

THE HOUSE OF REPRESENTATIVES  
Monday, February 9, 2009

House Bill No. 1760

HOUSE BILL NO. 1760 - By: ENNS of the House.

An Act relating to motor vehicles; amending 47 O.S. 2001, Section 752, as last amended by Section 5, Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2008, Section 752), which relates to the administration of blood tests; providing option for certain test requirement; and providing an effective date.

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

1 SECTION 1. AMENDATORY 47 O.S. 2001, Section 752, as last amended by  
2 Section 5, Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2008, Section 752), is amended to  
3 read as follows:  
4 Section 752. A. Only a licensed medical doctor, licensed osteopathic physician,  
5 licensed chiropractic physician, registered nurse, licensed practical nurse, physician's  
6 assistant, certified by the State Board of Medical Licensure and Supervision, an  
7 employee of a hospital or other health care facility authorized by the hospital or health  
8 care facility to withdraw blood, or other qualified person authorized by the Board of Tests  
9 for Alcohol and Drug Influence acting at the request of a law enforcement officer may  
10 withdraw blood for purpose of having a determination made of its concentration of  
11 alcohol or the presence or concentration of other intoxicating substance. Only qualified  
12 persons authorized by the Board may collect breath, saliva or urine, or administer tests  
13 of breath under the provisions of this title.

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

3 1. Authorizing blood withdrawal signed by the person whose blood is to be  
4 withdrawn;

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6 withdrawn has agreed to the withdrawal of blood;

7 3. Signed by a duly authorized peace officer that the person whose blood is to be  
8 withdrawn has been placed under arrest and that the officer has probable cause to  
9 believe that the person, while intoxicated, has operated a motor vehicle in such manner  
10 as to have caused the death or serious physical injury of another person, or the person  
11 has been involved in a traffic accident and has been removed from the scene of the  
12 accident that resulted in the death or great bodily injury, as defined in subsection B of  
13 Section 646 of Title 21 of the Oklahoma Statutes, of any person to a hospital or other  
14 health care facility outside the State of Oklahoma before the law enforcement officer was  
15 able to effect an arrest for such offense; or

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

1 hospital or other health care facility shall not be liable in any action alleging lack of  
2 consent or lack of informed consent.

3 C. No person specified in subsection A of this section, no employer of such person,  
4 and no hospital or other health care facility where blood is withdrawn shall incur any  
5 civil or criminal liability as a result of the proper withdrawal of blood when acting at the  
6 request of a law enforcement officer by the provisions of Section 751 or 753 of this title, or  
7 when acting in reliance upon a signed statement or court order as provided in this  
8 section, if the act is performed in a reasonable manner according to generally accepted  
9 clinical practice. No person specified in subsection A of this section shall incur any civil  
10 or criminal liability as a result of the proper collection of breath, saliva or urine when  
11 acting at the request of a law enforcement officer under the provisions of Section 751 or  
12 753 of this title or when acting pursuant to a court order.

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

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

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

11 F. When a test of breath is performed for the purpose of determining the alcohol  
12 concentration thereof, except when such test is performed by means of an automated  
13 analyzer as designated by the Board, a sufficient quantity of breath, or of the alcohol  
14 content of a fixed or measured quantity of breath, shall be obtained, in accordance with  
15 the rules and regulations of the Board, to enable the tested person, at his or her own  
16 option and expense, to have an independent analysis made of such specimen. The excess  
17 specimen of breath, or of its alcohol content, shall be retained by the law enforcement  
18 agency employing the arresting officer, in accordance with the rules and regulations of  
19 the Board, for sixty (60) days from the date of collection. At any time within that period,  
20 the tested person, or his or her attorney, may direct that such specimen be sent or  
21 delivered to a laboratory of his or her own choosing and approved by the Board for an  
22 independent analysis. Neither the tested person, nor any agent of such person, shall

1 have access to the additional specimen of breath, or of its alcohol content, prior to the  
2 completion of the independent analysis thereof, except the analyst performing the  
3 independent analysis and agents of the analyst.

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

15 H. Tests of blood or breath for the purpose of determining the alcohol concentration  
16 thereof, and tests of blood, saliva or urine for the purpose of determining the presence or  
17 concentration of any other intoxicating substance therein, under the provisions of this  
18 title, whether administered by or at the direction of a law enforcement officer or  
19 administered independently, at the option of the tested person, on the excess specimen of  
20 such person's blood, breath, saliva or urine, to be considered valid and admissible in  
21 evidence under the provisions of this title, shall have been administered or performed in

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

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

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

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

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

6           SECTION 2. This act shall become effective November 1, 2009.

7           COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02/05/09 - DO  
8           PASS.