

1 STATE OF OKLAHOMA

2 2nd Session of the 50th Legislature (2006)

3 FLOOR SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 2926

By: Tibbs, Terrill and Lamons  
of the House

and

Reynolds of the Senate

6  
7  
8  
9 FLOOR SUBSTITUTE

10 [ motor vehicles - bicycles - roadway requirements -  
11 implied consent - concentration or presence of  
12 certain substances - repealer - codification -  
effective date -

emergency ]

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14  
15  
16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY 47 O.S. 2001, Section 1-104, as  
18 last amended by Section 1, Chapter 521, O.S.L. 2004 (47 O.S. Supp.  
19 2005, Section 1-104), is amended to read as follows:

20 Section 1-104. Bicycle, Electric-assisted Bicycle, and  
21 Motorized Bicycle.

22 A. A bicycle is any a device upon which any person or persons  
23 may ride, propelled solely by human power upon which any person or  
24 persons may ride, having a seat or saddle for the use of each rider  
25 and.

26 1. ~~On a bicycle, two tandem wheels, either of which is twenty~~  
27 ~~(20) inches or more in diameter,~~

28 2. ~~On a tricycle, three wheels in any configuration, of which~~  
29 ~~at least one is twenty (20) inches or more in diameter; or~~

30 3. ~~On a quadcycle, four wheels in any configuration, of which~~  
31 ~~at least two are twenty (20) inches or more in diameter.~~  
32

1 ~~The wheel diameter provisions of this subsection shall not apply~~  
2 ~~to recumbent bicycles through a belt, chain, or gears, and having~~  
3 ~~two or more wheels, excluding mopeds.~~

4 B. An electric-assisted bicycle is any bicycle with:

5 1. Two or three wheels; and

6 2. Fully operative pedals for human propulsion and equipped  
7 with an electric motor:

8 a. with a power output not to exceed one thousand (1,000)  
9 watts,

10 b. incapable of propelling the device at a speed of more  
11 than twenty (20) miles per hour on level ground, and

12 c. incapable of further increasing the speed of the  
13 device when human power alone is used to propel the  
14 device at a speed of twenty (20) miles per hour or  
15 more.

16 An electric-assisted bicycle shall meet the requirements of the  
17 Federal Motor Vehicle Safety Standards as set forth in federal  
18 regulations and shall operate in such a manner that the electric  
19 motor disengages or ceases to function when the brakes are applied.

20 C. A motorized bicycle is any bicycle having:

21 1. Fully operative pedals for propulsion by human power;

22 2. An automatic transmission; and

23 3. A combustion engine with a piston or rotor displacement of  
24 fifty cubic centimeters (50 cu cm) or less, regardless of the number  
25 of chambers in the engine, which is capable of propelling the  
26 bicycle at a maximum design speed of not more than thirty (30) miles  
27 per hour on level ground.

28 D. As used in this title, the term "bicycle" shall include  
29 tricycles, quadcycles, or similar human-powered devices, electric-  
30 assisted bicycles, and motorized bicycles unless otherwise  
31 specifically indicated.

1 SECTION 2. AMENDATORY 47 O.S. 2001, Section 11-1205, as  
2 last amended by Section 15, Chapter 521, O.S.L. 2004 (47 O.S. Supp.  
3 2005, Section 11-1205), is amended to read as follows:

4 Section 11-1205. A. Every person operating a bicycle or  
5 motorized scooter upon a roadway at less than the normal speed of  
6 traffic at the time and place and under the conditions then existing  
7 shall ride as ~~near~~ close as ~~practicable~~ is safe to the right-hand  
8 curb or edge of the roadway, except under any of the following  
9 situations:

10 1. When overtaking and passing another vehicle proceeding in  
11 the same direction;

12 2. When preparing for a left turn at an intersection or into a  
13 private road or driveway;

14 3. When reasonably necessary to avoid conditions and while  
15 exercising due care, including but not limited to:

16 a. fixed or moving objects,

17 b. parked or moving vehicles,

18 c. pedestrians or animals,

19 d. surface hazards, or

20 e. any time it is unsafe to continue along the right-hand  
21 curb or edge of the roadway; and

22 4. When riding in the right-turn-only lane.

