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February 3, 2021

SENATE BILL NO. 367

By: David

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.

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

1 appropriate licensing authority, an employee of a hospital or other  
2 health care facility authorized by the hospital or health care  
3 facility to withdraw blood, or ~~other qualified person authorized by~~  
4 ~~the Board of Tests for Alcohol and Drug Influence~~ individuals  
5 licensed in accordance with Section 1-2505 of Title 63 of the  
6 Oklahoma Statutes as an Intermediate Emergency Medical Technician,  
7 an Advanced Emergency Medical Technician or a Paramedic, acting  
8 within the scope of practice prescribed by their medical director,  
9 acting at the request of a law enforcement officer may withdraw  
10 blood for the purpose of having a determination made of its  
11 concentration of alcohol or the presence or concentration of other  
12 intoxicating substance. Only qualified persons authorized by the  
13 Board may collect breath, saliva or urine, or administer tests of  
14 breath under the provisions of this title.

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

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18 blood is to be withdrawn;

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20 whose blood is to be withdrawn has agreed to the withdrawal of  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

22 3. Signed by a duly authorized peace officer that the person  
23 whose blood is to be withdrawn has been placed under arrest and that  
24 the officer has probable cause to believe that the person, while

1 intoxicated, has operated a motor vehicle in such manner as to have  
2 caused the death or serious physical injury of another person, or  
3 the person has been involved in a traffic accident and has been  
4 removed from the scene of the accident that resulted in the death or  
5 great bodily injury, as defined in subsection B of Section 646 of  
6 Title 21 of the Oklahoma Statutes, of any person to a hospital or  
7 other health care facility outside the State of Oklahoma before the  
8 law enforcement officer was able to effect an arrest for such  
9 offense; or

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11 withdrawn, the person authorized to withdraw the blood and the  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

20 C. No person specified in subsection A of this section, no  
21 employer of such person, and no hospital or other health care  
22 facility where blood is withdrawn shall incur any civil or criminal  
23 liability as a result of the proper withdrawal of blood when acting  
24 at the request of a law enforcement officer by the provisions of

1 Section 751 or 753 of this title, or when acting in reliance upon a  
2 signed statement or court order as provided in this section, if the  
3 act is performed in a reasonable manner according to generally  
4 accepted clinical practice. No person specified in subsection A of  
5 this section shall incur any civil or criminal liability as a result  
6 of the proper collection of breath, saliva or urine when acting at  
7 the request of a law enforcement officer under the provisions of  
8 Section 751 or 753 of this title or when acting pursuant to a court  
9 order.

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

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

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

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

21 G. The costs of collecting blood, ~~breath, saliva or urine~~  
22 specimens for the purpose of determining the alcohol or other  
23 intoxicating substance thereof, by or at the direction of a law  
24 enforcement officer, shall be borne by the law enforcement agency

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

18 H. G. Tests of blood or breath for the purpose of determining  
19 the alcohol concentration thereof, and tests of blood,~~saliva or~~  
20 ~~urine~~ for the purpose of determining the presence or concentration  
21 of any other intoxicating substance therein, under the provisions of  
22 this title, whether administered by or at the direction of a law  
23 enforcement officer or administered independently, at the option of  
24 the tested person, on the excess specimen of such person's blood,

1 ~~breath, saliva or urine,~~ to be considered valid and admissible in  
2 evidence under the provisions of this title, shall have been  
3 administered ~~or performed in accordance with the rules and~~  
4 ~~regulations of the Board, or performed by a laboratory that is~~  
5 ~~exempt from the Board rules pursuant to~~ in accordance with Section  
6 759 of this title.

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

1 whether such person was under the influence of alcohol, or any other  
2 intoxicating substance or the combined influence of alcohol and any  
3 other intoxicating substance.

4 ~~J.~~ I. Any agency or laboratory certified by the Board or any  
5 agency or laboratory that is exempt from the Board rules pursuant to  
6 Section 759 of this title, which analyses ~~breath, blood, or urine~~  
7 shall 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 title shall be  
15 admissible in all civil actions, including administrative hearings  
16 regarding driving privileges.

