

An Act

ENROLLED SENATE
BILL NO. 367

By: David of the Senate

and

Kannady of the House

An Act relating to impaired driving; amending 47 O.S. 2011, Sections 752, as last amended by Section 13, Chapter 400, O.S.L. 2019, 754, as last amended by Section 15, Chapter 400, O.S.L. 2019 and 759, as last amended by Section 1, Chapter 125, O.S.L. 2015 (47 O.S. Supp. 2020, Sections 752, 754 and 759), which relate to administration of tests, administrative revocation and Board of Tests for Alcohol and Drug Influence; clarifying use of certain licensing authority; providing authorized persons prescribed to withdraw blood; clarifying language; removing authority to seize driver license; removing authorization for independent audits; requiring certain report be provided; modifying requirements for validity and admissibility; authorizing certain delegation by the Board; providing definition; and providing an effective date.

SUBJECT: Modifying collection process for blood alcohol concentration testing

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. 2020, Section 752), is amended to read as follows:

Section 752. A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, certified by ~~the State Board of Medical Licensure and Supervision~~ any state's appropriate licensing authority, an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or ~~other qualified person authorized by the Board of Tests for Alcohol and Drug Influence~~ individuals licensed in accordance with Section 1-2505 of Title 63 of the Oklahoma Statutes as an Intermediate Emergency Medical Technician, an Advanced Emergency Medical Technician or a Paramedic, acting within the scope of practice prescribed by their medical director, acting at the request of a law enforcement officer may withdraw blood for the purpose of having a determination made of its concentration of alcohol or the presence or concentration of other intoxicating substance. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of this title.

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

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 Authorizing blood withdrawal signed by the person whose blood is to be withdrawn;

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

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

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

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

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

E. When blood is withdrawn ~~or saliva or urine is collected~~ for testing of its alcohol concentration or other intoxicating substance presence or concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, ~~saliva or urine~~ specimen shall be retained by a laboratory approved by the Board, in accordance with the rules and

regulations of the Board, or by a laboratory that is exempt from the Board rules pursuant to Section 759 of this title, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, ~~saliva or urine~~ specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional blood, ~~saliva or urine~~ specimen prior to the completion of the independent analysis, except the analyst performing the independent analysis and agents of the analyst.

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

~~G. The costs of collecting blood, breath, saliva or urine~~ specimens for the purpose of determining the alcohol or other intoxicating substance thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer; provided, if the person is convicted for any offense involving the operation of a motor vehicle while under the influence of or while impaired by alcohol or an intoxicating substance, or both, as a direct result of the incident which caused the collection of blood, ~~saliva or urine~~ specimens, an amount equal to the costs shall become a part of the court costs of the person and shall be collected by the court and remitted to the law enforcement agency bearing the costs. The cost of collecting, retaining and sending or delivering to an independent laboratory the excess specimens of blood, ~~breath, saliva or urine~~ for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such specimen of blood, ~~breath, saliva or urine~~ shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary

arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

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

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

~~J.~~ I. Any agency or laboratory certified by the Board or any agency or laboratory that is exempt from the Board rules pursuant to Section 759 of this title, which analyses ~~breath, blood, or urine~~

shall make available a written report of the results of the test administered by or at the direction of the law enforcement officer to:

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

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

SECTION 2. AMENDATORY 47 O.S. 2011, Section 754, as last amended by Section 15, Chapter 400, O.S.L. 2019 (47 O.S. Supp. 2020, Section 754), is amended to read as follows:

Section 754. A. ~~Any arrested person who is under twenty-one (21) years of age and has any measurable quantity of alcohol in the person's blood or breath, or any person twenty-one (21) years of age or older whose alcohol concentration is eight-hundredths (0.08) or more as shown by a breath test administered according to the provisions of this title, or any arrested person who has refused to submit to a breath or blood test, shall immediately surrender his or her driver license, permit or other evidence of driving privilege to the arresting law enforcement officer. The officer shall seize any driver license, permit, or other evidence of driving privilege surrendered by or found on the arrested person during a search.~~