23 B. Any person riding a bicycle or motorized scooter upon a one-  
24 way street or highway with two or more marked lanes of travel may  
25 ride as ~~near~~ close as ~~practicable~~ is safe to the left-hand curb or  
26 edge of the street or highway.

27 C. No person operating a bicycle or motorized scooter shall  
28 pass other vehicles between lanes of traffic traveling in the same  
29 direction.

30 D. Persons riding bicycles or motorized scooters upon a roadway  
31 shall not ride more than two abreast except on paths or parts of  
32 roadways set aside for the exclusive use of bicycles or motorized

1 scooters. Persons riding two abreast shall not impede the normal  
2 and reasonable flow of traffic and, on a laned roadway, shall ~~ride~~  
3 ride within a single lane.

4 ~~E. Wherever a usable path for bicycles or motorized scooters~~  
5 ~~has been provided adjacent to a roadway, bicycle or motorized~~  
6 ~~scooter riders shall use the path and shall not use the roadway if~~  
7 ~~required by local, municipal or county ordinances.~~

8 SECTION 3. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 11-1208 of Title 47, unless  
10 there is created a duplication in numbering, reads as follows:

11 A. When overtaking and passing a bicycle proceeding in the same  
12 direction, a person driving a motor vehicle shall exercise due care  
13 by leaving a safe distance between the motor vehicle and the bicycle  
14 of not less than three (3) feet until the motor vehicle is safely  
15 past the overtaken bicycle.

16 B. If a person violates the provisions of subsection A of this  
17 section and the violation results in a collision causing serious  
18 physical injury to another person, the person shall be subject to a  
19 fine of not more than Five Hundred Dollars (\$500.00).

20 C. If a person violates the provisions of subsection A of this  
21 section and the violation results in the death of another person,  
22 the person shall be subject to a fine of not more than One Thousand  
23 Dollars (\$1,000.00), in addition to any other penalties prescribed  
24 by law.

25 SECTION 4. AMENDATORY 47 O.S. 2001, Section 751, as last  
26 amended by Section 2, Chapter 189, O.S.L. 2005 (47 O.S. Supp. 2005,  
27 Section 751), is amended to read as follows:

28 Section 751. A. 1. Any person who operates a motor vehicle  
29 upon the public roads, highways, streets, turnpikes or other public  
30 place or upon any private road, street, alley or lane which provides  
31 access to one or more single or multi-family dwellings within this  
32 state shall be deemed to have given consent to a test or tests of

1 such person's blood or breath, for the purpose of determining the  
2 alcohol concentration as defined in Section 756 of this title, and  
3 such person's blood, saliva or urine for determining the presence  
4 ~~and~~ or concentration of any other intoxicating substance therein as  
5 defined in this section, if arrested for any offense arising out of  
6 acts alleged to have been committed while the person was operating  
7 or in actual physical control of a motor vehicle upon the public  
8 roads, highways, streets, turnpikes or other public place or upon  
9 any private road, street, alley or lane which provides access to one  
10 or more single or multi-family dwellings while under the influence  
11 of alcohol or other intoxicating substance, or the combined  
12 influence of alcohol and any other intoxicating substance, or if the  
13 person is involved in a traffic accident that resulted in the  
14 immediate death or serious injury of any person and is removed from  
15 the scene of the accident to a hospital or other health care  
16 facility outside the State of Oklahoma before a law enforcement  
17 officer can effect an arrest.

18 2. A law enforcement officer, having reasonable grounds to  
19 believe that such person was operating or in actual physical control  
20 of a motor vehicle while under the influence may direct the  
21 administration of or administer the test or tests.

