that  
20 is exempt from the Board rules pursuant to Section 759 of Title 47  
21 of the Oklahoma Statutes, to determine the alcohol concentration  
22 thereof, or the presence and concentration of any other intoxicating  
23 substance which might have affected the ability of the person tested  
24 to operate a vessel 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 of Tests for Alcohol and Drug  
9 Influence, in accordance with the rules and regulations of the  
10 Board, or by a laboratory that is exempt from the Board rules  
11 pursuant to Section 759 of Title 47 of the Oklahoma Statutes, for  
12 sixty (60) days from the date of collection. At any time within  
13 that period, the tested person or his or her attorney may direct  
14 that such blood, saliva or urine specimen be sent or delivered to a  
15 laboratory of his or her own choosing and approved by the Board for  
16 an independent analysis. Neither the tested person, nor any agent  
17 of such person, shall have access to the additional blood, saliva or  
18 urine specimen prior to the completion of the independent analysis,  
19 except the analyst performing the independent analysis and agents of  
20 the analyst.

21 F. When a test of breath is performed for the purpose of  
22 determining the alcohol concentration thereof, except when such test  
23 is performed by means of an automated analyzer as designated by the  
24 Board of Tests for Alcohol and Drug Influence, a sufficient quantity

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

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

7 H. Tests of blood or breath for the purpose of determining the  
8 alcohol concentration thereof, and tests of blood, saliva or urine  
9 for the purpose of determining the presence or concentration of any  
10 other intoxicating substance therein, under the provisions of this  
11 section, whether administered by or at the direction of a law  
12 enforcement officer or administered independently, at the option of  
13 the tested person, on the excess specimen of such person's blood,  
14 breath, saliva or urine, to be considered valid and admissible in  
15 evidence under the provisions of this section, shall have been  
16 administered or performed in accordance with the rules and  
17 regulations of the Board of Tests for Alcohol and Drug Influence, or  
18 performed by a laboratory that is exempt from the Board rules  
19 pursuant to Section 759 of Title 47 of the Oklahoma Statutes.

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 vessel while under the  
23 influence of alcohol, any other intoxicating substance or the  
24 combined influence of alcohol and any other intoxicating substance,

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

17 J. Any agency or laboratory certified by the Board of Tests for  
18 Alcohol and Drug Influence or any agency or laboratory that is  
19 exempt from the Board rules pursuant to Section 759 of Title 47 of  
20 the Oklahoma Statutes, which analyzes breath, blood, or urine shall  
21 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:

24 1. The tested person, or his or her attorney;

1        2. The Commissioner of Public Safety; and

2        3. The Fatality Analysis Reporting System (FARS) analyst of the  
3 state, upon request.

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

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

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

1           SECTION 6.           NEW LAW           A new section of law to be codified

2 in the Oklahoma Statutes as Section 4210.12 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4           A. At any proceeding held relevant to this act, a report of the  
5 findings of the laboratory of the Oklahoma State Bureau of  
6 Investigation, the medical examiner's report of investigation or  
7 autopsy report, or a laboratory report from a forensic laboratory  
8 operated by the State of Oklahoma or any political subdivision  
9 thereof, which has been made available by the Oklahoma Tax  
10 Commission to the person or an authorized representative at least  
11 five (5) days prior to the hearing, with reference to all or part of  
12 the evidence submitted, when certified as correct by the persons  
13 making the report shall be received as evidence of the facts and  
14 findings stated, if relevant and otherwise admissible in evidence.  
15 If the report is deemed relevant by either party, the court shall  
16 admit the report without the testimony of the person making the  
17 report, unless the court, pursuant to this subsection, orders the  
18 person to appear.

19           B. When any alleged controlled dangerous substance has been  
20 submitted to the laboratory of the Oklahoma State Bureau of  
21 Investigation for analysis, and the analysis shows that the  
22 submitted material is a controlled dangerous substance, the  
23 distribution of which constitutes a felony under the laws of this  
24 state, no portion of the substance shall be released to any other

1 person or laboratory absent an order of a district court. The  
2 defendant shall additionally be required to submit to the court a  
3 procedure for transfer and analysis of the subject material to  
4 ensure the integrity of the sample and to prevent the material from  
5 being used in any illegal manner.

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

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

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

23 A. Upon the trial of any criminal action or proceeding arising  
24 out of acts alleged to have been committed by any person while

1 operating or in actual physical control of a vessel while under the  
2 influence of alcohol or any other intoxicating substance, or the  
3 combined influence of alcohol and any other intoxicating substance,  
4 evidence of the alcohol concentration in the blood or breath of the  
5 person as shown by analysis of the blood or breath of the person  
6 performed in accordance with the provisions of Section 4 of this act  
7 and Section 759 of Title 47 of the Oklahoma statutes or evidence of  
8 the presence or concentration of any other intoxicating substance as  
9 shown by analysis of such person's blood, breath, saliva, or urine  
10 specimens in accordance with the provisions of Section 4 of this act  
11 and Section 759 of Title 47 of the Oklahoma Statutes shall be  
12 admissible. Evidence that the person has refused to submit to  
13 either of said analyses is also admissible. For the purpose of this  
14 section, when the person is under the age of twenty-one (21) years,  
15 evidence that there was, at the time of the test, any measurable  
16 quantity of alcohol is prima facie evidence that the person is under  
17 the influence of alcohol in violation of Section 3 of this act. For  
18 persons twenty-one years of age or older:

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

22 2. Evidence that there was, at the time of the test, an alcohol  
23 concentration of eight-hundredths (0.08) or more shall be admitted  
24

1 as prima facie evidence that the person was under the influence of  
2 alcohol.

3 B. For purposes of this section, "alcohol concentration" means  
4 grams of alcohol per one hundred (100) milliliters of blood if the  
5 blood was tested, or grams of alcohol per two hundred ten (210)  
6 liters of breath if the breath was tested.

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

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

13 The provisions of Sections 3 through 7 of this act do not limit  
14 the introduction of any other competent evidence bearing on the  
15 question of whether the person was under the influence of alcohol or  
16 any other intoxicating substance, or the combined influence of  
17 alcohol and any other intoxicating substance.

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

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

23

24 52-1-137 MRB 3/6/2009 7:31:45 AM