

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3692

By: Kannady

AS INTRODUCED

An Act relating to driving under the influence; amending 47 O.S. 2011, Section 752, as last amended by Section 13, Chapter 400, O.S.L. 2019 (47 O.S. Supp. 2019, Section 752), which relates to administration of tests; modifying list of persons who may withdraw blood; modifying specimens requiring certain actions; deleting certain requirements for breath tests; deleting certain test requirements; amending 47 O.S. 2011, Section 759, as last amended by Section 1, Chapter 125, O.S.L. 2015 (47 O.S. Supp. 2019, Section 759), which relates to the Board of Tests for Alcohol and Drug Influence; authorizing promulgation of certain rules; deleting certain specimen analysis requirements; requiring person collecting blood to have certain authorization; requiring certain accreditation for laboratory analysis; providing requirements for collection of breath; deleting requirement for approval of laboratories; requiring standards for breath alcohol concentration determination; deleting certain exemption; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 752, as last amended by Section 13, Chapter 400, O.S.L. 2019 (47 O.S. Supp. 2019, Section 752), is amended to read as follows:

1 Section 752. A. Only a licensed medical doctor, licensed
2 osteopathic physician, licensed chiropractic physician, registered
3 nurse, licensed practical nurse, physician's assistant, certified by
4 ~~the State Board of Medical Licensure and Supervision~~ any state's
5 appropriate licensing authority, an employee of a hospital or other
6 health care facility authorized by the hospital or health care
7 facility to withdraw blood, or ~~other qualified person authorized by~~
8 ~~the Board of Tests for Alcohol and Drug Influence~~ an individual
9 licensed in accordance with Section 1-2505 of Title 63 of the
10 Oklahoma Statutes as an intermediate emergency medical technician,
11 an advanced emergency medical technician, or a paramedic, acting at
12 the request of a law enforcement officer may withdraw blood for the
13 purpose of having a determination made of its concentration of
14 alcohol or the presence or concentration of other intoxicating
15 substance. Only qualified persons authorized by the Board of Tests
16 for Alcohol and Drug Influence may collect breath, saliva or urine,
17 or administer tests of breath under the provisions of this title.

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

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

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

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

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

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

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

22 E. When blood is withdrawn ~~or saliva or urine is collected~~ for
23 testing of its alcohol concentration or other intoxicating substance
24 presence or concentration, at the request of a law enforcement

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

17 F. ~~When a test of breath is performed for the purpose of~~
18 ~~determining the alcohol concentration thereof, except when such test~~
19 ~~is performed by means of an automated analyzer as designated by the~~
20 ~~Board, a sufficient quantity of breath, or of the alcohol content of~~
21 ~~a fixed or measured quantity of breath, shall be obtained, in~~
22 ~~accordance with the rules and regulations of the Board, to enable~~
23 ~~the tested person, at his or her own option and expense, to have an~~

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

3 G. The costs of collecting blood, ~~breath,~~ or saliva ~~or urine~~
4 specimens for the purpose of determining the concentration of
5 alcohol or other intoxicating substance thereof, by or at the
6 direction of a law enforcement officer, shall be borne by the law
7 enforcement agency employing such officer; provided, if the person
8 is convicted for any offense involving the operation of a motor
9 vehicle while under the influence of or while impaired by alcohol or
10 an intoxicating substance, or both, as a direct result of the
11 incident which caused the collection of blood, ~~or~~ or saliva ~~or urine~~
12 specimens, an amount equal to the costs shall become a part of the
13 court costs of the person and shall be collected by the court and
14 remitted to the law enforcement agency bearing the costs. The ~~cost~~
15 costs of collecting, retaining and sending or delivering to an
16 independent laboratory the excess specimens of blood, ~~breath,~~ or
17 saliva ~~or urine~~ for independent analysis at the option of the tested
18 person shall also be borne by such law enforcement agency. The ~~cost~~
19 costs of the independent analysis of such specimen of blood, ~~breath,~~
20 or saliva ~~or urine~~ shall be borne by the tested person at whose
21 option such analysis is performed. The tested person, or his or her
22 agent, shall make all necessary arrangements for the performance of
23 such independent analysis other than the forwarding or delivery of
24 such specimen.

