

Enrolled House Bill 2157

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

CHAPTER

AN ACT

Relating to laboratories; amending ORS 813.160 and 830.535.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 813.160 is amended to read:

813.160. (1) *[To be]* **A chemical analysis is valid under ORS 813.300 if:**

(a) *[Chemical analyses]* **It is an analysis** of a person's blood **for alcohol content and is** *[shall be]* performed *[by an individual shown to be qualified to perform such analyses and shall be performed according to methods approved by the Department of Human Services. For purposes of this paragraph, the Department of Human Services shall approve methods of performing chemical analyses of a person's blood that are satisfactory for determining alcoholic content.] in:*

(A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology testing;

(B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

(C) A forensic laboratory established by the Department of State Police under ORS 181.080 that is accredited by a national forensic accrediting organization.

(b) *[Chemical analyses]* **It is an analysis** of a person's breath *[shall be]* **and is** performed by an individual possessing a valid permit to perform *[such]* **chemical** analyses issued by the Department of State Police and *[shall be]* **is** performed according to methods approved by the Department of State Police. For purposes of this paragraph, the Department of State Police shall do all of the following:

(A) Approve methods of performing chemical analyses of a person's breath.

(B) Prepare manuals and conduct courses throughout the state for the training of police officers in chemical analyses of a person's breath, which courses shall include, but are not limited to, approved methods of chemical analyses, use of approved equipment and interpretation of test results together with a written examination on these subjects.

(C) Test and certify the accuracy of equipment to be used by police officers for chemical analyses of a person's breath before regular use of *[such]* **the** equipment and periodically thereafter at intervals of not more than 90 days. Tests and certification required by this subparagraph *[shall]* **must** be conducted by trained technicians. Certification under this subparagraph does not require a signed document.

(D) Ascertain the qualifications and competence of individuals to conduct *[such]* **chemical** analyses in accordance with one or more methods approved by the department.

(E) Issue permits to individuals according to their qualifications. Permits *[shall]* **may** be issued to police officers only upon satisfactory completion of the prescribed training course and written

examination. A permit *[shall]* **must** state the methods and equipment *[which]* **that** the police officer is qualified to use. Permits *[shall be]* **are** subject to termination or revocation at the discretion of the Department of State Police.

(2) In conducting a chemical test of the blood, only a duly licensed physician or a person acting under the direction or control of a duly licensed physician may withdraw blood or pierce human tissue. A licensed physician, or a qualified person acting under the direction or control of a duly licensed physician, *[shall not be held]* **is not** civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.

(3) An individual who performs a chemical analysis of breath or blood under ORS 813.100 or 813.140 shall prepare and sign a written report of the findings of the test *[which shall]* **that must** include the identification of the police officer upon whose request the test was administered.

(4) Any individual having custody of the report mentioned in subsection (3) of this section shall, upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

(5) The expense of conducting a chemical test as provided by ORS 813.100 or 813.140 *[shall]* **must** be paid by the governmental unit on whose equipment the test is conducted or by the governmental unit upon whose request the test was administered if no governmental unit's equipment is used to conduct the test.

SECTION 2. ORS 830.535 is amended to read:

830.535. (1) *[For the]* **A** chemical *[analyses to be]* **analysis is** valid under ORS 830.505, 830.520 or 830.525 **if:**

(a) *[The chemical analyses]* **It is an analysis** of a person's blood *[shall be]* **for alcohol content and is** performed *[by an individual shown to be qualified to perform such analyses and shall be performed according to methods approved by the Department of Human Services. For the purposes of this paragraph, the Department of Human Services shall approve methods of performing chemical analyses of a person's blood that are satisfactory for determining alcoholic content.] in:*

(A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology testing;

(B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

(C) A forensic laboratory established by the Department of State Police under ORS 181.080 that is accredited by a national forensic accrediting organization.

(b) *[The chemical analyses]* **It is an analysis** of a person's breath *[shall be]* **and is** performed by an individual possessing a valid permit to perform *[such]* **chemical** analyses issued by the Department of State Police under ORS 813.160 or by the State Marine Board under the provisions of this section. *[The]* Chemical analyses *[shall]* **must** be performed according to methods approved by the Department of State Police under ORS 813.160 or approved by the board under this section. For purposes of this section, the board shall do all of the following:

(A) Approve methods of performing chemical analyses of a person's breath.

(B) Prepare manuals and conduct courses throughout the state for the training of peace officers in chemical analyses of a person's breath, which courses shall include, but are not limited to, approved methods of chemical analyses, use of approved equipment and interpretation of test results together with a written examination on these subjects.

(C) Test and certify the accuracy of equipment to be used by peace officers for chemical analyses of a person's breath before regular use of *[such]* **the** equipment and periodically thereafter at intervals of not more than 90 days. Tests and certification required by this subparagraph *[shall]* **must** be conducted by trained technicians.

(D) Ascertain the qualifications and competence of individuals to conduct *[such]* **chemical** analyses in accordance with one or more methods approved by the board or by the Department of State Police under ORS 813.160.

(E) Issue permits to individuals according to their qualifications. Permits *[shall]* **may** be issued to peace officers only upon satisfactory completion of the prescribed training course and written examination. A permit *[shall]* **must** state the methods and equipment *[which]* **that** the peace officer

is qualified to use. Permits [shall be] **are** subject to termination or revocation at the discretion of the board.

(2) In conducting a chemical test of the blood, only a duly licensed physician or a person acting under the direction or control of a duly licensed physician may withdraw blood or pierce human tissue. A licensed physician, or a qualified person acting under the direction or control of a duly licensed physician, [shall not be held] **is not** civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.

(3) An individual who performs a chemical analysis of breath or blood under ORS 830.505, 830.520 or 830.525 shall prepare and sign a written report of the findings of the test. A test administered at the request of a peace officer [shall] **must** include the identification of the peace officer upon whose request the test was administered.

(4) Any individual having custody of the report mentioned in subsection (3) of this section shall, upon request of the person tested, furnish a copy of the report to that person or that person's attorney.

(5) The expense of conducting a chemical test as provided by ORS 830.505 or 830.520 [shall] **must** be paid by the governmental units on whose equipment the test is conducted or by the governmental units upon whose request the test was administered if no governmental unit's equipment is used to conduct the test.

Passed by House February 4, 2003

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate March 3, 2003

.....
President of Senate

Received by Governor:

.....M,....., 2003

Approved:

.....M,....., 2003

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2003

.....
Secretary of State