

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2606

By: Claunch

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 6-205, as last amended by Section 3, Chapter 148, O.S.L. 1997 and 6-205.1, as last amended by Section 6, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1997, Sections 6-205 and 6-205.1), which relate to revocation of driver licenses; modifying circumstances requiring mandatory revocation; modifying time periods for revocations; amending 47 O.S. 1991, Sections 11-902, as last amended by Section 5, Chapter 420, O.S.L. 1997 and 11-904, as amended by Section 482, Chapter 133, O.S.L. 1997 (47 O.S. Supp. 1997, Sections 11-902 and 11-904), which relate to driving while under the influence of alcohol; modifying penalties; establishing crime of causing death of another while driving under the influence of alcohol; scheduling crime; authorizing Department of Public Safety to forfeit vehicle under certain circumstances; establishing procedures to be followed; providing for disposal of forfeited vehicles; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 6-205, as last amended by Section 3, Chapter 148, O.S.L. 1997 (47 O.S. Supp. 1997, Section 6-205), is amended by read as follows:

Section 6-205. A. The Department of Public Safety shall immediately revoke the driver license or driving privilege of any person, whether adult or juvenile, upon receiving a record of conviction in any municipal, state or federal court within the United States of any of the following offenses, when such conviction has become final:

1. Manslaughter or negligent homicide resulting from the operation of a motor vehicle;
2. Driving or being in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, or any violation of Section 6-106.4 of this title; provided, however, the Department shall not additionally revoke a license pursuant to this subsection if the person's driving privilege has been revoked because of a test result or test refusal pursuant to Section 753 or 754 of this title arising from the same circumstances which resulted in the conviction;
3. Any felony during the commission of which a motor vehicle is used;
4. Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
5. Perjury or the making of a false affidavit or statement under oath to the Department under the Uniform Vehicle Code, Section 1-101 et seq. of this title, or under any other law relating to the ownership or operation of motor vehicles;

6. A misdemeanor or felony conviction for unlawfully possessing, distributing, dispensing, manufacturing or trafficking in a controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes; ~~or~~

7. Failure to pay for gasoline pumped into a vehicle pursuant to Section ~~2~~ 1740 of ~~this act~~ Title 21 of the Oklahoma Statutes; or

8. Causing the death of another person while in violation of the provisions of subsection A of Section 11-902 of this title pursuant to Section 5 of this act.

B. The first license revocation under any provision of this section, except for paragraph 2, 6 or 7 of subsection A of this section, shall be for a period of one (1) year. Such period shall not be modified.

C. A license revocation under any provision of this section, except for paragraph 2, 6 or 7 of subsection A of this section, shall be for a period of three (3) years if a prior revocation under this section, except under paragraph 2 of subsection A of this section, commenced within the preceding five-year period as shown by the Department's record. Such period shall not be modified.

D. The period of license revocation under paragraph 2 or 6 of subsection A of this section shall be governed by the provisions of Section 6-205.1 of this title.

E. The first license revocation under paragraph 7 of subsection A of this section shall be for a period of six (6) months. A second or subsequent license revocation under paragraph 7 of subsection A of this section shall be for a period of one (1) year. Such periods shall not be modified.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 6-205.1, as last amended by Section 6, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1997, Section 6-205.1), is amended to read as follows:

Section 6-205.1 A. The driver license or driving privilege of a person who is convicted of any offense as provided in paragraph 2 or 6 of subsection A of Section 6-205 of this title, or a person who has refused to submit to a test or tests as provided in Section 753 of this title, or a person whose alcohol concentration is subject to the provisions of Section 754 of this title, shall be revoked or denied by the Department of Public Safety for the following period, as applicable:

1. The first license revocation pursuant to Section 753 of this title shall be for one hundred eighty (180) days, which may be modified;

2. The first license revocation pursuant to paragraph 2 of subsection A of Section 6-205 of this title or pursuant to Section 754 of this title shall be for one hundred eighty (180) days, which may be modified;

