

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1304

By: Trebilcock of the House

and

Gumm of the Senate

An Act relating to motor vehicles; amending 47 O.S. 2001, Section 6-303, as last amended by Section 9, Chapter 390, O.S.L. 2004 (47 O.S. Supp. 2004, Section 6-303), * * * * as last amended by Section 1, Chapter 548, O.S.L. 2004 and 11-902a (47 O.S. Supp. 2004, Section 11-902), which relate to persons under the influence of alcohol or other intoxicating substance; * * * * specifying that Department of Public Safety shall not require installment of device on certain vehicles; providing for exceptions; requiring written permission; requiring compliance with certain laws; expanding scope of prohibited acts; and providing for an effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to motor vehicles; requiring certain persons to show proof of ignition interlock device installation on certain vehicles; specifying that Department of Public Safety shall not require installment of device on certain vehicles; defining approved devices; authorizing the Department of Public Safety to issue restricted driver license to certain persons; providing for fees; restricting certain persons to operating certain vehicles; providing for exemptions; requiring installation for certain period of time; requiring certain persons to pay maintenance fees; requiring device provider to make certain reports to the Department; authorizing the Department to revoke driving privileges under certain circumstances; authorizing the Department to promulgate certain rules; amending 47 O.S. 2001, Section 11-902, as last amended by Section 54 of Enrolled House Bill No 2060 of the 1st Session of the 50th Oklahoma Legislature and 11-902a (47 O.S. Supp. 2004, Section 11-902), which relates to persons under the influence of alcohol or other intoxicating substance; modifying requirements for device; prohibiting the disabling or disconnection of device; providing exception; providing for codification; and providing for an effective date.

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 6-212.3 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Whenever the records of the Department of Public Safety reflect:

1. A second or subsequent conviction of a person for driving under the influence of alcohol or the combination of alcohol and any other intoxicating substance within five (5) years of a previous conviction for the same offense; or

2. A person is classified as an excessive user of alcohol or of a combination of alcohol and any other intoxicating substance, and inimical to public safety, in accordance with rules promulgated by the Department, the person shall, upon request for reinstatement of driving privileges from revocation or suspension based upon the conviction or the status as an excessive user, provide proof of installation of an ignition interlock device approved by the Board of Tests for Alcohol and Drug Influence, at the person's own expense, upon every motor vehicle operated by such person; provided, the Department shall not require as a condition of reinstatement the device to be installed upon any vehicle owned or leased by an employer of the person, except when the person is self-employed or employed by relatives within the first degree of consanguinity or who reside in the same household, without the employer's written permission, on official letterhead of the employer, to install the ignition interlock device on any vehicle to be operated by the person during the course of employment.

B. 1. The requirements of subsection A of this section shall be a prerequisite and condition for reinstatement of driving privileges, in addition to other conditions for driving privilege reinstatement provided by law or by rule of the Department. The Department shall issue a restricted driver license to the person, upon payment of a restricted driver license fee of Fifty Dollars

(\$50.00) and all other appropriate fees by the person. The restricted driver license and the driving record of the person shall indicate by an appropriate restriction that the person is only authorized to operate a vehicle upon which an ignition interlock is installed. If the person is operating a motor vehicle owned or leased by an employer who has not given permission for an ignition interlock device to be installed, the employer shall provide the person with a letter, on official letterhead of the employer, which the person shall carry in his or her immediate possession at all times when operating a motor vehicle and shall display for examination and inspection upon demand of a peace officer.

2. The restricted driver license fee authorized by this section 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 restricted driver license fees shall be budgeted and expended solely for the purpose of administering the provisions of this section.

3. The installation of an ignition interlock device, as required by this subsection, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

C. 1. Installation of an ignition interlock device pursuant to paragraph 1 of subsection A of this section shall be for a period of six (6) months which shall run concurrently with a court order, if any, for installation of an ignition interlock device pursuant to the same conviction.

2. Installation of an ignition interlock device pursuant to paragraph 2 of subsection A of this section shall be for a period of twelve (12) months which shall run concurrently with a court order, if any, for installation of an ignition interlock device pursuant to a conviction which caused the person to be classified as an excessive user of alcohol or of a combination of alcohol and any other intoxicating substance.

