

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 402

By: Crain

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5
6 AS INTRODUCED

7 An Act relating to motor vehicles; amending 47 O.S.
8 2001, Section 752, as last amended by Section 5,
9 Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2008, Section
10 752), which relates to administration of chemical
11 tests; modifying certain testing requirement; and
12 providing an effective date.

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

14 SECTION 1. AMENDATORY 47 O.S. 2001, Section 752, as last
15 amended by Section 5, Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2008,
16 Section 752), is amended to read as follows:

17 Section 752. A. Only a licensed medical doctor, licensed
18 osteopathic physician, licensed chiropractic physician, registered
19 nurse, licensed practical nurse, physician's assistant, certified by
20 the State Board of Medical Licensure and Supervision, an employee of
21 a hospital or other health care facility authorized by the hospital
22 or health care facility to withdraw blood, or other qualified person
23 authorized by the Board of Tests for Alcohol and Drug Influence
24 acting at the request of a law enforcement officer may withdraw

1 blood for purpose of having a determination made of its
2 concentration of alcohol or the presence or concentration of other
3 intoxicating substance. Only qualified persons authorized by the
4 Board may collect breath, saliva or urine, or administer tests of
5 breath under the provisions of this title.

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

8 1. Authorizing blood withdrawal signed by the person whose
9 blood is to be withdrawn;

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11 whose blood is to be withdrawn has agreed to the withdrawal of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

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14 whose blood is to be withdrawn has been placed under arrest and that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

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

11 C. No person specified in subsection A of this section, no
12 employer of such person, and no hospital or other health care
13 facility where blood is withdrawn shall incur any civil or criminal
14 liability as a result of the proper withdrawal of blood when acting
15 at the request of a law enforcement officer by the provisions of
16 Section 751 or 753 of this title, or when acting in reliance upon a
17 signed statement or court order as provided in this section, if the
18 act is performed in a reasonable manner according to generally
19 accepted clinical practice. No person specified in subsection A of
20 this section shall incur any civil or criminal liability as a result
21 of the proper collection of breath, saliva or urine when acting at
22 the request of a law enforcement officer under the provisions of
23 Section 751 or 753 of this title or when acting pursuant to a court
24 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
24 prior to the completion of the independent analysis, except the

1 analyst performing the independent analysis and agents of the
2 analyst.

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

23 G. The costs of collecting blood, breath, saliva or urine
24 specimens for the purpose of determining the alcohol or other

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

13 H. Tests of blood or breath for the purpose of determining the
14 alcohol concentration thereof, and tests of blood, saliva or urine
15 for the purpose of determining the presence or concentration of any
16 other intoxicating substance therein, under the provisions of this
17 title, whether administered by or at the direction of a law
18 enforcement officer or administered independently, at the option of
19 the tested person, on the excess specimen of such person's blood,
20 breath, saliva or urine, to be considered valid and admissible in
21 evidence under the provisions of this title, shall have been
22 administered or performed in accordance with the rules and
23 regulations of the Board, or performed by a laboratory that is
24 exempt from the Board rules pursuant to Section 759 of this title.

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

22 J. Any agency or laboratory certified by the Board or any
23 agency or laboratory that is exempt from the Board rules pursuant to
24 Section 759 of this title, which analyses breath, blood, or urine

1 shall make available a written report of the results of the test
2 administered by or at the direction of the law enforcement officer
3 to:

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

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

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

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