

3 ENGROSSED

4 House Bill No. 1304

5 As Amended

6 ENGROSSED HOUSE BILL NO. 1304 - By: TREBILCOCK of the House and GUMM
7 of the Senate.

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

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

13 SECTION 1. AMENDATORY 47 O.S. 2001, Section 6-303, as
14 last amended by Section 9, Chapter 390, O.S.L. 2004 (47 O.S. Supp.
15 2004, Section 6-303), is amended to read as follows:

16 Section 6-303. A. No person shall operate a motor vehicle upon
17 the public roads, streets, highways, turnpikes or other public place
18 of this state without having first procured a driver license for the
19 class of vehicle being operated from the Oklahoma Department of
20 Public Safety, except as herein specifically exempted.

21 Any violation of the provisions of this subsection shall
22 constitute a misdemeanor and shall be punishable by a fine of not
23 less than Fifty Dollars (\$50.00) nor more than Three Hundred Dollars
24 (\$300.00) plus costs or by imprisonment for not more than thirty
25 (30) days, or by both such fine and imprisonment.

1 B. Any person who drives a motor vehicle on any public roads,
2 streets, highways, turnpikes or other public place of this state at
3 a time when his privilege to do so is canceled, denied, suspended or
4 revoked or at a time when he is disqualified from so doing shall be
5 guilty of a misdemeanor and upon conviction shall be punished by a
6 fine of not less than One Hundred Dollars (\$100.00) and not more
7 than Five Hundred Dollars (\$500.00), or by imprisonment for not more
8 than one (1) year or by both such fine and imprisonment. Each act
9 of driving on the highways as prohibited shall constitute a separate
10 offense.

11 C. Any person who drives a motor vehicle on any public roads,
12 streets, highways, turnpikes or other public roads of this state at
13 a time when the driving privilege of that person is canceled,
14 denied, suspended or revoked, pursuant to paragraph 1, 2, or 3 of
15 subsection A of Section 6-205.1 of this title, shall be guilty of a
16 misdemeanor and upon conviction shall be punished by a fine of not
17 less than Five Hundred Dollars (\$500.00) and not more than One
18 Thousand Dollars (\$1,000.00), or by imprisonment for not more than
19 one (1) year or by both such fine and imprisonment. Each act of
20 driving on the highways as prohibited shall constitute a separate
21 offense. Any fine imposed pursuant to this subsection shall not be
22 waived by the court.

1 D. The Department upon receiving a record of conviction of an
2 offense committed by any person whose license or privilege to
3 operate motor vehicles is under suspension or revocation, shall
4 extend the period of such suspension or revocation for an additional
5 three-month period of time. The additional orders of suspension or
6 revocation shall be dated and become effective the day following the
7 date terminating the prior order of suspension or revocation.

8 E. The Department upon receiving a record of conviction of an
9 offense committed by any person whose license or privilege to
10 operate motor vehicles is under revocation, pursuant to paragraph 1,
11 2, or 3 of subsection A of Section 6-205.1 of this title, shall
12 extend the period of such revocation for an additional four-month
13 period of time. The additional orders of revocation shall be dated
14 and become effective the day following the date terminating the
15 prior order of revocation.

16 F. It shall be a misdemeanor, punishable by imprisonment for
17 not less than seven (7) days, nor more than six (6) months or by a
18 fine of not more than Five Hundred Dollars (\$500.00), or by both
19 such fine and imprisonment for any person to apply for a renewal or
20 a replacement license to operate a motor vehicle while his license,
21 permit or other evidence of driving privilege is in the custody of a
22 law enforcement officer or the Department. A notice regarding this

1 offense and the penalty therefor shall be included on the same form
2 containing the notice of revocation issued by the officer.

3 SECTION 2. AMENDATORY 47 O.S. 2001, Section 11-902, as
4 last amended by Section 1, Chapter 548, O.S.L. 2004 (47 O.S. Supp.
5 2004, Section 11-902), is amended to read as follows:

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

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

16 2. Is under the influence of alcohol;

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

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

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

6 C. 1. Any person who is convicted of a violation of the
7 provisions of this section shall be deemed guilty of a misdemeanor
8 for the first offense and shall participate in an assessment and
9 evaluation by an assessment agency or assessment personnel certified
10 by the Department of Mental Health and Substance Abuse Services
11 pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and
12 shall follow all recommendations made in the assessment and
13 evaluation and be punished by imprisonment in jail for not less than
14 ten (10) days nor more than one (1) year. Any person convicted of a
15 violation for a first offense shall be fined not more than One
16 Thousand Dollars (\$1,000.00).