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

13 ~~I.~~ H. Any person who has been 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 motor vehicle while
16 under the influence of alcohol, any other intoxicating substance or
17 the combined influence of alcohol and any other intoxicating
18 substance who is not requested by a law enforcement officer to
19 submit to a test shall be entitled to have an independent test of
20 his or her blood, ~~breath, saliva or urine which is appropriate as~~
21 ~~determined by the Board~~ for the purpose of determining its alcohol
22 concentration or the presence or concentration of any other
23 intoxicating substance therein, performed by a person of his or her
24 own choosing who is qualified as stipulated in this section. The

1 arrested person shall bear the responsibility for making all
2 necessary arrangements for the administration of such independent
3 test and for the independent analysis of any specimens obtained, and
4 bear all costs thereof. The failure or inability of the arrested
5 person to obtain an independent test shall not preclude the
6 admission of other competent evidence bearing upon the question of
7 whether such person was under the influence of alcohol, or any other
8 intoxicating substance or the combined influence of alcohol and any
9 other intoxicating substance.

10 ~~J. I.~~ I. Any agency or laboratory certified by the Board or any
11 agency or laboratory that is exempt from the Board rules pursuant to
12 Section 759 of this title, which ~~analyses breath,~~ analyzes blood, ~~or~~
13 ~~urine~~ shall make available a written report of the results of the
14 test administered by or at the direction of the law enforcement
15 officer to:

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

20 The results of the tests provided for in this title shall be
21 admissible in all civil actions, including administrative hearings
22 regarding driving privileges.
23
24

1 SECTION 2. AMENDATORY 47 O.S. 2011, Section 759, as last
2 amended by Section 1, Chapter 125, O.S.L. 2015 (47 O.S. Supp. 2019,
3 Section 759), is amended to read as follows:

4 Section 759. A. There is hereby re-created, to continue until
5 July 1, 2022, in accordance with the provisions of the Oklahoma
6 Sunset Law, the Board of Tests for Alcohol and Drug Influence to be
7 composed of the following members beginning July 1, 2015:

8 1. The Dean of the Oklahoma State University College of
9 Osteopathic Medicine, or a designee;

10 2. The Dean of the University of Oklahoma College of Medicine,
11 or a designee;

12 3. The Commissioner of Public Safety, or a designee;

13 4. The Director of the Oklahoma State Bureau of Investigation,
14 or a designee;

15 5. The State Commissioner of Health, or a designee;

16 6. The Director of the Council on Law Enforcement Education and
17 Training, or a designee;

18 7. One certified peace officer who is a member of a local law
19 enforcement agency selected by the Oklahoma Sheriffs and Peace
20 Officers Association; and

21 8. One person selected by the Oklahoma Association of Chiefs of
22 Police.

23 Members shall serve without pay other than reimbursement of
24 necessary and actual expenses as provided in the State Travel

1 Reimbursement Act. Each member shall receive an appointment in
2 writing which shall become a permanent part of the records of the
3 Board. The chair and vice-chair shall be elected from the
4 membership of the Board every two (2) years. The Board is
5 authorized to appoint a State Director of Tests for Alcohol and Drug
6 Influence and other employees, including, but not limited to,
7 persons to conduct training and provide administrative assistance as
8 necessary for the performance of its functions, subject to available
9 funding and authorized full-time equivalent employee limitations.
10 The Board is authorized to promulgate rules to delegate procedural
11 matters to the State Director. The Board may expend appropriated
12 funds for purposes consistent with Sections 751 through 761 of this
13 title and Sections 301 through 308 of Title 3 of the Oklahoma
14 Statutes. The Legislature shall appropriate funds to the Department
15 of Public Safety for the support of the Board of Tests for Alcohol
16 and Drug Influence and its employees, if any. Upon the transfer of
17 any employees from the Alcohol Drug Countermeasures Unit of the
18 Department of Public Safety to the Board of Tests for Alcohol and
19 Drug Influence on July 1, 2003, all funds of the Unit appropriated
20 and budgeted shall be transferred to the Board, and may be budgeted
21 and expended to support the functions and personnel of the Board.

22 B. ~~Collection and analysis of a person's blood, breath, saliva~~
23 ~~or urine, to be considered valid and admissible in evidence, whether~~
24 ~~performed by or at the direction of a law enforcement officer or at~~

~~the request of the tested person, shall have been performed in compliance with the rules adopted by the Board of Tests for Alcohol and Drug Influence and by an individual possessing a valid permit issued by the Board for this purpose or shall have been performed by a laboratory accredited in Toxicology by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited by the American Board of Forensic Toxicology (ABFT)~~ For collection of a person's blood to be considered valid and admissible in evidence, whether performed at the direction of a law enforcement officer or at the request of the tested person, the collection shall have been performed by a person authorized to collect blood pursuant to Section 752 of this title. In order for analysis of a person's blood to be considered valid and admissible in evidence, whether performed at the direction of a law enforcement officer or at the request of the tested person, it shall have been performed by a laboratory accredited in accordance with ISO/IEC 17025 as that standard is defined by Section 150.37 of Title 74 of the Oklahoma Statutes.