~~B. If the evidence of driving privilege surrendered to or seized by the officer has not expired and otherwise appears valid, the officer shall issue to the arrested person a dated receipt for that driver license, permit, or other evidence of driving privilege on a form prescribed by the Department of Public Safety. This receipt shall be recognized as a driver license and shall authorize the arrested person to operate a motor vehicle for a period not to exceed thirty (30) days. The receipt form shall contain and constitute a notice of revocation of driving privilege by the Department effective in thirty (30) days. The evidence of driving privilege and a copy of the receipt form issued to the arrested~~

~~person shall be attached to the~~ The sworn report of the officer and stating the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance, shall be submitted by mail, by electronic means approved by the Department or in person to the Department within seventy-two (72) hours of the issuance of the ~~receipt report~~. The failure of the officer to timely file this report shall not affect the authority of the Department to revoke the driving privilege of the arrested person.

~~C.~~ B. Upon receipt of a written blood or breath test report reflecting that the arrested person, if under twenty-one (21) years of age, had any measurable quantity of alcohol in the blood or breath of the person, or, if the arrested person is twenty-one (21) years of age or older, a blood or breath alcohol concentration of eight-hundredths (0.08) or more, accompanied by a sworn report from a law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while under the influence of alcohol as prohibited by law, the Department shall revoke or deny the driving privilege of the arrested person for a period as provided by Section 6-205.1 of this title, unless the person has successfully completed or is currently participating in the Impaired Driver Accountability Program in relation to the arrest which is the subject of the report. Revocation or denial of the driving privilege of the arrested person shall become effective thirty (30) days after the arrested person is given written notice thereof by the officer as provided in this section or by the Department as provided in Section 2-116 of this title.

~~D.~~ C. The appeal hearing before the district court shall be conducted in accordance with Section 6-211 of this title. The hearing shall cover the issues of whether the officer had reasonable grounds to believe the person had been operating or was in actual physical control of a vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance

as prohibited by law, and whether the person was placed under arrest.

1. If the revocation or denial is based upon a breath or blood test result and a sworn report from a law enforcement officer, the scope of the hearing shall also cover the issues as to whether:

- a. if timely requested by the person, the person was not denied a breath or blood test,
- b. the specimen was obtained from the person within two (2) hours of the arrest of the person,
- c. the person, if under twenty-one (21) years of age, was advised that driving privileges would be revoked or denied if the test result reflected the presence of any measurable quantity of alcohol,
- d. the person, if twenty-one (21) years of age or older, was advised that driving privileges would be revoked or denied if the test result reflected an alcohol concentration of eight-hundredths (0.08) or more, and
- e. the test result in fact reflects the alcohol concentration.

2. If the revocation or denial is based upon the refusal of the person to submit to a breath or blood test, reflected in a sworn report by a law enforcement officer, the scope of the hearing shall also include whether:

- a. the person refused to submit to the test or tests, and
- b. the person was informed that driving privileges would be revoked or denied if the person refused to submit to the test or tests.

~~E.~~ D. After the hearing, the district court shall order the revocation or denial either rescinded or sustained.

SECTION 3. AMENDATORY 47 O.S. 2011, Section 759, as last amended by Section 1, Chapter 125, O.S.L. 2015 (47 O.S. Supp. 2020, Section 759), is amended to read as follows:

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

1. The Dean of the Oklahoma State University College of Osteopathic Medicine, or a designee;
2. The Dean of the University of Oklahoma College of Medicine, or a designee;
3. The Commissioner of Public Safety, or a designee;
4. The Director of the Oklahoma State Bureau of Investigation, or a designee;
5. The State Commissioner of Health, or a designee;
6. The Director of the Council on Law Enforcement Education and Training, or a designee;
7. One certified peace officer who is a member of a local law enforcement agency selected by the Oklahoma Sheriffs and Peace Officers Association; and
8. One person selected by the Oklahoma Association of Chiefs of Police.