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

20 Section 754. A. ~~Any arrested person who is under twenty-one~~  
21 ~~(21) years of age and has any measurable quantity of alcohol in the~~  
22 ~~person's blood or breath, or any person twenty-one (21) years of age~~  
23 ~~or older whose alcohol concentration is eight hundredths (0.08) or~~  
24 ~~more as shown by a breath test administered according to the~~



1 ~~provisions of this title, or any arrested person who has refused to~~  
2 ~~submit to a breath or blood test, shall immediately surrender his or~~  
3 ~~her driver license, permit or other evidence of driving privilege to~~  
4 ~~the arresting law enforcement officer. The officer shall seize any~~  
5 ~~driver license, permit, or other evidence of driving privilege~~  
6 ~~surrendered by or found on the arrested person during a search.~~

7       ~~B. If the evidence of driving privilege surrendered to or~~  
8 ~~seized by the officer has not expired and otherwise appears valid,~~  
9 ~~the officer shall issue to the arrested person a dated receipt for~~  
10 ~~that driver license, permit, or other evidence of driving privilege~~  
11 ~~on a form prescribed by the Department of Public Safety. This~~  
12 ~~receipt shall be recognized as a driver license and shall authorize~~  
13 ~~the arrested person to operate a motor vehicle for a period not to~~  
14 ~~exceed thirty (30) days. The receipt form shall contain and~~  
15 ~~constitute a notice of revocation of driving privilege by the~~  
16 ~~Department effective in thirty (30) days. The evidence of driving~~  
17 ~~privilege and a copy of the receipt form issued to the arrested~~  
18 ~~person shall be attached to the The sworn report of the officer and~~  
19 ~~stating the officer had reasonable grounds to believe the arrested~~  
20 ~~person had been driving or was in actual physical control of a motor~~  
21 ~~vehicle upon the public roads, highways, streets, turnpikes or other~~  
22 ~~public place of this state while under the influence of alcohol, any~~  
23 ~~other intoxicating substance or the combined influence of alcohol~~  
24 ~~and any other intoxicating substance, shall be submitted by mail, by~~

1 electronic means approved by the Department or in person to the  
2 Department within seventy-two (72) hours of the issuance of the  
3 ~~receipt~~ report. The failure of the officer to timely file this  
4 report shall not affect the authority of the Department to revoke  
5 the driving privilege of the arrested person.

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

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

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

- 14           a. if timely requested by the person, the person was not  
15               denied a breath or blood test,
- 16           b. the specimen was obtained from the person within two  
17               (2) hours of the arrest of the person,
- 18           c. the person, if under twenty-one (21) years of age, was  
19               advised that driving privileges would be revoked or  
20               denied if the test result reflected the presence of  
21               any measurable quantity of alcohol,
- 22           d. the person, if twenty-one (21) years of age or older,  
23               was advised that driving privileges would be revoked

1 or denied if the test result reflected an alcohol  
2 concentration of eight-hundredths (0.08) or more, and  
3 e. the test result in fact reflects the alcohol  
4 concentration.

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

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

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

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

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

- 22 1. The Dean of the Oklahoma State University College of  
23 Osteopathic Medicine, or a designee;  
24

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

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

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

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

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

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

12        8. One person selected by the Oklahoma Association of Chiefs of  
13 Police.

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

1 The Board may expend appropriated funds for purposes consistent with  
2 Sections 751 through 761 of this title and Sections 301 through 308  
3 of Title 3 of the Oklahoma Statutes. The Legislature shall  
4 appropriate funds to the Department of Public Safety for the support  
5 of the Board of Tests For Alcohol and Drug Influence and its  
6 employees, if any. Upon the transfer of any employees from the  
7 Alcohol Drug Countermeasures Unit of the Department of Public Safety  
8 to the Board of Tests For Alcohol and Drug Influence on July 1,  
9 2003, all funds of the Unit appropriated and budgeted shall be  
10 transferred to the Board, and may be budgeted and expended to  
11 support the functions and personnel of the Board.