3. The first license revocation pursuant to paragraph 6 of subsection A of Section 6-205 of this title shall be for one hundred eighty (180) days, which may be modified; provided, for license revocations for a misdemeanor charge of possessing a controlled dangerous substance, the provisions of this paragraph shall apply to any such revocations by the Department on or after January 1, 1993;

4. A revocation pursuant to paragraph ~~2~~ 6 of subsection A of Section 6-205, 753 or 754 of this title shall be for a period of one (1) year if within five (5) years preceding the date of arrest relating thereto, a prior revocation commenced pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of this title as shown by the Department's records. Such period may be modified; ~~or~~

5. A revocation pursuant to paragraph 2 of subsection A of Section 6-205 of this title shall be for a period of three (3) years if, within five (5) years preceding the date of arrest relating thereto, a prior revocation commenced pursuant to paragraph 2 of

subsection A of Section 6-205 of this title is shown by the Department's records. Such period may be modified;

6. A revocation pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of this title shall be for a period of three (3) years if within five (5) years preceding the date of arrest relating thereto, two or more prior revocations commenced pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of this title as shown by the Department's records. Such period may be modified; or

7. A revocation pursuant to paragraph 7 of subsection A of Section 6-205 of this title shall be for a period of twelve (12) years. Such period may be modified.

B. The term "revocation" as used in this section includes a denial by the Department to issue a driver's license.

C. Each period of license revocation not subject to modification shall be mandatory and neither the Department nor any court shall grant a license or permit to drive a motor vehicle based upon hardship or otherwise for the duration of that period. The revocation periods provided for in this section may be modified as provided for in Section 754.1 or 755 of this title.

D. Any appeal of a revocation or denial of a driver license shall be governed by Section 6-211 of this title.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 5, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1997, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ten-hundredths (0.10) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance which may render such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ~~ten (10)~~ ninety (90) days nor more than one (1) year, and a fine of not more than One Thousand Dollars (\$1,000.00). Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of any law of another state prohibiting the offense provided in subsection A of this section, is convicted of a second offense pursuant to the provisions of this section or has a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in

subsection A of this section and within ten (10) years of such municipal conviction is convicted pursuant to the provision of this section shall be deemed guilty of a felony. The fine shall be not more than Two Thousand Five Hundred Dollars (\$2,500.00). Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment. Any person who is convicted of a second felony offense pursuant to the provisions of this section shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00). Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment. Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this section shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00). Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment.

Provided, however, a conviction from another state shall not be used to enhance punishment pursuant to the provisions of this subsection if that conviction is based on a blood or breath alcohol concentration of less than ten-hundredths (0.10).

D. When a person is sentenced to the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center. The Department of Corrections shall classify and assign the person to one or more of the following:

1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section 612 of Title 57 of the Oklahoma Statutes; or

2. A correctional facility operated by the Department of Corrections.

E. The Department of Mental Health and Substance Abuse Services and the Department of Corrections may certify to the Department of

Public Safety that a person has successfully completed a treatment program and is successfully complying with any follow-up treatment required by the Department of Corrections. In such case, the person shall be given credit therefor as fulfillment of all provisions of Section 3-453 of Title 43A of the Oklahoma Statutes and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing a privilege to drive.

F. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked license when the applicant meets the statutory requirements which affect the existing driving privilege.

G. Any person who is found guilty of a violation of the provisions of this section shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars (\$75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this section for

any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. If a person is sentenced to the custody of the Department of Corrections and the court has received a written evaluation report pursuant to the provisions of this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation report submitted to the court pursuant to the provisions of this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection. As used in this subsection, "qualified practitioner" means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field and at least two (2) years' experience in providing alcohol treatment, other drug abuse treatment, or both alcohol and other drug abuse treatment who is certified each year by the Department of Mental Health and Substance Abuse Services to provide these assessments. However, any person who does not meet the requirements for a qualified practitioner as defined herein, but who has been previously certified by the Department of Mental Health and Substance Abuse Services to provide alcohol or drug treatment or assessments, shall be considered a qualified practitioner provided all education, experience and certification requirements stated herein are met within two (2) years from June 7, 1994. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence and any other sanction

authorized by law for failure or refusal to comply with an order of the court.