17 2. Any person who, within ten (10) years after a previous
18 conviction of a violation of this section or a violation pursuant to
19 the provisions of any law of another state prohibiting the offense
20 provided in subsection A of this section, is convicted of a second
21 offense pursuant to the provisions of this section or has a prior
22 conviction in a municipal criminal court of record for the violation
23 of a municipal ordinance prohibiting the offense provided for in

1 subsection A of this section and within ten (10) years of such
2 municipal conviction is convicted pursuant to the provision of this
3 section shall be deemed guilty of a felony and shall participate in
4 an assessment and evaluation by an assessment agency or assessment
5 personnel certified by the Department of Mental Health and Substance
6 Abuse Services pursuant to Section 3-460 of Title 43A of the
7 Oklahoma Statutes and shall be sentenced to:

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

19 However, if the treatment in subparagraph a of this paragraph
20 does not include residential or inpatient treatment for a period of
21 not less than five (5) days, the person shall serve a term of
22 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

1 not less than ten (10) days, the person shall serve a term of
2 imprisonment of at least ten (10) days.

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

9 a. follow all recommendations made in the assessment and
10 evaluation at the defendant's expense with a minimum
11 of twenty-eight (28) days residential or inpatient
12 treatment followed by not less than one (1) year of
13 supervision, periodic testing, and aftercare at the
14 defendant's expense, four hundred eighty (480) hours
15 of community service following the period of
16 aftercare, and use of an ignition interlock device for
17 a minimum of thirty (30) days, or

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

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

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

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

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

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

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

19 E. When a person is sentenced to imprisonment in the custody of
20 the Department of Corrections, the person shall be processed through
21 the Lexington Assessment and Reception Center or at a place
22 determined by the Director of the Department of Corrections. The

1 Department of Corrections shall classify and assign the person to
2 one or more of the following:

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

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

8 F. The Department of Public Safety is hereby authorized to
9 reinstate any suspended or revoked driving privilege when the person
10 meets the statutory requirements which affect the existing driving
11 privilege.

12 G. Any person who is found guilty of a violation of the
13 provisions of this section shall be ordered to participate in, prior
14 to sentencing, an alcohol and drug substance abuse evaluation and
15 assessment program offered by a certified assessment agency or
16 certified assessor for the purpose of evaluating and assessing the
17 receptivity to treatment and prognosis of the person. The court
18 shall order the person to reimburse the agency or assessor for the
19 evaluation and assessment. The fee for an evaluation and assessment
20 shall be the amount provided in subsection C of Section 3-460 of
21 Title 43A of the Oklahoma Statutes. The evaluation and assessment
22 shall be conducted at a certified assessment agency, the office of a
23 certified assessor or at another location as ordered by the court.

1 The agency or assessor shall, within seventy-two (72) hours from the
2 time the person is evaluated and assessed, submit a written report
3 to the court for the purpose of assisting the court in its final
4 sentencing determination. If such report indicates that the
5 evaluation and assessment shows that the defendant would benefit
6 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
7 course or a treatment program or both, the court shall, as a
8 condition of any sentence imposed, including deferred and suspended
9 sentences, require the person to follow all recommendations
10 identified by the evaluation and assessment and ordered by the
11 court. No person, agency or facility operating an evaluation and
12 assessment program certified by the Department of Mental Health and
13 Substance Abuse Services shall solicit or refer any person evaluated
14 and assessed pursuant to this section for any treatment program or
15 substance abuse service in which such person, agency or facility has
16 a vested interest; however, this provision shall not be construed to
17 prohibit the court from ordering participation in or any person from
18 voluntarily utilizing a treatment program or substance abuse service
19 offered by such person, agency or facility. If a person is
20 sentenced to imprisonment in the custody of the Department of
21 Corrections and the court has received a written evaluation report
22 pursuant to the provisions of this subsection, the report shall be
23 furnished to the Department of Corrections with the judgment and

1 sentence. Any evaluation and assessment report submitted to the
2 court pursuant to the provisions of this subsection shall be handled
3 in a manner which will keep such report confidential from the
4 general public's review. Nothing contained in this subsection shall
5 be construed to prohibit the court from ordering judgment and
6 sentence in the event the defendant fails or refuses to comply with
7 an order of the court to obtain the evaluation and assessment
8 required by this subsection. If the defendant fails or refuses to
9 comply with an order of the court to obtain the evaluation and
10 assessment, the Department of Public Safety shall not reinstate
11 driving privileges until the defendant has complied in full with
12 such order. Nothing contained in this subsection shall be construed
13 to prohibit the court from ordering judgment and sentence and any
14 other sanction authorized by law for failure or refusal to comply
15 with an order of the court.