C. ~~The Board of Tests for Alcohol and Drug Influence is authorized to approve laboratories for the analysis, provided by the provisions of this title, of specimens of blood, breath, saliva and urine, and to administer a program for regular monitoring of such laboratories.~~ For collection of a person's breath to be considered valid and admissible in evidence, it shall have been performed:

1 1. By an individual possessing a valid permit issued by the
2 Board of Tests for Alcohol and Drug Influence for this purpose;

3 2. On a breath alcohol measurement device appearing on the most
4 current conforming products list of such devices published by the
5 U.S. Department of Transportation in the Federal Register, and
6 utilizing a calibrating unit appearing on the most current
7 conforming products list of such devices published by the U.S.
8 Department of Transportation in the Federal Register; and

9 3. On a device maintained by the Board of Tests for Alcohol and
10 Drug Influence.

11 D. The Board is authorized to prescribe uniform standards and
12 conditions for, and to approve satisfactory methods, procedures,
13 techniques, devices, equipment and records for tests and analyses
14 and to prescribe and approve the requisite education and training
15 for the performance of ~~such tests and~~ or analyses of breath to
16 determine the breath alcohol concentration. The Board shall
17 establish standards for and ascertain the qualifications and
18 competence of individuals to administer ~~and conduct such~~ tests and
19 analyses of breath to determine the breath alcohol concentration,
20 and to issue permits ~~to laboratories and~~ to individuals which shall
21 be subject to suspension or revocation at the discretion of the
22 Board. The Board is authorized to prescribe uniform standards,
23 conditions, methods, procedures, techniques, devices, equipment and
24 records for the collection, handling, retention, storage,

1 preservation and delivery of specimens of blood, breath, saliva and
2 urine obtained for the purpose of determining the alcohol
3 concentration thereof or the presence or concentration of any other
4 intoxicating substance therein. The Board may take such other
5 actions as may be reasonably necessary or appropriate to effectuate
6 the purposes of Sections 751 through 761 of this title and Sections
7 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt,
8 amend and repeal such other rules consistent with this chapter as
9 the Board shall determine proper. ~~Laboratories accredited in~~
10 ~~Toxicology by the American Society of Crime Laboratory~~
11 ~~Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited~~
12 ~~by the American Board of Forensic Toxicology (ABFT) are exempt from~~
13 ~~the provisions of this subsection.~~

14 ~~D.~~ E. The Board shall promulgate rules adopting uniform
15 standards and conditions and rules approving devices, equipment,
16 methods, procedures, techniques, and records for screening tests
17 administered for the purpose of determining the presence or
18 concentration of alcohol or any other intoxicating substance in a
19 person's blood, breath, saliva or urine. Such screening tests shall
20 be performed in compliance with the rules adopted by the Board of
21 Tests for Alcohol and Drug Influence. For the purposes of this
22 subsection, "screening test" means the use of devices, equipment,
23 methods, procedures, techniques and records by law enforcement
24 officers at roadside to assist in the development of probable cause.

1 ~~E.~~ F. The Board may set rules and charge appropriate fees for
2 operations incidental to its required duties and responsibilities.

3 ~~F.~~ G. There is hereby created in the State Treasury a revolving
4 fund for the Board of Tests for Alcohol and Drug Influence to be
5 designated the "Board of Tests for Alcohol and Drug Influence
6 Revolving Fund". The fund shall be a continuing fund, not subject
7 to fiscal year limitations, and shall consist of monies received
8 pursuant to the provisions of subsection ~~E~~ F of this section and any
9 funds previously deposited in the Board of Tests for Alcohol and
10 Drug Influence Revolving Fund. All monies accruing to the credit of
11 the fund are hereby appropriated and may be budgeted and expended by
12 the Board of Tests for Alcohol and Drug Influence for operating
13 expenses of the Board. Expenditures from the funds shall be made
14 upon warrants issued by the State Treasurer against claims filed as
15 prescribed by law with the Director of the Office of Management and
16 Enterprise Services for approval and payment.

17 SECTION 3. This act shall become effective November 1, 2020.

18
19 57-2-9627 JBH 01/15/20
20
21
22
23
24