

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 295

By: Yen

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5  
6 AS INTRODUCED

7 An Act relating to electronic communication devices;  
8 stating legislative findings; directing the  
9 Commission of the Department of Public Safety  
10 promulgate rules and regulations to implement  
11 provisions relating to field testing of electronic  
12 communication devices; providing definitions;  
13 directing compliance; stating purpose; making certain  
14 implied consent; allowing for certain revocation for  
15 noncompliance; requiring certain report; allowing for  
16 revocation hearing; direction certain action;  
17 allowing certain evidence be admissible in any trial,  
18 proceeding or hearing; directing distribution of  
19 results; providing for noncodification; providing for  
20 codification; and providing an effective date.

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

24 SECTION 1. NEW LAW A new section of law not to be  
codified in the Oklahoma Statutes reads as follows:

The Legislature hereby finds that the use of electronic  
communication devices has dramatically increased the prevalence of  
distracted driving. This destructive behavior endangers the lives  
of every driver and passenger traveling on Oklahoma state roadways.  
In 2015, this legislature enacted legislation prohibiting texting  
while operating a motor vehicle. Law enforcement has a difficult

1 time enforcing this public safety law, especially after an accident  
2 where it is impossible to discern whether the operator of a motor  
3 vehicle was in fact using his or her electronic communication device  
4 immediately prior to or at the time of the collision.

5 Empowering our law enforcement with technology, which is able to  
6 immediately determine electronic communication device usage without  
7 the inquiry into the content will allow enforcement of this law  
8 after an accident while still protecting essential privacy rights.  
9 Therefore, the legislature finds that while technology has created  
10 this grave danger, it also has the capacity to aid law enforcement  
11 in tackling and eradicating distracted driving caused by electronic  
12 communication devices.

13 The legislature further finds that a driver's license is a  
14 privilege granted by this state and maintaining such privilege  
15 requires continued compliance with established conditions enumerated  
16 in law. One such condition is implied consent, an accepted  
17 mechanism in combating driving while under the influence of alcohol.  
18 Studies have concluded that texting while driving impairs a driver  
19 to the level of eight-hundredths (0.08) blood alcohol level.  
20 Therefore, it is in the state's interest to treat this impairment  
21 with a similar methodology to that of drunk driving. The state's  
22 invested interest in promoting public safety and preventing  
23 senseless loss of life justifies the creation of this law.

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1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 11-901e of Title 47, unless  
3 there is created a duplication in numbering, reads as follows:

4 The Commissioner of the Department of Public Safety shall  
5 promulgate rules and regulations and take any other action necessary  
6 to implement the provisions of this act relating to field testing of  
7 electronic communication devices. Such action shall include the  
8 testing and determination of the reliability and accuracy of  
9 electronic scanning devices used for such field testing. The  
10 Commissioner shall approve electronic scanning devices which are  
11 reliable and accurate for the purpose of conducting field testing.

12 SECTION 3. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 11-901f of Title 47, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. For the purposes of this section:

16 1. "Field testing" shall mean the use of an electronic scanning  
17 device, approved and utilized in accordance with rules promulgated  
18 by the Commissioner of Public Safety to determine whether or not the  
19 operator of a motor vehicle was using an electronic communication  
20 device in violation of Section 11-901c or Section 11-901d of Title  
21 47 of the Oklahoma Statutes. Provided, that such use of an  
22 electronic scanning device shall be limited to determining whether  
23 the operator of a motor vehicle was using an electronic  
24 communication device in violation of either section at or near the

1 time of the accident or collision which provides the grounds for  
2 such testing. Furthermore, no such electronic scan shall include  
3 the content or origin of any communication or game conducted, or  
4 image or electronic data viewed on an electronic communication  
5 device.

6 2. "Electronic communication device" shall mean a portable  
7 electronic device as described in paragraph F of Section 11-901d of  
8 Title 47 of the Oklahoma Statutes.

9 B. Every person operating a motor vehicle which has been  
10 involved in an accident or collision involving damage to real or  
11 personal property, personal injury or death, and who has in his or  
12 her possession at or near the time of such accident or collision, an  
13 electronic communication device, shall at the request of a law  
14 enforcement officer, surrender his or her electronic communication  
15 device to the law enforcement officer solely for the purpose of  
16 field testing such electronic communication device. After testing  
17 the electronic communication device shall be returned to the owner.  
18 If such field testing determines that the operator of the motor  
19 vehicle was using his or her electronic communication device in  
20 violation of Section 11-901c or Section 11-901d of Title 47 of the  
21 Oklahoma Statutes, the result of such testing shall constitute  
22 evidence of such violation.

23 C. 1. Any person who operates a motor vehicle in this state  
24 shall be deemed to have given consent to field testing of his or her

1 electronic communication device for the purpose of determining the  
2 use thereof while operating a motor vehicle provided that such  
3 testing is conducted by or at the direction of a law enforcement  
4 officer, after such person has operated a motor vehicle involved in  
5 an accident or collision involving damage to real or personal  
6 property, personal injury or death.

