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THE STATE SENATE
Tuesday, February 17, 2009

Senate Bill No. 402

SENATE BILL NO. 402 - By: Crain of the Senate and 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 administration of chemical tests; modifying certain testing requirement; and providing an effective date.

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

Section 752. A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, certified by the State Board of Medical Licensure and Supervision, an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer may withdraw blood for purpose of having a determination made of its concentration of alcohol or the presence or concentration of other intoxicating substance. Only qualified persons authorized by the

1 Board may collect breath, saliva or urine, or administer tests of
2 breath under the provisions of this title.

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

5 1. Authorizing blood withdrawal signed by the person whose
6 blood is to be withdrawn;

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8 whose blood is to be withdrawn has agreed to the withdrawal of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

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11 whose blood is to be withdrawn has been placed under arrest and that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

22 4. In the form of an order from a district court that blood be
23 withdrawn, the person authorized to withdraw the blood and the

1 hospital or other health care facility where the withdrawal occurs
2 may rely on such a statement or order as evidence that the person
3 has consented to or has been required to submit to the clinical
4 procedure and shall not require the person to sign any additional
5 consent or waiver form. In such a case, the person authorized to
6 perform the procedure, the employer of such person, and the hospital
7 or other health care facility shall not be liable in any action
8 alleging lack of consent or lack of informed consent.

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

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

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

1 prior to the completion of the independent analysis, except the
2 analyst performing the independent analysis and agents of the
3 analyst.

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

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

15 H. Tests of blood or breath for the purpose of determining the
16 alcohol concentration thereof, and tests of blood, saliva or urine
17 for the purpose of determining the presence or concentration of any
18 other intoxicating substance therein, under the provisions of this
19 title, whether administered by or at the direction of a law
20 enforcement officer or administered independently, at the option of
21 the tested person, on the excess specimen of such person's blood,
22 breath, saliva or urine, to be considered valid and admissible in
23 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

1 intoxicating substance or the combined influence of alcohol and any
2 other intoxicating substance.

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

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY & HOMELAND SECURITY,
17 dated 2-3-09 - DO PASS, As Coauthored.