

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 367

By: David

AS INTRODUCED

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

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

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

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19 blood is to be withdrawn;

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21 whose blood is to be withdrawn has agreed to the withdrawal of  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

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24 whose blood is to be withdrawn has been placed under arrest and that

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

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12 withdrawn, the person authorized to withdraw the blood and the  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

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

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

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

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

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

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

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

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

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

1 the tested person, on the excess specimen of such person's blood,  
2 ~~breath, saliva or urine,~~ to be considered valid and admissible in  
3 evidence under the provisions of this title, shall have been  
4 administered ~~or performed in accordance with the rules and~~  
5 ~~regulations of the Board, or performed by a laboratory that is~~  
6 ~~exempt from the Board rules pursuant to~~ in accordance with Section  
7 759 of this title.

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

1 admission of other competent evidence bearing upon the question of  
2 whether such person was under the influence of alcohol, or any other  
3 intoxicating substance or the combined influence of alcohol and any  
4 other intoxicating substance.

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

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

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

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

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



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

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

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

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

1 the officer as provided in this section or by the Department as  
2 provided in Section 2-116 of this title.

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

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

- 16 a. if timely requested by the person, the person was not  
17 denied a breath or blood test,
- 18 b. the specimen was obtained from the person within two  
19 (2) hours of the arrest of the person,
- 20 c. the person, if under twenty-one (21) years of age, was  
21 advised that driving privileges would be revoked or  
22 denied if the test result reflected the presence of  
23 any measurable quantity of alcohol,
- 24

- 1           d.    the person, if twenty-one (21) years of age or older,  
2                was advised that driving privileges would be revoked  
3                or denied if the test result reflected an alcohol  
4                concentration of eight-hundredths (0.08) or more, and  
5           e.    the test result in fact reflects the alcohol  
6                concentration.

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

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

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

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

20       Section 759.   A.   There is hereby re-created, to continue until  
21 July 1, 2022, in accordance with the provisions of the Oklahoma  
22 Sunset Law, the Board of Tests for Alcohol and Drug Influence to be  
23 composed of the following members beginning July 1, 2015:  
24  
25

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

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

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

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

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

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

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

14       8. One person selected by the Oklahoma Association of Chiefs of  
15 Police.

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

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

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

1 admissible in evidence, whether performed by or at the direction of  
2 a law enforcement officer or at the request of the tested person,  
3 shall have been performed by a person authorized to collect blood  
4 pursuant to the provisions of Section 752 of this title and shall  
5 have been performed by a laboratory accredited in accordance with  
6 ISO/IEC 17025 as defined in Section 150.37 of Title 74 of the  
7 Oklahoma Statutes.

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

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

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

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

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

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



1 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt,  
2 amend and repeal such other rules consistent with this chapter as  
3 the Board shall determine proper. ~~Laboratories accredited in~~  
4 ~~Toxicology by the American Society of Crime Laboratory~~  
5 ~~Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited~~  
6 ~~by the American Board of Forensic Toxicology (ABFT) are exempt from~~  
7 ~~the provisions of this subsection~~ The Board is authorized to  
8 delegate authority granted in this section to the State Director of  
9 Tests as it deems appropriate.

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

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

23 ~~F.~~ G. There is hereby created in the State Treasury a revolving  
24 fund for the Board of Tests for Alcohol and Drug Influence to be

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

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