

SENATE BILL NO. 47

BY SENATOR PERRY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DWI. Provides technical changes to current law relative to the crime of driving while intoxicated. (gov sig)

1 AN ACT
2 To amend and reenact R.S. 13:1894.1 and R.S. 32:664(D), relative to the crime of driving
3 while intoxicated; to provide technical changes to current law relative to
4 prosecutions and penalties for driving while intoxicated; to provide for a licensed
5 practical nurse administering a blood test under certain circumstances; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 13:1894.1 is hereby amended and reenacted to read as follows:

9 §1894.1. Driving while intoxicated, prosecutions for violation required to be filed
10 under general state law; city and municipal courts, New Orleans
11 excepted

12 A. Notwithstanding any other provision of law to the contrary, including the
13 provisions of R.S. 13:1871, ~~on and after July 29, 1970~~, prosecutions in any city,
14 parish, or municipal court, the city, municipal and traffic courts of the city of New
15 Orleans excepted, based on or arising out of the operation of a vehicle by a person
16 while intoxicated may be charged and prosecuted under the provisions of R.S. 14:98
17 or under any applicable city, parish, or municipal ordinance ~~which~~ that incorporates

1 the standards, elements, and sentences of the offense of driving while intoxicated
2 contained in R.S. 14:98. Any conviction for a first or second offense or the entry of
3 a plea of guilty and sentence based on such plea or the forfeiture of bail of any
4 person having been charged with a first or second violation of R.S. 14:98 in any such
5 city, parish, or municipal court shall be punishable in accordance with the provisions
6 of ~~R.S. 14:98(B) or (C)~~ **R.S. 14:98(D)(1) or (D)(2)**, whichever is applicable. Any
7 conviction for a first or second offense or the entry of a plea of guilty and sentence
8 based on such plea or the forfeiture of bail of any person having been charged with
9 a first or second violation of the applicable city, parish, or municipal ordinance in
10 any such city, parish, or municipal court shall be punishable in accordance with the
11 provisions of the ordinance and shall constitute a conviction under R.S. 14:98 for
12 purposes of determining the number of prior convictions in a proceeding under R.S.
13 14:98.

14 B. For purposes of this Section all city, parish, and municipal courts shall
15 have concurrent jurisdiction with the district courts over violations otherwise subject
16 to their jurisdiction provided for by R.S. 14:98, except in those cases wherein the
17 person or defendant is charged as a third or subsequent offender under the provisions
18 of ~~R.S. 14:98(D) and (E)~~ **R.S. 14:98(D)(3) or (D)(4)**, **whichever is applicable**. If the
19 charge is for a third or subsequent offense, the prosecution shall be had only in the
20 district court and the defendant shall have the right to a trial by jury. However,
21 mayors' courts shall have no jurisdiction whatsoever over violations as provided for
22 by R.S. 14:98, nor to the trial of offenses against municipal ordinances relative to
23 prosecutions on charges of driving while intoxicated.

24 C.(1) Notwithstanding the provisions of R.S. 13:1898 or any other law to the
25 contrary, and except as provided in R.S. 13:1894.1(C)(2), all fines, forfeitures, and
26 penalties, exclusive of costs, collected in city, parish, and municipal courts for
27 violations of R.S. 14:98 shall be paid into the city treasury or as otherwise provided
28 by law when the prosecution is filed under said Section for a violation occurring
29 within the territorial limits of the city or municipality; however, in the event a

1 violation of R.S. 14:98 is charged and such violation occurred within the territorial
 2 limits of a municipality not having a city court, all said fines, forfeitures, and
 3 penalties collected by the district court wherein said prosecution is actually brought
 4 shall be distributed and disbursed by said court to the governing authority of the
 5 municipality within whose boundaries said violation occurred. When such
 6 prosecution is brought for a violation occurring outside of the territorial limits of said
 7 city or municipality, then said collections shall be payable to the governing authority
 8 of the parish or as otherwise provided by law; however, in the case of all such
 9 charges filed in a parish court, said funds shall be payable to the parish or as
 10 otherwise provided by law. All such charges filed under the provisions of this
 11 Section shall be on affidavit and such charges shall be filed and prosecuted by the
 12 city attorney or the city prosecutor when said charges are filed because of violations
 13 of any city, parish, or municipal ordinance occurring within the territorial limits of
 14 the city or municipality and by the district attorney or his representative when said
 15 charges are filed because of violations of R.S. 14:98 occurring in or outside of such
 16 territorial limits of the city or municipality.