Members shall serve without pay other than reimbursement of necessary and actual expenses as provided in the State Travel Reimbursement Act. Each member shall receive an appointment in writing which shall become a permanent part of the records of the Board. The chair and vice-chair shall be elected from the membership of the Board every two (2) years. The Board is authorized to appoint a State Director of Tests for Alcohol and Drug Influence and other employees, including, but not limited to, persons to conduct training and provide administrative assistance as necessary for the performance of its functions, subject to available

funding and authorized full-time equivalent employee limitations. The Board may expend appropriated funds for purposes consistent with Sections 751 through 761 of this title and Sections 301 through 308 of Title 3 of the Oklahoma Statutes. The Legislature shall appropriate funds to the Department of Public Safety for the support of the Board of Tests For Alcohol and Drug Influence and its employees, if any. Upon the transfer of any employees from the Alcohol Drug Countermeasures Unit of the Department of Public Safety to the Board of Tests For Alcohol and Drug Influence on July 1, 2003, all funds of the Unit appropriated and budgeted shall be transferred to the Board, and may be budgeted and expended to support the functions and personnel of the Board.

~~B. Collection and analysis of a person's blood, breath, saliva or urine, to be considered valid and admissible in evidence, whether 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) of a person's blood to be considered valid and admissible in evidence, whether performed by or at the direction of a law enforcement officer or at the request of the tested person, shall have been performed by a person authorized to collect blood pursuant to the provisions of Section 752 of this title. Analysis of a person's blood to be considered valid and admissible in evidence, whether performed by or at the direction of a law enforcement officer or at the request of the tested person, shall have been performed by a laboratory accredited in accordance with ISO/IEC 17025 as defined in Section 150.37 of Title 74 of the Oklahoma Statutes.~~

C. Collection of a person's breath, to be considered valid and admissible in evidence:

1. Shall have been performed by an individual possessing a valid permit issued by the Board of Tests for Alcohol and Drug Influence for this purpose; and

2. Shall have been performed on a breath alcohol measurement device appearing on the most current conforming products list of such devices published by the U.S. Department of Transportation in the Federal Register, and utilizing a calibrating unit appearing on the most current conforming products list of such devices published by the U.S. Department of Transportation in the Federal Register;

3. Shall have been performed on a device maintained by the Board of Tests for Alcohol and Drug Influence; and

4. Shall have been performed in accordance with the operating procedure prescribed by the State Director of Tests or the Board of Test for Alcohol and Drug Influence.

~~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.~~

D. The Board is authorized to prescribe uniform standards and conditions for, and to approve satisfactory methods, procedures, techniques, devices, equipment and records for tests and analyses and to prescribe and approve the requisite education and training for the performance of such tests and or analyses of breath to determine the breath alcohol concentration. The Board shall establish standards for and ascertain the qualifications and competence of individuals to administer ~~and conduct such tests and analyses of breath to determine the breath alcohol concentration,~~ and to issue permits ~~to laboratories and~~ to individuals which shall be subject to suspension or revocation at the discretion of the Board. The Board is authorized to prescribe uniform standards, conditions, methods, procedures, techniques, devices, equipment and records for the collection, handling, retention, storage, preservation and delivery of specimens of blood, breath, saliva and urine obtained for the purpose of determining the alcohol concentration thereof or the presence or concentration of any other intoxicating substance therein. The Board may take such other actions as may be reasonably necessary or appropriate to effectuate the purposes of Sections 751 through 761 of this title and Sections 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt, amend and repeal such other rules consistent with this chapter as the Board shall determine proper. ~~Laboratories 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) are exempt from the provisions of this subsection~~ The Board is authorized to delegate authority granted in this section to the State Director of Tests as it deems appropriate.

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

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

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

SECTION 4. This act shall become effective November 1, 2021.

Passed the Senate the 9th day of March, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____