22 As used in this title, the term "other intoxicating substance"  
23 shall mean any controlled dangerous substance as defined in the  
24 Uniform Controlled Dangerous Substances Act and any other substance,  
25 other than alcohol, which is capable of being ingested, inhaled,  
26 injected or absorbed into the human body and is capable of adversely  
27 affecting the central nervous system, vision, hearing or other  
28 sensory or motor functions.

29 B. The law enforcement agency by which the arresting officer is  
30 employed may designate, in accordance with the rules of the Board of  
31 Tests for Alcohol and Drug Influence, hereinafter referred to as the  
32 Board, whether blood or breath is to be tested for the alcohol

1 concentration thereof, and whether blood, saliva or urine is to be  
2 tested for the presence ~~and~~ or concentration of any other  
3 intoxicating substance therein.

4 In the event the law enforcement agency does not designate the  
5 test to be administered, breath shall be the substance tested for  
6 alcohol concentration. Blood may also be tested to determine the  
7 alcohol concentration thereof in the event that breath cannot be  
8 tested to determine the alcohol concentration thereof because of the  
9 lack of an approved device or qualified person to administer a  
10 breath test or because such breath test for any other reason cannot  
11 be administered in accordance with the rules of the Board.

12 In the event the law enforcement agency does not designate the  
13 test to be administered, blood, saliva or urine shall be the  
14 substance tested for the presence ~~and~~ or concentration of any other  
15 intoxicating substance or the combination of alcohol and any other  
16 intoxicating substance.

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

21 D. Any person who is unconscious or otherwise incapable of  
22 refusing to submit to a test of such person's blood or breath to  
23 determine the alcohol concentration thereof, or to a test of such  
24 person's blood, saliva or urine to determine the presence ~~and~~ or  
25 concentration of any other intoxicating substance therein, shall be  
26 deemed not to have withdrawn the consent provided by subsection A of  
27 this section, and such test may be administered as provided herein.

28 An unconscious person who has been issued a citation by a law  
29 enforcement officer for one of the offenses listed in subsection A  
30 of this section is arrested for purposes of this section. The  
31 arresting officer must leave a copy of the citation with the  
32 arrested person which may be accomplished by handing it to the

1 arrested person, or by leaving it with the personal effects of the  
2 arrested party, so as to inform the unconscious person of the  
3 arrest.

4 Any person who has been arrested for one of the offenses listed  
5 in subsection A of this section who is unconscious or injured and  
6 who requires immediate medical treatment as determined by a treating  
7 physician may be released on the person's own recognizance for  
8 medical reasons by the arresting officer. The arresting officer who  
9 releases an arrested person on the person's own recognizance must  
10 indicate the release on the face of the citation. Any person  
11 released on his or her own recognizance for medical reasons shall  
12 remain at liberty pending the filing of charges.

13 E. In addition to any test designated by the arresting officer,  
14 the arrested person may also designate any additional test to be  
15 administered to determine the concentration of alcohol, or the  
16 presence or concentration any other intoxicating substance or the  
17 combination of alcohol and any other intoxicating substance. The  
18 cost of such additional test shall be at the expense of the arrested  
19 person.

20 A sufficient quantity of any specimen obtained at the  
21 designation of the arrested person shall be available to the law  
22 enforcement agency employing the arresting officer. Such specimens  
23 shall be treated in accordance with the rules applicable to the  
24 specimens obtained by an arresting officer.

25 F. When a law enforcement officer has determined that the blood  
26 alcohol content of an individual is to be tested for the presence  
27 ~~and~~ or concentration of alcohol, other intoxicating substance, or  
28 the combination of alcohol and any other intoxicating substance, the  
29 law enforcement officer shall inform the individual to be tested  
30 that the withdrawal of blood shall only be performed by certain  
31 medical personnel as provided for in Section 752 of this title.