16 H. Any person who is found guilty of a violation of the
17 provisions of this section may be required by the court to attend a
18 victims impact panel program, if such a program is offered in the
19 county where the judgment is rendered, and to pay a fee, not less
20 than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars
21 (\$25.00) as set by the governing authority of the program and
22 approved by the court, to the program to offset the cost of

1 participation by the defendant, if in the opinion of the court the
2 defendant has the ability to pay such fee.

3 I. Any person who is found guilty of a second or subsequent
4 violation of the provisions of this section, ~~shall be ordered by the~~
5 ~~court to have installed, after the conclusion of the mandatory~~
6 ~~revocation period pursuant to Section 6-205.1 of this title, on~~
7 ~~every motor vehicle owned by the person and on the vehicle regularly~~
8 ~~operated by the person, if such vehicle is not owned by the person~~
9 ~~pursuant to Sections 754.1 and 755 of this title, an ignition~~
10 ~~interlock device approved by the Department of Public Safety at the~~
11 ~~person's own expense for a period of not less than six (6) months~~
12 ~~nor more than three (3) years. The person shall~~ as a prerequisite
13 and condition of reinstatement pursuant to subsection F of this
14 section, an ignition interlock device approved by the Board of Tests
15 for Alcohol and Drug Influence at the expense of the person upon
16 every motor vehicle operated by the person for a period of twelve
17 (12) months. The Department of Public Safety shall not require as a
18 condition of reinstatement that the ignition interlock device be
19 installed on any vehicle owned or leased by an employer of the
20 person, except when the person is self-employed, employed by
21 relatives within the first degree of consanguinity, or who resides
22 in the same household, without the written permission of the
23 employer to install the ignition interlock device on any vehicle to

1 be operated by the person during the course of employment. The
2 permission to install the ignition interlock device shall be in
3 writing on the official letterhead of the employer. The person
4 shall comply with all provisions of law regarding ignition interlock
5 devices and pay the monthly maintenance fee for each ignition
6 interlock device installed pursuant to this subsection. The
7 ~~installation of an ignition interlock device, as required by this~~
8 ~~subsection, shall not be construed to authorize the person to drive~~
9 ~~unless the person is otherwise eligible to drive.~~

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

14 K. Any person who, within ten (10) years after a previous
15 conviction of a violation of this section or a violation pursuant to
16 the provisions of law of another state prohibiting the offense
17 provided in subsection A of this section or a violation of a
18 municipal ordinance prohibiting the offense provided in subsection A
19 of this section, pleads guilty or nolo contendere or is convicted of
20 a violation of this section shall not be required to undergo the
21 alcohol and drug substance evaluation program required by subsection
22 G of this section. The court shall, as a condition of any sentence
23 imposed, including deferred and suspended sentences, require the

1 person to participate in and successfully complete all
2 recommendations from the evaluation, such as an alcohol and drug
3 substance abuse treatment program pursuant to Section 3-452 of Title
4 43A of the Oklahoma Statutes.

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

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

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

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

22 Section 11-902a. A. No person shall knowingly authorize or
23 permit a motor vehicle owned or under the control of that person

1 which is not equipped with an ignition interlock device to be driven
2 upon any street or highway of this state by any person who is
3 required to have an ignition interlock device installed upon the
4 vehicle of that person.

5 B. No person, who is required to have an ignition interlock
6 device installed upon the vehicle of that person, shall knowingly or
7 willfully attempt to disable, disconnect, or wire around the
8 ignition interlock device.

9 C. A violation of this section shall be a misdemeanor and shall
10 be punishable by a fine of not more than Five Hundred Dollars
11 (\$500.00) or by imprisonment in the county jail for not more than
12 six (6) months, or by both such fine and imprisonment.

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

14 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY AND HOMELAND
15 SECURITY, dated 3-29-05 - DO PASS, As Amended.