

1 STATE OF OKLAHOMA

2 1st Session of the 50th Legislature (2005)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1304

6 By: Trebilcock of the House

7 and

8 Gumm of the Senate

9 FLOOR SUBSTITUTE

10 [motor vehicles - prohibiting waiver of certain
11 fines - modifying requirements for ignition interlock
12 device - exempting certain vehicles from installation
13 of device - effective date]

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 6-212.3 of Title 47, unless
17 there is created a duplication in numbering, reads as follows:

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

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

24 2. A person is classified as an excessive user of alcohol or of
25 a combination of alcohol and any other intoxicating substance, and
26 inimical to public safety, in accordance with rules promulgated by
27 the Department, the person shall, upon request for reinstatement of
28 driving privileges from revocation or suspension based upon the
29 conviction or the status as an excessive user, provide proof of
30 installation of an ignition interlock device approved by the Board
31 of Tests for Alcohol and Drug Influence, at the person's own
32 expense, upon every motor vehicle operated by such person; provided,

1 the Department shall not require as a condition of reinstatement the
2 device to be installed upon any vehicle owned or leased by an
3 employer of the person, except when the person is self-employed or
4 employed by relatives within the first degree of consanguinity or
5 who reside in the same household, without the employer's written
6 permission, on official letterhead of the employer, to install the
7 ignition interlock device on any vehicle to be operated by the
8 person during the course of employment.

9 B. 1. The requirements of subsection A of this section shall
10 be a prerequisite and condition for reinstatement of driving
11 privileges, in addition to other conditions for driving privilege
12 reinstatement provided by law or by rule of the Department. The
13 Department shall issue a restricted driver license to the person,
14 upon payment of a restricted driver license fee of Fifty Dollars
15 (\$50.00) and all other appropriate fees by the person. The
16 restricted driver license and the driving record of the person shall
17 indicate by an appropriate restriction that the person is only
18 authorized to operate a vehicle upon which an ignition interlock is
19 installed. If the person is operating a motor vehicle owned or
20 leased by an employer who has not given permission for an ignition
21 interlock device to be installed, the employer shall provide the
22 person with a letter, on official letterhead of the employer, which
23 the person shall carry in his or her immediate possession at all
24 times when operating a motor vehicle and shall display for
25 examination and inspection upon demand of a peace officer.

26 2. The restricted driver license fee authorized by this section
27 shall be remitted to the State Treasurer to be credited to the
28 Department of Public Safety Revolving Fund. All monies accruing to
29 the credit of the Department of Public Safety Revolving Fund from
30 restricted driver license fees shall be budgeted and expended solely
31 for the purpose of administering the provisions of this section.

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

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

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

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

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

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

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

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

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

9 1. Has a blood or breath alcohol concentration, as defined in
10 Section 756 of this title, of eight-hundredths (0.08) or more at the
11 time of a test of such person's blood or breath administered within
12 two (2) hours after the arrest of such person;

13 2. Is under the influence of alcohol;

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

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

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

25 C. 1. Any person who is convicted of a violation of the
26 provisions of this section shall be deemed guilty of a misdemeanor
27 for the first offense and shall participate in an assessment and
28 evaluation by an assessment agency or assessment personnel certified
29 by the Department of Mental Health and Substance Abuse Services
30 pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and
31 shall follow all recommendations made in the assessment and
32 evaluation and be punished by imprisonment in jail for not less than

1 ten (10) days nor more than one (1) year. Any person convicted of a
2 violation for a first offense shall be fined not more than One
3 Thousand Dollars (\$1,000.00).