D. The person shall pay the monthly maintenance fee for each ignition interlock device installed pursuant to this section. The person shall comply with all provisions of law regarding ignition interlock devices.

E. The ignition interlock device provider shall make available to the Department regular reports of violations, if any, for each ignition interlock device installed pursuant to this section.

F. Pursuant to Section 6-113 of Title 47 of the Oklahoma Statutes, the Department may revoke or suspend the driving privileges of the person for reports from the provider which indicate attempts by the person to operate a motor vehicle when the person is under the influence of alcohol.

G. The Department shall promulgate rules necessary to implement and administer this section.

SECTION 2. AMENDATORY 47 O.S. 2001, Section 11-902, as last amended by Section 54 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state, whether upon public roads, highways, streets, turnpikes, other public places or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings, who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of eight-hundredths (0.08) 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.

C. 1. Any 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 participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall follow all recommendations made in the assessment and evaluation and be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year. Any person convicted of a violation for a first offense shall be fined not more than One Thousand Dollars (\$1,000.00).

2. 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 and shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance

Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

- a. follow all recommendations made in the assessment and evaluation with a minimum of twenty-eight (28) days of treatment followed by thirty (30) days of aftercare at the defendant's expense, or
- b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or
- c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph.

However, if the treatment in subparagraph a of this paragraph does not include residential or inpatient treatment for a period of not less than five (5) days, the person shall serve a term of imprisonment of at least five (5) days.

3. Any person who is convicted of a second felony offense pursuant to the provisions of this section shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

- a. follow all recommendations made in the assessment and evaluation at the defendant's expense with a minimum of twenty-eight (28) days of residential or inpatient treatment followed by ninety (90) days of aftercare at the defendant's expense, two hundred forty (240) hours of community service following the aftercare and use of an ignition interlock device, or
- b. placement in the custody of the Department of Corrections for not less than one (1) year and not to

exceed seven (7) years and a fine of not more than Five Thousand Dollars (\$5,000.00), or

- c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph.

However, if the treatment in subparagraph a of this paragraph does not include residential or inpatient treatment for a period of not less than ten (10) days, the person shall serve a term of imprisonment of at least ten (10) days.

4. Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this section shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

- a. follow all recommendations made in the assessment and evaluation at the defendant's expense with a minimum of twenty-eight (28) days residential or inpatient treatment followed by not less than one (1) year of supervision, periodic testing, and aftercare at the defendant's expense, four hundred eighty (480) hours of community service following the period of aftercare, and use of an ignition interlock device for a minimum of thirty (30) days, or
- b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed ten (10) years and a fine of not more than Five Thousand Dollars (\$5,000.00), or
- c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph.

However, if the person does not undergo residential or inpatient treatment pursuant to subparagraph a of this paragraph the person shall serve a term of imprisonment of at least ten (10) days.

5. Any person who, within ten (10) years after a previous conviction of a violation of murder in the second degree or manslaughter in the first degree in which the death was caused as a result of driving under the influence of alcohol or other intoxicating substance, is convicted of a violation of this section shall be deemed guilty of a felony.

6. 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 eight-hundredths (0.08).

7. In any case in which a defendant is charged with a second or subsequent driving under the influence of alcohol or other intoxicating substance offense within any municipality with a municipal court other than a court of record, the charge shall be presented to the county's district attorney and filed with the district court of the county within which the municipality is located.

D. Any person who is convicted of a violation of driving under the influence with a blood or breath alcohol concentration of fifteen-hundredths (0.15) or more shall be deemed guilty of aggravated driving under the influence. A person convicted of aggravated driving under the influence shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall comply with all recommendations and shall be punished by mandatory residential or inpatient treatment for a minimum of twenty-eight (28) days followed by not less than one (1) year of supervision, periodic testing, and aftercare at the

defendant's expense, four hundred eighty (480) hours of community service following the period of aftercare, and an ignition interlock device for a minimum of thirty (30) days. Nothing in this subsection shall preclude the defendant from being charged or punished as provided in paragraph 1, 2, 3, 4 or 5 of subsection C of this section.