H. Any person who is found guilty of a violation of the provisions of this section may be required by the court to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars (\$25.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 11-904, as amended by Section 482, Chapter 133, O.S.L. 1997 (47 O.S. Supp. 1997, Section 11-904), is amended to read as follows:

Section 11-904. A. Any person who is involved in a personal injury accident or property damage accident while driving or operating a motor vehicle within this state and who is in violation of the provisions of subsection A of Section 11-902 of this title may be charged with a violation of the provisions of this subsection as follows:

1. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in the county jail for not less than ~~ninety (90) days~~ six (6) months nor more than one (1) year, and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00); and

2. Any person who is convicted of a second or subsequent violation of the provisions of this subsection shall be deemed guilty of a felony. The fine for a violation of this subsection shall be not more than Five Thousand Dollars (\$5,000.00). Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment.

B. 1. Any person who causes an accident resulting in great bodily injury to any person other than himself while driving or operating a motor vehicle within this state and who is in violation of the provisions of subsection A of Section 11-902 of this title may be charged with a violation of the provisions of this subsection. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a felony. The fine for a violation of this subsection shall be for not more than Five Thousand Dollars (\$5,000.00). Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment.

2. As used in this subsection, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-905 of Title 47, unless there is created a duplication in numbering, reads as follows:

Any person who causes the death of another person while driving or operating a motor vehicle within this state in violation of the provisions of subsection A of Section 11-902 of Title 47 of the Oklahoma Statutes shall, upon conviction, be deemed guilty of a Schedule B felony.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-906 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. After a conviction for an offense under Sections 11-902, 11-904 or 11-905 of Title 47 of the Oklahoma Statutes, the Department of Public Safety may move the court to order the forfeiture of the motor vehicle involved in the commission of the offense if the convicted person has been previously convicted in this state or any

other jurisdiction of one or more of the offenses listed in Sections 11-902, 11-904 or 11-905 of Title 47 of the Oklahoma Statutes.

B. Upon receipt of a motion for forfeiture, the court shall schedule a hearing on the matter and shall notify the Department of Public Safety and the convicted person of the time and place set for the hearing. Upon receiving notice from the court of the time and place set for a hearing under this section, the Department shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle a written notice that includes:

1. A full description of the motor vehicle;
2. The time and place of the forfeiture hearing;
3. The legal authority under which the motor vehicle may be forfeited; and
4. Notice of the right to intervene to protect the interest in the motor vehicle.

C. At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that:

1. The person has an interest in the motor vehicle acquired in good faith;
2. The person is not the person convicted of the offense that resulted in the forfeiture proceeding; and
3. Before parting with the motor vehicle, the person did not know or have reasonable cause to believe that it would be used in the commission of an offense.

D. If a person satisfies the requirements of subsection C of this section, the court shall order that an amount equal to the value of the interest of that person in the motor vehicle shall be paid to that person upon sale of the motor vehicle.

E. At the hearing, the court may order the forfeiture of the motor vehicle if it is determined by a preponderance of the evidence

that the forfeiture of the motor vehicle will serve one or more of the following purposes:

1. Deterrence of the convicted person from the commission of future offenses under Sections 11-902, 11-904 or 11-905 of Title 47 of the Oklahoma Statutes;

2. Protection of the safety and welfare of the public;

3. Deterrence of other persons who are potential offenders under Sections 11-902, 11-904 or 11-905 of Title 47 of the Oklahoma Statutes; and

4. Expression of public condemnation of the serious or aggravated nature of the conduct of the convicted person.

F. Upon forfeiture of a motor vehicle the court shall require the surrender of the motor vehicle, the certificate of title and registration of the motor vehicle. The vehicle, the certificate of title and registration shall be delivered to the Department of Public Safety. A motor vehicle forfeited pursuant to this section, shall be disposed of by the Department of Public Safety as provided by law.

SECTION 7. This act shall become effective November 1, 1998.

46-2-8448

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