4 2. Any person who, within ten (10) years after a previous
5 conviction of a violation of this section or a violation pursuant to
6 the provisions of any law of another state prohibiting the offense
7 provided in subsection A of this section, is convicted of a second
8 offense pursuant to the provisions of this section or has a prior
9 conviction in a municipal criminal court of record for the violation
10 of a municipal ordinance prohibiting the offense provided for in
11 subsection A of this section and within ten (10) years of such
12 municipal conviction is convicted pursuant to the provision of this
13 section shall be deemed guilty of a felony and shall participate in
14 an assessment and evaluation by an assessment agency or assessment
15 personnel certified by the Department of Mental Health and Substance
16 Abuse Services pursuant to Section 3-460 of Title 43A of the
17 Oklahoma Statutes and shall be sentenced to:

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

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

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

7 a. follow all recommendations made in the assessment and
8 evaluation at the defendant's expense with a minimum
9 of twenty-eight (28) days of residential or inpatient
10 treatment followed by ninety (90) days of aftercare at
11 the defendant's expense, two hundred forty (240) hours
12 of community service following the aftercare and use
13 of an ignition interlock device, or

14 b. placement in the custody of the Department of
15 Corrections for not less than one (1) year and not to
16 exceed seven (7) years and a fine of not more than
17 Five Thousand Dollars (\$5,000.00), or

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

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

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

31 a. follow all recommendations made in the assessment and
32 evaluation at the defendant's expense with a minimum

1 of twenty-eight (28) days residential or inpatient
2 treatment followed by not less than one (1) year of
3 supervision, periodic testing, and aftercare at the
4 defendant's expense, four hundred eighty (480) hours
5 of community service following the period of
6 aftercare, and use of an ignition interlock device for
7 a minimum of thirty (30) days, or

8 b. placement in the custody of the Department of
9 Corrections for not less than one (1) year and not to
10 exceed ten (10) years and a fine of not more than Five
11 Thousand Dollars (\$5,000.00), or

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

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

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

24 6. Provided, however, a conviction from another state shall not
25 be used to enhance punishment pursuant to the provisions of this
26 subsection if that conviction is based on a blood or breath alcohol
27 concentration of less than eight-hundredths (0.08).

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

1 district court of the county within which the municipality is
2 located.

3 D. Any person who is convicted of a violation of driving under
4 the influence with a blood or breath alcohol concentration of
5 fifteen-hundredths (0.15) or more shall be deemed guilty of
6 aggravated driving under the influence. A person convicted of
7 aggravated driving under the influence shall participate in an
8 assessment and evaluation by an assessment agency or assessment
9 personnel certified by the Department of Mental Health and Substance
10 Abuse Services pursuant to Section 3-460 of Title 43A of the
11 Oklahoma Statutes and shall comply with all recommendations and
12 shall be punished by mandatory residential or inpatient treatment
13 for a minimum of twenty-eight (28) days followed by not less than
14 one (1) year of supervision, periodic testing, and aftercare at the
15 defendant's expense, four hundred eighty (480) hours of community
16 service following the period of aftercare, and an ignition interlock
17 device for a minimum of thirty (30) days. Nothing in this
18 subsection shall preclude the defendant from being charged or
19 punished as provided in paragraph 1, 2, 3, 4 or 5 of subsection C of
20 this section.

21 E. When a person is sentenced to imprisonment in the custody of
22 the Department of Corrections, the person shall be processed through
23 the Lexington Assessment and Reception Center or at a place
24 determined by the Director of the Department of Corrections. The
25 Department of Corrections shall classify and assign the person to
26 one or more of the following:

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

30 2. A correctional facility operated by the Department of
31 Corrections with assignment to substance abuse treatment.

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1 F. The Department of Public Safety is hereby authorized to
2 reinstate any suspended or revoked driving privilege when the person
3 meets the statutory requirements which affect the existing driving
4 privilege.