12 B. ~~Collection and analysis of a person's blood, breath, saliva~~  
13 ~~or urine, to be considered valid and admissible in evidence, whether~~  
14 ~~performed by or at the direction of a law enforcement officer or at~~  
15 ~~the request of the tested person, shall have been performed in~~  
16 ~~compliance with the rules adopted by the Board of Tests for Alcohol~~  
17 ~~and Drug Influence and by an individual possessing a valid permit~~  
18 ~~issued by the Board for this purpose or shall have been performed by~~  
19 ~~a laboratory accredited in Toxicology by the American Society of~~  
20 ~~Crime Laboratory Directors/Laboratory Accreditation Board~~  
21 ~~(ASCLD/LAB) or accredited by the American Board of Forensic~~  
22 ~~Toxicology (ABFT)~~ of a person's blood to be considered valid and  
23 admissible in evidence, whether performed by or at the direction of  
24 a law enforcement officer or at the request of the tested person,

1 shall have been performed by a person authorized to collect blood  
2 pursuant to the provisions of Section 752 of this title and shall  
3 have been performed by a laboratory accredited in accordance with  
4 ISO/IEC 17025 as defined in Section 150.37 of Title 74 of the  
5 Oklahoma Statutes.

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

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

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

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

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

22 ~~The Board of Tests for Alcohol and Drug Influence is authorized~~  
23 ~~to approve laboratories for the analysis, provided by the provisions~~  
24

1 ~~of this title, of specimens of blood, breath, saliva and urine, and~~  
2 ~~to administer a program for regular monitoring of such laboratories.~~

3 D. The Board is authorized to prescribe uniform standards and  
4 conditions for, and to approve satisfactory methods, procedures,  
5 techniques, devices, equipment and records for tests and analyses  
6 and to prescribe and approve the requisite education and training  
7 for the performance of ~~such tests and~~ or analyses of breath to  
8 determine the breath alcohol concentration. The Board shall  
9 establish standards for and ascertain the qualifications and  
10 competence of individuals to administer ~~and conduct such~~ tests and  
11 analyses of breath to determine the breath alcohol concentration,  
12 and to issue permits ~~to laboratories and~~ to individuals which shall  
13 be subject to suspension or revocation at the discretion of the  
14 Board. The Board is authorized to prescribe uniform standards,  
15 conditions, methods, procedures, techniques, devices, equipment and  
16 records for the collection, handling, retention, storage,  
17 preservation and delivery of specimens of blood, breath, saliva and  
18 urine obtained for the purpose of determining the alcohol  
19 concentration thereof or the presence or concentration of any other  
20 intoxicating substance therein. The Board may take such other  
21 actions as may be reasonably necessary or appropriate to effectuate  
22 the purposes of Sections 751 through 761 of this title and Sections  
23 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt,  
24 amend and repeal such other rules consistent with this chapter as



1 the Board shall determine proper. ~~Laboratories accredited in~~  
2 ~~Toxicology by the American Society of Crime Laboratory~~  
3 ~~Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited~~  
4 ~~by the American Board of Forensic Toxicology (ABFT) are exempt from~~  
5 ~~the provisions of this subsection~~ The Board is authorized to  
6 delegate authority granted in this section to the State Director of  
7 Tests as it deems appropriate.

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

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

21 ~~F.~~ G. There is hereby created in the State Treasury a revolving  
22 fund for the Board of Tests for Alcohol and Drug Influence to be  
23 designated the "Board of Tests for Alcohol and Drug Influence  
24 Revolving Fund". The fund shall be a continuing fund, not subject

1 to fiscal year limitations, and shall consist of monies received  
2 pursuant to the provisions of subsection ~~E~~ F of this section and any  
3 funds previously deposited in the Board of Tests for Alcohol and  
4 Drug Influence Revolving Fund. All monies accruing to the credit of  
5 the fund are hereby appropriated and may be budgeted and expended by  
6 the Board of Tests for Alcohol and Drug Influence for operating  
7 expenses of the Board. Expenditures from the funds shall be made  
8 upon warrants issued by the State Treasurer against claims filed as  
9 prescribed by law with the Director of the Office of Management and  
10 Enterprise Services for approval and payment.

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

12 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY  
13 February 3, 2021 - DO PASS  
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