An Act

ENROLLED HOUSE
BILL NO. 1800

By: Tibbs and Roan of the House

and

Barrington of the Senate

An Act relating to state government; amending 74 O.S. 2001, Section 150.5, as last amended by Section 1, Chapter 240, O.S.L. 2010 and Section 3, Chapter 351, O.S.L. 2002, as amended by Section 1, Chapter 203, O.S.L. 2003 (74 O.S. Supp. 2010, Sections 150.5 and 150.37), which relate to investigations and the Forensic Laboratory Accreditation Act; modifying confidentiality requirements for disclosing certain records; modifying and adding definitions; deleting certain definitions; deleting certain requirements and exceptions for forensic laboratories; modifying accreditation guidelines; and providing an effective date.

SUBJECT: Criminal investigations and forensics

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 2001, Section 150.5, as last amended by Section 1, Chapter 240, O.S.L. 2010 (74 O.S. Supp. 2010, Section 150.5), is amended to read as follows:

Section 150.5 A. 1. Oklahoma State Bureau of Investigation investigations not covered under Section 150.2 of this title shall be initiated at the request of the following persons:

a. the Governor,

b. the Attorney General,

c. the Council on Judicial Complaints upon a vote by a majority of the Council,

d. the chair of any Legislative Investigating Committee which has been granted subpoena powers by resolution, upon authorization by a vote of the majority of the Committee,

e. the Director of the Department of Human Services, or designee, as authorized by Section 1-2-105 of Title 10A of the Oklahoma Statutes, or

f. a district court judge as authorized by Section 1-2-103 of Title 10A of the Oklahoma Statutes.

2. Requests for investigations shall be submitted in writing and shall contain specific allegations of wrongdoing under the laws of the State of Oklahoma.

B. The Governor may initiate special background investigations with the written consent of the person who is the subject of the investigation.

C. The chair of any Senate committee which is fulfilling the statutory responsibility for approving nominations made by the Governor may, upon a vote by a majority of the committee and with the written consent of the person who is to be the subject of the investigation, initiate a special background investigation of any nominee for the Oklahoma Horse Racing Commission as established by Section 201 of Title 3A of the Oklahoma Statutes or any nominee for the Board of Trustees of the Oklahoma Lottery Commission as established by Section 704 of Title 3A of the Oklahoma Statutes. The Bureau shall submit a report to the committee within thirty (30) days of the receipt of the request. Any consideration by the committee of a report from the Bureau shall be for the exclusive use of the committee and shall be considered only in executive session.

D. 1. All records relating to any investigation being conducted by the Bureau, including any records of laboratory services provided to law enforcement agencies pursuant to paragraph 1 of Section 150.2 of this title, shall be confidential and shall not be open to the public or to the Commission except as provided in Section 150.4 of this title; provided, however, officers and agents of the Bureau may disclose, at the discretion of the Director, such investigative information to:

a. officers and agents of federal, state, county, or municipal law enforcement agencies and to district attorneys, in the furtherance of criminal investigations within their respective jurisdictions,

b. employees of the Department of Human Services in the furtherance of child abuse investigations, and

c. appropriate accreditation bodies for the purposes of the Bureau's obtaining or maintaining accreditation.

2. Any unauthorized disclosure of any information contained in the confidential files of the Bureau shall be a misdemeanor. The person or entity authorized to initiate investigations in this section, and the Attorney General in the case of investigations initiated by the Insurance Commissioner, shall receive a report of the results of the requested investigation. The person or entity requesting the investigation may give that information only to the appropriate prosecutorial officer or agency having statutory authority in the matter if that action appears proper from the information contained in the report, and shall not reveal or give such information to any other person or agency. Violation hereof shall be deemed willful neglect of duty and shall be grounds for removal from office.

E. It shall not be a violation of this section to reveal otherwise confidential information to outside agencies or individuals who are providing interpreter services, questioned document analysis, laboratory services, or other specialized services that are necessary in the assistance of Bureau investigations. Individuals or agencies receiving the confidential and investigative information or records or results of laboratory services provided to the Bureau by those agencies or individuals, shall be subject to the confidentiality provisions and requirements established in subsection D of this section.

F. It shall not be a violation of this section to reveal for training or educational purposes otherwise confidential information from records relating to any investigation previously conducted by the Bureau, including any records of laboratory services provided to law enforcement agencies pursuant to paragraph 1 of Section 150.2 of this title, so long as ten (10) or more years have passed since the production of the information or record.