7       2. If a person operating a motor vehicle involved in an  
8 accident or collision involving damage to real or personal property,  
9 personal injury or death has in his or her possession an electronic  
10 communication device, having thereafter been requested to surrender  
11 such electronic communication device for field testing, and have  
12 been informed that the person's license or permit to drive and any  
13 non-resident operating privilege operating privilege shall be  
14 immediately suspended and subsequently revoked, shall be revoked for  
15 refusal to surrender his or her electronic communication device for  
16 the purpose of field testing, whether or not the person is found  
17 guilty of a violation of Section 11-901c or Section 11-901d of Title  
18 47 of the Oklahoma Statutes, refuses to surrender his or her  
19 electronic communication device solely for the purpose of field  
20 testing, unless a court order has been granted pursuant to this  
21 section, field testing shall not be conducted and a written report of  
22 such refusal shall be immediately made by the law enforcement  
23 officer before whom such refusal was made.

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1           3. The report of the law enforcement officer shall set forth  
2 the grounds to believe that the person operated a motor vehicle  
3 involved in an accident or collision involving damage to real or  
4 personal property, personal injury or death while in the possession  
5 of an electronic communication device, that the person had refused  
6 to surrender his or her electronic communication device for field  
7 testing, and that no field test was administered.

8           4. For persons charged with a violation of Section 11-901c or  
9 Section 11-901d of Title 47 of the Oklahoma Statutes, the license  
10 shall, upon the basis of such written report, be temporarily  
11 suspended by the court without notice pending the determination of a  
12 hearing as provided in paragraph D of this subsection.

13           5. The court shall provide such person with a scheduled hearing  
14 date, a waiver form and other such information as may be required by  
15 the Commissioner. If a hearing, as provided in paragraph D of this  
16 subsection, is waived by such person, the Commissioner shall  
17 immediately revoke the license, as of the date of receipt of such  
18 waiver in accordance with paragraph D of this subsection.

19           D. Any person whose license has been suspended pursuant to  
20 paragraph C of this subsection is entitled to a hearing in  
21 accordance with a hearing schedule to be promulgated by the  
22 Commissioner. If the Department fails to provide such hearing  
23 fifteen (15) days after the receipt of a report of a refusal, the  
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1 license shall be reinstated pending a hearing pursuant to this  
2 section. The hearing shall be limited to the following issues:

3 1. Did such person operate a motor vehicle involved in an  
4 accident or collision involving damage to real or personal property,  
5 personal injury or death;

6 2. Did such person possess an electronic communication device  
7 at or near the time of such accident or collision;

8 3. Was such person given sufficient warning in clear or  
9 unequivocal language, prior to such refusal that such refusal to  
10 surrender his or her electronic communication device for field  
11 testing would result in the immediate suspension and subsequent  
12 revocation of such person's license or operating privilege; and

13 4. Did such person refuse to surrender his or her electronic  
14 communication device solely for the purpose of field testing.

15 If, after such hearing, the hearing officer, acting on behalf of  
16 the Commissioner, finds on any one of these issues in the negative,  
17 the hearing officer shall immediately terminate any suspension  
18 arising from such refusal. If, after such hearing, the hearing  
19 officer, acting on behalf of the Commissioner, finds all of these  
20 issues in the affirmative, such officer shall immediately revoke the  
21 license in accordance with paragraph E of this subsection. A person  
22 who has a license suspended or revoked pursuant to this subsection  
23 may appeal the findings of the hearing officer in accordance with  
24 rules promulgated by the Commissioner. Failure by such person to

1 appear for the scheduled hearing shall constitute a waiver of such  
2 hearing; provided, however, that such person may petition the  
3 Commissioner for a new hearing which shall be held as soon as  
4 practicable.

5 E. Any license which has been revoked pursuant to paragraph D  
6 of this section shall not be restored for at least one (1) year  
7 after such revocation. In any case where the person has had a prior  
8 revocation resulting from refusal to surrender his or her electronic  
9 communication device for field testing within five (5) years  
10 immediately preceding the date of such revocation, the license shall  
11 not be restored for at least eighteen (18) months.

12 F. The Commissioner shall promulgate such rules and regulations  
13 as may be necessary to effectuate the provisions of this section.

14 G. Evidence of a refusal to surrender an electronic  
15 communication device for field testing shall be admissible in any  
16 trial, proceeding or hearing based on a violation of the provisions  
17 of Section 11-901c or Section 11-901d of Title 47 of the Oklahoma  
18 Statutes but only upon a showing that the person was given  
19 sufficient warning, in clear and unequivocal language, of the effect  
20 of such refusal and that person persisted in the refusal.

21 H. Upon the request of the person who surrendered his or her  
22 electronic communication device for field testing the results of  
23 such testing shall be made available to such person.

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SECTION 4. This act shall become effective November 1, 2017.

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