17 (2) Notwithstanding R.S. 13:1894.1(C)(1), the fines levied pursuant to R.S.
 18 ~~14:98(J)~~ **14:98.1 and 98.2** and collected in Caldwell, Catahoula, Concordia,
 19 Franklin, LaSalle, and Tensas parishes shall be remitted to the Northeast Louisiana
 20 Substance Abuse Center.

21 Section 2. R.S. 32:664(D) is hereby amended and reenacted to read as follows:

22 §664. Persons authorized to administer test

23 * * *

24 D. Notwithstanding the provisions of R.S. 37:961 et seq., a licensed practical
 25 nurse shall only withdraw blood as provided by Subsections A and B of this Section
 26 **when directed to do so by a registered nurse or licensed physician acting**
 27 **individually or in his capacity as a member of a medical staff, or** pursuant to a
 28 subpoena or court order.

29 Section 3. This Act shall become effective upon signature by the governor or, if not

1 signed by the governor, upon expiration of the time for bills to become law without signature
 2 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 3 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 4 effective on the day following such approval.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

DIGEST

SB 47 Reengrossed

2015 Regular Session

Perry

Present law provides that prosecutions in any city, parish, or municipal court (except for the city, municipal and traffic courts of the city of New Orleans) that arise out of the operation of a vehicle by a person while intoxicated may be charged and prosecuted under the provisions of present law relative to DWI, or under any applicable city, parish, or municipal ordinance that incorporates the standards, elements, and sentences of the offense of driving while intoxicated contained in present law. Present law further provides that any conviction for a first or second offense, or the entry of a plea of guilty and sentence based on such plea or the forfeiture of bail of any person having been charged with a first or second violation of present law relative to DWI in any such city, parish, or municipal court, is to be punished in accordance with the penalty provisions of present law relative to DWI.

Proposed law retains present law.

Present law provides that any conviction for a first or second offense of DWI, or the entry of a plea of guilty and sentence based on such plea or the forfeiture of bail of any person having been charged with a first or second violation of the applicable city, parish, or municipal ordinance in any such city, parish, or municipal court, is to be punished in accordance with the provisions of the ordinance and constitutes a conviction under present law relative to DWI for purposes of determining the number of prior convictions for DWI in a proceeding under present law.

Proposed law makes technical changes to citations in present law in order to conform to the provisions of present law enacted by Act No. 385 of the 2014 Regular Session.

Proposed law otherwise retains present law.

Present law provides that all city, parish, and municipal courts have concurrent jurisdiction with the district courts over violations otherwise subject to their jurisdiction provided for by present law relative to DWI, except in those cases in which the person or defendant is charged as a third or subsequent offender under the provisions of present law. Present law further provides that if the charge is for a third or subsequent offense of DWI, the prosecution is to be had only in the district court and the defendant has the right to a trial by jury. Present law further provides that mayors' courts have no jurisdiction whatsoever over violations of present law relative to DWI, nor to the trial of offenses against municipal ordinances relative to prosecutions on charges of DWI.

Proposed law makes technical changes to citations in present law in order to conform to the provisions of present law enacted by Act No. 385 of the 2014 Regular Session.

Proposed law otherwise retains present law.

Present law provides that DWI fines levied pursuant to the "Child Endangerment Law"

relative to the presence of a child under 12 years of age in a motor vehicle at the time of the commission of the DWI offense, when such fines are collected in Caldwell, Catahoula, Concordia, Franklin, LaSalle, and Tensas parishes, are to be remitted to the Northeast Louisiana Substance Abuse Center.

Proposed law makes technical changes to citations in present law in order to conform to the provisions of present law enacted by Act No. 385 of the 2014 Regular Session.

Proposed law otherwise retains present law.

Present law provides that when a person submits to a blood test at the request of a law enforcement officer, only a physician, physician assistant, registered nurse, licensed practical nurse, emergency medical technician, chemist, nurse practitioner, or other qualified technician may withdraw blood for the purpose of determining the alcoholic content or presence of any abused or illegal controlled dangerous substances. Present law further provides that a licensed practical nurse can only withdraw blood as provided by present law pursuant to a subpoena or court order. Proposed law retains present law and additionally authorizes the nurse to perform a blood test when directed to do so by a registered nurse or licensed physician.

Proposed law otherwise retains present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 13:1894.1 and R.S. 32:664(D))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Repeals present law prohibition on a licensed practical nurse performing a blood test without a court order.

Senate Floor Amendments to engrossed bill

1. Restores authorization for a licensed practical nurse to perform a blood test pursuant to a subpoena or court order, and further authorizes the nurse to perform a blood test when directed to do so by a registered nurse or licensed physician.