1 SECTION 5. AMENDATORY 47 O.S. 2001, Section 752, as last  
2 amended by Section 15, Chapter 394, O.S.L. 2005 (47 O.S. Supp. 2005,  
3 Section 752), is amended to read as follows:

4 Section 752. A. Only a licensed medical doctor, licensed  
5 osteopathic physician, licensed chiropractic physician, registered  
6 nurse, licensed practical nurse, physician's assistant, certified by  
7 the State Board of Medical Licensure and Supervision, an employee of  
8 a hospital or other health care facility authorized by the hospital  
9 or health care facility to withdraw blood, or other qualified person  
10 authorized by the Board of Tests for Alcohol and Drug Influence  
11 acting at the request of a law enforcement officer may withdraw  
12 blood for purpose of having a determination made of its  
13 concentration of alcohol or presence or concentration of other  
14 intoxicating substance. Only qualified persons authorized by the  
15 Board may collect breath, saliva or urine, or administer tests of  
16 breath under the provisions of this title.

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

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

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

24 3. Signed by a duly authorized peace officer that the person  
25 whose blood is to be withdrawn has been placed under arrest and that  
26 the officer has probable cause to believe that the person, while  
27 intoxicated, has operated a motor vehicle in such manner as to have  
28 caused the death or serious physical injury of another person, or  
29 the person has been involved in a traffic accident and has been  
30 removed from the scene of the accident that resulted in the death or  
31 great bodily injury, as defined in subsection B of Section 646 of  
32 Title 21 of the Oklahoma Statutes, of any person to a hospital or

1 other health care facility outside the State of Oklahoma before the  
2 law enforcement officer was able to effect an arrest for such  
3 offense; or

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

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

28 D. The blood, breath, saliva or urine specimens obtained shall  
29 be tested by the appropriate test as determined by the Board, or  
30 tested by a laboratory that is exempt from the Board rules pursuant  
31 to Section 759 of this title, to determine the alcohol concentration  
32 thereof, or the presence and concentration of any other intoxicating

1 substance which might have affected the ability of the person tested  
2 to operate a motor vehicle safely.

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

22 F. When a test of breath is performed for the purpose of  
23 determining the alcohol concentration thereof, except when such test  
24 is performed by means of an automated analyzer as designated by the  
25 Board, a sufficient quantity of breath, or of the alcohol content of  
26 a fixed or measured quantity of breath, shall be obtained, in  
27 accordance with the rules and regulations of the Board, to enable  
28 the tested person, at his or her own option and expense, to have an  
29 independent analysis made of such specimen. The excess specimen of  
30 breath, or of its alcohol content, shall be retained by the law  
31 enforcement agency employing the arresting officer, in accordance  
32 with the rules and regulations of the Board, for sixty (60) days

1 from the date of collection. At any time within that period, the  
2 tested person, or his or her attorney, may direct that such specimen  
3 be sent or delivered to a laboratory of his or her own choosing and  
4 approved by the Board for an independent analysis. Neither the  
5 tested person, nor any agent of such person, shall have access to  
6 the additional specimen of breath, or of its alcohol content, prior  
7 to the completion of the independent analysis thereof, except the  
8 analyst performing the independent analysis and agents of the  
9 analyst.

10 G. The costs of collecting blood, breath, saliva or urine  
11 specimens for the purpose of determining the alcohol or other  
12 intoxicating substance thereof, by or at the direction of a law  
13 enforcement officer, shall be borne by the law enforcement agency  
14 employing such officer. The cost of collecting, retaining and  
15 sending or delivering to an independent laboratory the excess  
16 specimens of blood, breath, saliva or urine for independent analysis  
17 at the option of the tested person shall also be borne by such law  
18 enforcement agency. The cost of the independent analysis of such  
19 specimen of blood, breath, saliva or urine shall be borne by the  
20 tested person at whose option such analysis is performed. The  
21 tested person, or his or her agent, shall make all necessary  
22 arrangements for the performance of such independent analysis other  
23 than the forwarding or delivery of such specimen.

