

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3290

By: Hager

AS INTRODUCED

An Act relating to motor vehicles; requiring the Department of Public Safety to provide design and distribution of stickers to be placed on certain vehicles; requiring sticker on vehicles operated by certain persons receiving modification of suspension or revocation of license in certain circumstances; providing exception; authorizing peace officers to stop vehicle to which sticker is attached; amending 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), which relates to suspension or revocation of driver licenses; making modification subject to certain conditions and restrictions; amending 47 O.S. 1991, Section 6-303, as amended by Section 5, Chapter 97, O.S.L. 1993 (47 O.S. Supp. 1997, Section 6-303), which relates to penalties for operating a motor vehicle during period of suspension or revocation; modifying and increasing penalty; amending 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), which relates to operation of a motor vehicle while under the influence of alcohol or other substances; eliminating requirement that

prior municipal court conviction be in court of record; amending 47 O.S. 1991, Sections 754.1 and 755, as last amended by Sections 6 and 7, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1997, Sections 754.1 and 755), which relate to modification and denial of modification of certain revocations or suspensions of driver licenses; providing for modification stickers; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-204.1 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The Department of Public Safety shall provide for the design and distribution of stickers that are to be placed on vehicles driven by persons whose driver licenses have been revoked or suspended pursuant to Section 6-205.1 of Title 47 of the Oklahoma Statutes and who have received modification of the revocation or suspension.

B. The sticker shall be placed on the license plate of any vehicle the person shall be driving pursuant to the modification order if the vehicle does not have an interlock device, except the Department shall not require the sticker to be placed upon any vehicle owned or leased by the employer of the person seeking modification, without the written permission of the other person. The sticker shall be placed on the left side of the license plate if the person seeking modification is a female and shall be placed on the right side of the license plate if the person seeking

modification is a male. A notation of the modification shall be affixed to the person's driver license for the period of time that the modification is in effect. Upon the expiration of the period for the modification, the Department of Public Safety shall remove the sticker from the vehicle and the notation from the driver license.

C. Any peace officer of this state may stop any vehicle to which a suspension sticker is attached to determine if the driver of the vehicle is operating the vehicle in compliance with any applicable modification order.

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 or 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 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.

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.

D. The revocation periods provided for in this section may be modified as provided for in Section 754.1 or 755 of this title, subject to the conditions or restrictions provided for in Section 754.1 of this title.

~~D.~~ E. 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 6-303, as amended by Section 5, Chapter 97, O.S.L. 1993 (47 O.S. Supp. 1997, Section 6-303), is amended to read as follows:

Section 6-303. A. No person shall operate a motor vehicle upon the public roads, streets, highways, turnpikes or other public place

of this state without having first procured a driver's license from the Oklahoma Department of Public Safety except as herein specifically exempted.

Any violation of the provisions of this subsection shall constitute a misdemeanor and shall be punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Three Hundred Dollars (\$300.00) plus costs or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

B. Any person who drives a motor vehicle on any public roads, streets, highways, turnpikes or other public place of this state at a time when his privilege to do so is canceled, denied, suspended or revoked or at a time when he is disqualified from so doing, or in violation of a modification order issued pursuant to Section 754.1 or 755 of this title, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ~~One Hundred Dollars (\$100.00)~~ Two Hundred Dollars (\$200.00) and not more than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one (1) year or by both such fine and imprisonment. Each act of driving on the highways as prohibited shall constitute a separate offense. If the person is sentenced to imprisonment, the court may order the convicted person to serve the sentence on nights or weekends as provided in Section 991a-2 of Title 22 of the Oklahoma Statutes.

C. The Department upon receiving a record of conviction of an offense committed by any person whose license or privilege to operate motor vehicles is under suspension or revocation or who is disqualified from operating a motor vehicle, shall extend the period of such disqualification, suspension or revocation for an additional three-month period of time. The additional orders of suspension, disqualification or revocation shall be dated and become effective the day following the date terminating the prior order of suspension, disqualification or revocation.

D. It shall be a misdemeanor, punishable by imprisonment for not less than seven (7) days, nor more than six (6) months or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment for any person to apply for a renewal or a replacement license to operate a motor vehicle while his license, permit or other evidence of driving privilege is in the custody of a law enforcement officer or the Department. A notice regarding this offense and the penalty therefor shall be included on the same form containing the notice of revocation issued by the officer.

SECTION 4. 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) 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 5. AMENDATORY 47 O.S. 1991, Section 754.1, as last amended by Section 6, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1997, Section 754.1), is amended to read as follows:

Section 754.1 A. The Department of Public Safety, prior to an administrative hearing for a revocation or denial arising under the provisions of Sections 751 through 754 of this title or under the provisions of Section 6-205.1 of this title, may modify the revocation or denial when it is determined by the Department that no other adequate means of transportation exists for the person whose license has been revoked or denied.

B. As a prerequisite and condition of any modification, the person shall be required either to place a sticker, as provided for in Section 1 of this act, on the license plate of the vehicle the person will be operating, or to have installed an ignition interlock device approved by the Department, at the person's own expense, upon every motor vehicle operated by such person, except the Department shall not require the sticker or device to be installed upon any vehicle owned or leased by an employer of the person without the employer's written permission to install the sticker or ignition interlock device on any vehicle to be operated by the person during the course of employment. The permission to install the sticker or the ignition interlock device shall be in writing on the official letterhead of the employer. The person shall comply with all provisions of law regarding modification stickers or ignition interlock devices.

C. Upon the issuance of a modification order pursuant to this section or Section 755 of this title, the person shall pay a modification fee of One Hundred Fifty Dollars (\$150.00) to the Department. For each modification fee collected pursuant to the provisions of this section, One Hundred Dollars (\$100.00) shall be remitted to the State Treasurer to be credited to the General Revenue Fund in the State Treasury and Fifty Dollars (\$50.00) shall

be remitted to the State Treasurer to be credited to the Department of Public Safety Revolving Fund. All monies accruing to the credit of the Department of Public Safety Revolving Fund from modification fees shall be budgeted and expended solely for the purpose of administering the provisions of this section and Section 755 of this title.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 755, as last amended by Section 7, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1997, Section 755), is amended to read as follows:

Section 755. If the revocation or denial is sustained, the person whose license or permit to drive or nonresident operating privilege has been revoked or denied may file a petition for appeal in the district court in the manner and subject to the proceedings provided for in Section 6-211 of this title. The district court may modify the revocation or denial when it is determined by the court that the person whose license or permit to drive has been revoked or denied has no other adequate means of transportation and may enter a written order directing the Department of Public Safety to allow driving, subject to the limitations of Section 6-205.1 of this title and the requirement of an ignition interlock device as provided in Section 754.1 of this title or the requirement of a modification sticker as provided in Section 1 of this act and Section 754.1 of this title.

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

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.