E. When a person is sentenced to imprisonment in the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center or at a place determined by the Director of the Department of Corrections. 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 with assignment to substance abuse treatment.

F. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked driving privilege when the person 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 and assessment program offered by a certified assessment agency or certified assessor for the purpose of evaluating and assessing the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the agency or assessor for the evaluation and assessment. The fee for an evaluation and assessment shall be the amount provided in subsection C of Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation and assessment shall be conducted at a certified assessment agency, the office of a

certified assessor or at another location as ordered by the court. The agency or assessor shall, within seventy-two (72) hours from the time the person is evaluated and assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. If such report indicates that the evaluation and assessment shows that the defendant would benefit from a ten-hour or twenty-four-hour alcohol and drug substance abuse course or a treatment program or both, the court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to follow all recommendations identified by the evaluation and assessment and ordered by the court. No person, agency or facility operating an evaluation and assessment program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated and assessed pursuant to this section for any treatment program or 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 substance abuse service offered by such person, agency or facility. If a person is sentenced to imprisonment in 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 and assessment 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 and assessment required by this subsection. If the defendant fails or refuses to

comply with an order of the court to obtain the evaluation and assessment, the Department of Public Safety shall not reinstate driving privileges until the defendant has complied in full with such order. 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.

~~I. Any person who is found guilty of a second or subsequent violation of the provisions of this section, shall be ordered by the court to have installed, after the conclusion of the mandatory revocation period pursuant to Section 6-205.1 of this title, on every motor vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person pursuant to Sections 754.1 and 755 of this title, an ignition interlock device approved by the Board of Tests for Alcohol and Drug Influence at the person's own expense for a period of not less than six (6) months nor more than three (3) years. The person shall pay the monthly maintenance fee for each ignition interlock device installed pursuant to this subsection. The installation of an ignition interlock device, as required by this subsection, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.~~

~~J.~~ Any person who is found guilty of a felony violation of the provisions of this section may be required to submit to electronic monitoring as authorized and defined by Section 991a of Title 22 of the Oklahoma Statutes.

~~K.~~ J. 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 law of another state prohibiting the offense provided in subsection A of this section or a violation of a municipal ordinance prohibiting the offense provided in subsection A of this section, pleads guilty or nolo contendere or is convicted of a violation of this section shall not be required to undergo the alcohol and drug substance evaluation program required by subsection G of this section. The court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to participate in and successfully complete all recommendations from the evaluation, such as an alcohol and drug substance abuse treatment program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes.

~~H.~~ K. Any person who is found guilty of a violation of the provisions of this section who has been sentenced by the court to perform any type of community service shall not be permitted to pay a fine in lieu of performing the community service.

~~M.~~ L. When a person is found guilty of a violation of the provisions of this section, the court shall order, in addition to any other penalty, the defendant to pay a one-hundred-dollar assessment to be deposited in the Drug Abuse Education and Treatment Revolving Fund created in Section 2-503.2 of Title 63 of the Oklahoma Statutes, upon collection.

~~N.~~ M. In any case in which a person is convicted of violating the provisions of this section and who was transporting in the motor vehicle a child fifteen (15) years of age or younger, the fine shall

be enhanced to double the amount of the whole sum otherwise prescribed.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 11-902a, is amended to read as follows:

Section 11-902a. A. No person shall knowingly authorize or permit a motor vehicle owned or under the control of that person which is not equipped with an ignition interlock device to be driven upon any street or highway of this state by any person who is required to have an ignition interlock device installed upon the vehicle of that person.

B. No person shall make an overt or conscious attempt to physically disable, disconnect or wire around an ignition interlock device, unless certified pursuant to rule or Oklahoma Statutes, or intentionally fail to return an ignition interlock device when it is no longer required in the vehicle or upon request by the owner of the device.

C. A violation of this section shall be a misdemeanor and shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

SECTION 4. This act shall become effective November 1, 2005."

Passed the Senate the 26th day of April, 2005.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2005.

Presiding Officer of the House
of Representatives