5 G. Any person who is found guilty of a violation of the
6 provisions of this section shall be ordered to participate in, prior
7 to sentencing, an alcohol and drug substance abuse evaluation and
8 assessment program offered by a certified assessment agency or
9 certified assessor for the purpose of evaluating and assessing the
10 receptivity to treatment and prognosis of the person. The court
11 shall order the person to reimburse the agency or assessor for the
12 evaluation and assessment. The fee for an evaluation and assessment
13 shall be the amount provided in subsection C of Section 3-460 of
14 Title 43A of the Oklahoma Statutes. The evaluation and assessment
15 shall be conducted at a certified assessment agency, the office of a
16 certified assessor or at another location as ordered by the court.
17 The agency or assessor shall, within seventy-two (72) hours from the
18 time the person is evaluated and assessed, submit a written report
19 to the court for the purpose of assisting the court in its final
20 sentencing determination. If such report indicates that the
21 evaluation and assessment shows that the defendant would benefit
22 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
23 course or a treatment program or both, the court shall, as a
24 condition of any sentence imposed, including deferred and suspended
25 sentences, require the person to follow all recommendations
26 identified by the evaluation and assessment and ordered by the
27 court. No person, agency or facility operating an evaluation and
28 assessment program certified by the Department of Mental Health and
29 Substance Abuse Services shall solicit or refer any person evaluated
30 and assessed pursuant to this section for any treatment program or
31 substance abuse service in which such person, agency or facility has
32 a vested interest; however, this provision shall not be construed to

1 prohibit the court from ordering participation in or any person from
2 voluntarily utilizing a treatment program or substance abuse service
3 offered by such person, agency or facility. If a person is
4 sentenced to imprisonment in the custody of the Department of
5 Corrections and the court has received a written evaluation report
6 pursuant to the provisions of this subsection, the report shall be
7 furnished to the Department of Corrections with the judgment and
8 sentence. Any evaluation and assessment report submitted to the
9 court pursuant to the provisions of this subsection shall be handled
10 in a manner which will keep such report confidential from the
11 general public's review. Nothing contained in this subsection shall
12 be construed to prohibit the court from ordering judgment and
13 sentence in the event the defendant fails or refuses to comply with
14 an order of the court to obtain the evaluation and assessment
15 required by this subsection. If the defendant fails or refuses to
16 comply with an order of the court to obtain the evaluation and
17 assessment, the Department of Public Safety shall not reinstate
18 driving privileges until the defendant has complied in full with
19 such order. Nothing contained in this subsection shall be construed
20 to prohibit the court from ordering judgment and sentence and any
21 other sanction authorized by law for failure or refusal to comply
22 with an order of the court.

23 H. Any person who is found guilty of a violation of the
24 provisions of this section may be required by the court to attend a
25 victims impact panel program, if such a program is offered in the
26 county where the judgment is rendered, and to pay a fee, not less
27 than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars
28 (\$25.00) as set by the governing authority of the program and
29 approved by the court, to the program to offset the cost of
30 participation by the defendant, if in the opinion of the court the
31 defendant has the ability to pay such fee.

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

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

20 ~~K.~~ J. Any person who, within ten (10) years after a previous
21 conviction of a violation of this section or a violation pursuant to
22 the provisions of law of another state prohibiting the offense
23 provided in subsection A of this section or a violation of a
24 municipal ordinance prohibiting the offense provided in subsection A
25 of this section, pleads guilty or nolo contendere or is convicted of
26 a violation of this section shall not be required to undergo the
27 alcohol and drug substance evaluation program required by subsection
28 G of this section. The court shall, as a condition of any sentence
29 imposed, including deferred and suspended sentences, require the
30 person to participate in and successfully complete all
31 recommendations from the evaluation, such as an alcohol and drug
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1 substance abuse treatment program pursuant to Section 3-452 of Title
2 43A of the Oklahoma Statutes.

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

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

13 ~~N.~~ M. In any case in which a person is convicted of violating
14 the provisions of this section and who was transporting in the motor
15 vehicle a child fifteen (15) years of age or younger, the fine shall
16 be enhanced to double the amount of the whole sum otherwise
17 prescribed.

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

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

26 B. No person shall make an overt or conscious attempt to
27 physically disable, disconnect or wire around an ignition interlock
28 device, unless certified pursuant to rule or Oklahoma Statutes, or
29 intentionally fail to return an ignition interlock device when it is
30 no longer required in the vehicle or upon request by the owner of
31 the device.
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1 C. A violation of this section shall be a misdemeanor and shall
2 be punishable by a fine of not more than Five Hundred Dollars
3 (\$500.00) or by imprisonment in the county jail for not more than
4 six (6) months, or by both such fine and imprisonment.

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

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