G. It shall not be a violation of this section to reveal otherwise confidential information from records relating to any investigation being conducted by the Bureau, including any records of laboratory services provided to law enforcement agencies pursuant to paragraph 1 of Section 150.2 of this title or to the public, provided, release of the confidential information has been authorized by the Director of the Bureau for the purposes of developing or obtaining further information reasonably necessary to the successful conclusion of a criminal investigation being conducted by the Bureau or authorized by the Director of the Bureau for the purpose of advising crime victims or family representatives of homicide victims regarding the status of a pending investigation.

H. The State Treasurer shall initiate a complete background investigation of the positions with the written consent of the persons who are the subject of the investigation pursuant to subsection I of Section 71.1 of Title 62 of the Oklahoma Statutes. The Bureau shall advise the State Treasurer and the Cash Management and Investment Oversight Commission in writing of the results of the investigation.

SECTION 2. AMENDATORY Section 3, Chapter 351, O.S.L. 2002, as amended by Section 1, Chapter 203, O.S.L. 2003 (74 O.S. Supp. 2010, Section 150.37), is amended to read as follows:

Section 150.37 A. For purposes of this act:

1. ~~"ASCLD/LAB" shall mean the American Society of Crime Laboratory Directors/Laboratory Accreditation Board;~~

~~2.~~ "ABFT" shall mean the American Board of Forensic Toxicology, an accrediting body for toxicology;

2. "Accredited" shall mean recognized formally by an accrediting body as meeting or exceeding applicable quality standards;

3. "Accrediting body" shall mean a nationally recognized organization that has developed and maintained an independent system, based upon ISO/IEC 17025 standards, for providing laboratories with an impartial review of laboratory operations and that provides formal recognition or certification to laboratories who demonstrate continued compliance with those standards and other supplemental forensic standards which are specific to the maintenance and testing of forensic evidence;

4. "ISO/IEC 17025" shall mean the International Organization of Standards/International Electrotechnical Commission standard 17025 that is published by the International Organization for Standardization and the International Electrotechnical Commission and included as a standard in general requirements for the competence of testing and calibration laboratories;

~~3.~~ 5. "Forensic laboratory" shall mean a laboratory operated by the state or any unit of municipal, county, city or other local government that examines physical evidence in criminal matters and provides opinion testimony in a court of law ~~in forensic disciplines accredited by ASCLD/LAB~~;

~~4. "Technical peer review system" shall mean a system whereby the case work by an employee of a forensic laboratory shall be reviewed for technical correctness by a qualified peer;~~

~~5. "Proficiency testing program" shall mean a program whereby the competency of analysis and the quality of performance of a laboratory is evaluated by external testing;~~

6. "Toxicology analysis" shall mean a laboratory analysis whereby biological samples are tested for alcohol and/or other toxic or intoxicating substances; ~~and~~

7. "IAI" shall mean the International Association for Identification; and

8. "Supplemental forensic standards" shall mean additional requirements specifically related to maintenance and analysis of forensic evidence required in addition to the calibration and testing requirements of ISO/IEC 17025 standards.

B. ~~Effective January 1, 2003, all forensic laboratories as defined in this act shall have a technical peer review system sufficient to meet or exceed ASCLD/LAB accreditation standards.~~

~~This section shall not apply to:~~

~~1. Breath testing for alcohol;~~

~~2. Field testing, crime scene processing, crime scene evidence collection, searches, examinations or enhancements of digital evidence, and crime scene reconstruction;~~

~~3. Latent print identification performed by an IAI certified latent print examiner;~~

~~4. Marihuana identification using methods generally accepted in the forensic field that are approved by a forensic laboratory accredited by ASCLD/LAB in controlled substances; and~~

~~5. Laboratories that exclusively and solely perform forensic toxicology analysis. Such laboratories shall have a technical peer review system sufficient to meet or exceed either ASCLD/LAB or ABFT accreditation standards.~~

~~C. Effective January 1, 2004, all forensic laboratories as defined in this act shall have a proficiency testing program sufficient to meet or exceed ASCLD/LAB accreditation standards for such systems. This subsection shall not apply to:~~