24 H. Tests of blood or breath for the purpose of determining the  
25 alcohol concentration thereof, and tests of blood, saliva or urine  
26 for the purpose of determining the presence ~~and~~ or concentration of  
27 any other intoxicating substance therein, under the provisions of  
28 this title, whether administered by or at the direction of a law  
29 enforcement officer or administered independently, at the option of  
30 the tested person, on the excess specimen of such person's blood,  
31 breath, saliva or urine, to be considered valid and admissible in  
32 evidence under the provisions of this title, shall have been

1 administered or performed in accordance with the rules and  
2 regulations of the Board, or performed by a laboratory that is  
3 exempt from the Board rules pursuant to Section 759 of this title.

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

25 J. Any agency or laboratory certified by the Board or any  
26 agency or laboratory that is exempt from the Board rules pursuant to  
27 Section 759 of this title, which analyses breath, blood, or urine  
28 shall make available a written report of the results of the test  
29 administered by or at the direction of the law enforcement officer  
30 to:

- 31 1. The tested person, or his or her attorney;
- 32 2. The Commissioner of Public Safety; and

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

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

5 SECTION 6. AMENDATORY 47 O.S. 2001, Section 753, is  
6 amended to read as follows:

7 Section 753. If a conscious person under arrest refuses to  
8 submit to testing of his or her blood or breath for the purpose of  
9 determining the alcohol concentration thereof, or to a test of his  
10 or her blood, saliva or urine for the purpose of determining the  
11 presence or concentration of any other intoxicating substance, or  
12 the combined influence of alcohol and any other intoxicating  
13 substance, none shall be given, unless the investigating officer has  
14 probable cause to believe that the person under arrest, while  
15 intoxicated, has operated the motor vehicle in such a manner as to  
16 have caused the death or serious physical injury of any other person  
17 or persons. In such event, such test otherwise authorized by law  
18 may be made in the same manner as if a search warrant had been  
19 issued for such test or tests. The sample shall be taken in a  
20 medically acceptable manner at a hospital or other suitable health  
21 care facility. The Commissioner of Public Safety, upon the receipt  
22 of a sworn report of the law enforcement officer that the officer  
23 had reasonable grounds to believe the arrested person had been  
24 driving or was in actual physical control of a motor vehicle upon  
25 the public roads, highways, streets, turnpikes or other public place  
26 of this state while under the influence of alcohol, any other  
27 intoxicating substance, or the combined influence of alcohol and any  
28 other intoxicating substance and that the person had refused to  
29 submit to the test or tests, shall revoke the license to drive and  
30 any nonresident operating privilege for a period as provided by  
31 Section 6-205.1 of this title. If the person is a resident or a  
32 nonresident without a license or permit to operate a motor vehicle

1 in this state, the Commissioner of Public Safety shall deny to the  
2 person the issuance of a license or permit for a period as provided  
3 by Section 6-205.1 of this title subject to a review as provided in  
4 Section 754 of this title. The revocation or denial shall become  
5 effective thirty (30) days after the arrested person is given  
6 written notice thereof by the officer or by the Department as  
7 provided in Section 754 of this title.

8 SECTION 7. AMENDATORY 47 O.S. 2001, Section 756, is  
9 amended to read as follows:

10 Section 756. A. Upon the trial of any criminal action or  
11 proceeding arising out of acts alleged to have been committed by any  
12 person while driving or in actual physical control of a motor  
13 vehicle while under the influence of alcohol or any other  
14 intoxicating substance, or the combined influence of alcohol and any  
15 other intoxicating substance, evidence of the alcohol concentration  
16 in the blood or breath of the person as shown by analysis of the  
17 blood or breath of the person performed in accordance with the  
18 provisions of Sections 752 and 759 of this title or evidence of the  
19 presence and or concentration of any other intoxicating substance as  
20 shown by analysis of such person's blood, breath, saliva, or urine  
21 specimens in accordance with the provisions of Sections 752 and 759  
22 of this title is admissible. Evidence that the person has refused  
23 to submit to either of said analyses is also admissible. For the  
24 purpose of this title, when the person is under the age of twenty-  
25 one (21) years, evidence that there was, at the time of the test,  
26 any measurable quantity of alcohol is prima facie evidence that the  
27 person is under the influence of alcohol in violation of Section 11-  
28 906.4 of this title. For persons twenty-one years of age or older:

29 1. Evidence that there was, at the time of the test, an alcohol  
30 concentration of five-hundredths (0.05) or less is prima facie  
31 evidence that the person was not under the influence of alcohol;  
32

1        2. Evidence that there was, at the time of the test, an alcohol  
2 concentration in excess of five-hundredths (0.05) but less than  
3 eight-hundredths (0.08) is relevant evidence that the person's  
4 ability to operate a motor vehicle was impaired by alcohol.  
5 However, no person shall be convicted of the offense of operating or  
6 being in actual physical control of a motor vehicle while such  
7 person's ability to operate such vehicle was impaired by alcohol  
8 solely because there was, at the time of the test, an alcohol  
9 concentration in excess of five-hundredths (0.05) but less than  
10 eight-hundredths (0.08) in the blood or breath of the person in the  
11 absence of additional evidence that such person's ability to operate  
12 such vehicle was affected by alcohol to the extent that the public  
13 health and safety was threatened or that said person had violated a  
14 state statute or local ordinance in the operation of a motor  
15 vehicle; and

16        3. Evidence that there was, at the time of the test, an alcohol  
17 concentration of eight-hundredths (0.08) or more shall be admitted  
18 as prima facie evidence that the person was under the influence of  
19 alcohol.

20        B. For purposes of this title, "alcohol concentration" means  
21 grams of alcohol per one hundred (100) milliliters of blood if the  
22 blood was tested, or grams of alcohol per two hundred ten (210)  
23 liters of breath if the breath was tested.

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

27        SECTION 8.        AMENDATORY        47 O.S. 2001, Section 759, as last  
28 amended by Section 1 of Enrolled House Bill No. 2154 of the 2nd  
29 Session of the 50th Oklahoma Legislature, is amended to read as  
30 follows:

31        Section 759. A. There is hereby re-created, to continue until  
32 July 1, 2012, in accordance with the provisions of the Oklahoma

1 Sunset Law, the Board of Tests for Alcohol and Drug Influence to be  
2 composed of the Dean of the University of Oklahoma College of  
3 Medicine, or the Dean's designee who shall receive an appointment in  
4 writing, as Chairman, and the Commissioner of Public Safety or a  
5 designee, the Director of the Oklahoma State Bureau of Investigation  
6 or a designee, the State Commissioner of Health or a designee, the  
7 Director of the Council on Law Enforcement Education and Training or  
8 a designee, one certified peace officer who is a member of a local  
9 law enforcement agency selected by the Oklahoma Sheriffs and Peace  
10 Officers Association and one person selected by the Oklahoma  
11 Association of Chiefs of Police, as members, to serve without pay  
12 other than reimbursement of necessary and actual expenses as  
13 provided in the State Travel Reimbursement Act, Section 500.1 et  
14 seq. of Title 74 of the Oklahoma Statutes. Each designee shall  
15 receive an appointment in writing which shall become a permanent  
16 part of the records of the Board. The Board is authorized to  
17 appoint a State Director of Tests for Alcohol and Drug Influence, an  
18 Administrative Assistant to the Board, and other employees,  
19 including but not limited to persons to conduct training and provide  
20 administrative assistance as necessary for the performance of its  
21 functions, subject to available funding and authorized full-time  
22 equivalent employee limitations. The Board may expend appropriated  
23 funds for purposes consistent with Sections 751 through 761 of this  
24 title and Sections 301 through 308 of Title 3 of the Oklahoma  
25 Statutes. The Legislature shall appropriate funds to the Department  
26 of Public Safety for the support of the Board of Tests For Alcohol  
27 and Drug Influence and its employees, if any. Upon the transfer of  
28 any employees from the Alcohol Drug Countermeasures Unit of the  
29 Department of Public Safety to the Board of Tests For Alcohol and  
30 Drug Influence on ~~the effective date of this act~~ July 1, 2003, all  
31 funds of the Unit appropriated and budgeted shall be transferred to  
32

1 the Board, and may be budgeted and expended to support the functions  
2 and personnel of the Board.