~~1. Breath testing for alcohol;~~

~~2. Field testing, crime scene processing, crime scene evidence collection, searches, examinations or enhancements of digital evidence, and crime scene reconstruction;~~

~~3. Latent print identification performed by an IAI certified latent print examiner;~~

~~4. Marihuana identification using methods generally accepted in the forensic field that are approved by a forensic laboratory accredited by ASCLD/LAB in controlled substances; and~~

~~5. Laboratories that exclusively and solely perform forensic toxicology analysis. Such laboratories shall have a proficiency testing program sufficient to meet or exceed either ASCLD/LAB or ABFT accreditation standards.~~

~~D.~~ Effective July 1, 2005, all forensic laboratories as defined in this act established or operating prior to that date shall be ~~ASCLD/LAB~~ accredited. The following exceptions shall apply:

1. Breath testing for alcohol;

2. Field testing, crime scene processing, crime scene evidence collection, searches, examinations or enhancements of digital evidence, and crime scene reconstruction;

3. Latent print identification performed by an IAI certified latent print examiner;

4. ~~Latent print identification performed by a latent print examiner not yet eligible for IAI certification in latent prints, provided they achieve IAI certification within six (6) months of first eligibility;~~

~~5.~~ Marihuana identification using methods generally accepted in the forensic field that are approved by a forensic laboratory accredited ~~by ASCLD/LAB~~ in controlled substances;

~~6.~~ 5. All forensic laboratories established on or after July 1, 2005, as defined in this act, shall be ~~ASCLD/LAB~~ accredited within two (2) years of establishment; and

~~7.~~ 6. Forensic laboratories that exclusively and solely perform forensic toxicology analysis may meet this requirement by being either ~~ASCLD/LAB~~ accredited through an accrediting body as defined in this section or accredited by ABFT ~~accredited~~.

~~B.~~ C. On or after July 1, 2005, testimony, results, reports, or evidence of forensics analysis produced on behalf of the prosecution in a criminal trial ~~in forensic disciplines accredited by ASCLD/LAB~~ shall be done by an ~~ASCLD/LAB~~ accredited forensic laboratory. This section shall not apply to:

1. Testimony, results, reports, or evidence of forensic analysis produced by a forensic laboratory established after July 1, 2005, and not yet required to be accredited as set forth in subsection ~~D~~ B of this section;

2. Testimony, results, reports, or evidence of forensic analysis produced by a forensic laboratory prior to July 1, 2005. Such testimony, results, reports, or evidence need not be performed by an accredited forensic laboratory and may be produced or presented on behalf of the prosecution in a criminal trial after July 1, 2005, as long as the forensic analysis was produced prior to that date;

3. Testimony, results, reports, or evidence of breath testing for alcohol;

4. Testimony, results, reports, or evidence of field testing, crime scene processing, crime scene evidence collection, searches, examinations or enhancements of digital evidence, and crime scene reconstruction;

5. Testimony, results, reports, or evidence of latent print identification performed by an IAI certified latent print examiner; and

6. ~~Testimony, results, reports, or evidence of latent print identification performed by a latent print examiner not yet eligible for IAI certification in latent prints, provided they achieve IAI certification within six (6) months of first eligibility;~~

~~7.~~ Testimony, results, reports, or evidence of marihuana identification using methods generally accepted in the forensic field that are approved by a forensic laboratory accredited ~~by ASCLD/LAB~~ in controlled substances~~;~~

~~8. Testimony, results, reports, or evidence of forensic toxicology analysis performed by laboratories that exclusively and solely perform such forensic toxicology analysis. Such laboratories may produce and present such testimony, results, reports, or evidence if it is either ASCLD/LAB accredited or ABFT accredited; and~~

~~9. Testimony, results, reports, or evidence of forensic analysis in forensic disciplines which are optional for a laboratory seeking ASCLD/LAB accreditation~~.

SECTION 3. This act shall become effective November 1, 2011.

Passed the House of Representatives the 23rd day of February, 2011.

Presiding Officer of the House of Representatives

Passed the Senate the 20th day of April, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 25th **day of** April, **20** 11, **at** 4:22 **o'clock** P **M.**

By: Jessica R Byers

Approved by the Governor of the State of Oklahoma the 29th **day of** April, **20** 11, **at** 1:32 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 29th **day of** April, **20** 11, **at** 2:51 **o'clock** P **M.**

By: Michelle R Day