3 B. Collection and analysis of a person's blood, breath, saliva  
4 or urine, to be considered valid and admissible in evidence, whether  
5 performed by or at the direction of a law enforcement officer or at  
6 the request of the tested person, shall have been performed in  
7 compliance with the rules adopted by the Board of Tests for Alcohol  
8 and Drug Influence and by an individual possessing a valid permit  
9 issued by the Board for this purpose or shall have been performed by  
10 a laboratory accredited in Toxicology by the American Society of  
11 Crime Laboratory Directors/Laboratory Accreditation Board  
12 (ASCLD/LAB) or accredited by the American Board of Forensic  
13 Toxicology (ABFT).

14 C. The Board of Tests for Alcohol and Drug Influence is  
15 authorized to approve laboratories for the analysis, provided by the  
16 provisions of this title, of specimens of blood, breath, saliva and  
17 urine, and to administer a program for regular monitoring of such  
18 laboratories. The Board is authorized to prescribe uniform  
19 standards and conditions for, and to approve satisfactory methods,  
20 procedures, techniques, devices, equipment and records for tests and  
21 analyses and to prescribe and approve the requisite education and  
22 training for the performance of such tests and analyses. The Board  
23 shall establish standards for and ascertain the qualifications and  
24 competence of individuals to administer and conduct such tests and  
25 analyses, and to issue permits to laboratories and to individuals  
26 which shall be subject to suspension or revocation at the discretion  
27 of the Board. The Board is authorized to prescribe uniform  
28 standards, conditions, methods, procedures, techniques, devices,  
29 equipment and records for the collection, handling, retention,  
30 storage, preservation and delivery of specimens of blood, breath,  
31 saliva and urine obtained for the purpose of determining the alcohol  
32 concentration thereof or the presence ~~and~~ or concentration of any

1 other intoxicating substance therein. The Board may take such other  
2 actions as may be reasonably necessary or appropriate to effectuate  
3 the purposes of Sections 751 through 761 of this title and Sections  
4 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt,  
5 amend and repeal such other rules consistent with this chapter as  
6 the Board shall determine proper. Laboratories accredited in  
7 Toxicology by the American Society of Crime Laboratory  
8 Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited  
9 by the American Board of Forensic Toxicology (ABFT) are exempt from  
10 the provisions of this subsection.

11 D. The Board may set rules and charge appropriate fees for  
12 operations incidental to its required duties and responsibilities.

13 E. There is hereby created in the State Treasury a revolving  
14 fund for the Board of Tests for Alcohol and Drug Influence to be  
15 designated the "Board of Tests for Alcohol and Drug Influence  
16 Revolving Fund". The fund shall be a continuing fund, not subject  
17 to fiscal year limitations, and shall consist of monies received  
18 pursuant to the provisions of subsection D of this section and any  
19 funds previously deposited in the Board of Tests for Alcohol and  
20 Drug Influence Revolving Fund. All monies accruing to the credit of  
21 the fund are hereby appropriated and may be budgeted and expended by  
22 the Board of Tests for Alcohol and Drug Influence for operating  
23 expenses of the Board. Expenditures from the funds shall be made  
24 upon warrants issued by the State Treasurer against claims filed as  
25 prescribed by law with the Director of State Finance for approval  
26 and payment.

27 SECTION 9. REPEALER Section 78, Chapter 411, O.S.L. 2003  
28 (47 O.S. Supp. 2005, Section 12-705), is hereby repealed.

29 SECTION 10. This act shall become effective July 1, 2006.

30 SECTION 11. It being immediately necessary for the preservation  
31 of the public peace, health and safety, an emergency is hereby  
32

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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