

1 **THE STATE SENATE**
2 **Monday, February 28, 2005**

3 **Senate Bill No. 867**

4 SENATE BILL NO. 867 - By: GUMM of the Senate and TREBILCOCK of the
5 House.

6 An Act relating to motor vehicles; amending 47 O.S. 2001,
7 Sections 6-303, as last amended by Section 1, Chapter 387,
8 O.S.L. 2004, 11-902a and 11-902, as last amended by Section
9 15, Chapter 418, O.S.L. 2004 (47 O.S. Supp. 2004, Sections
10 6-303 and 11-902), which relate to driving while license
11 canceled, use of motor vehicle without ignition interlock
12 device, and driving under the influence of intoxicating
13 substance; modifying language; prohibiting suspension of
14 certain fine; prohibiting disabling ignition interlock
15 device; deleting language; requiring ignition interlock
16 device after certain offense as condition to reinstatement
17 of license; increasing duration period for mandatory
18 ignition interlock device; prohibiting installation of
19 ignition interlock device on employer vehicle without
20 permission of employer; providing certain exception to
21 certain installation of ignition interlock device; requiring
22 certain compliance; providing an effective date; and
23 declaring an emergency.

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

25 SECTION 1. AMENDATORY 47 O.S. 2001, Section 6-303, as
26 last amended by Section 1, Chapter 387, O.S.L. 2004 (47 O.S. Supp.
27 2004, Section 6-303), is amended to read as follows:

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

1 Any violation of the provisions of this subsection shall
2 constitute a misdemeanor and shall be punishable by a fine of not
3 less than Fifty Dollars (\$50.00) nor more than Three Hundred Dollars
4 (\$300.00) plus costs or by imprisonment for not more than thirty
5 (30) days, or by both such fine and imprisonment.

6 B. Any person who drives a motor vehicle on any public roads,
7 streets, highways, turnpikes or other public place of this state at
8 a time when the person's privilege to do so is canceled, denied,
9 suspended or revoked or at a time when the person is disqualified
10 from so doing shall be guilty of a misdemeanor and upon conviction
11 shall be punished by ~~a fine~~:

12 1. For a first conviction, ~~of a fine in an amount~~ not less than
13 One Hundred Dollars (\$100.00) ~~and not nor~~ more than Five Hundred
14 Dollars (\$500.00), or by imprisonment for a term not exceeding one
15 (1) year, or by both such fine and imprisonment;

16 2. For a second conviction, ~~of a fine in an amount~~ not less
17 than Two Hundred Dollars (\$200.00) ~~and not nor~~ more than Seven
18 Hundred Fifty Dollars (\$750.00), or by imprisonment for a term not
19 exceeding one (1) year, or by both such fine and imprisonment; or

20 3. For a third and subsequent conviction, ~~of a fine in an~~
21 amount not less than Three Hundred Dollars (\$300.00) ~~and not nor~~
22 more than One Thousand Dollars (\$1,000.00), or by imprisonment for a a

1 term not ~~more than~~ exceeding one (1) year, or by both such fine and
2 imprisonment.

3 Each act of driving on the highways as prohibited shall
4 constitute a separate offense.

5 C. Any person who drives a motor vehicle on any public roads,
6 streets, highways, turnpikes or other public roads of this state at
7 a time when the driving privilege of that person is canceled,
8 denied, suspended or revoked, pursuant to paragraph 1 of subsection
9 A of Section 6-205.1 of this title, shall be guilty of a misdemeanor
10 and upon conviction shall be punished by ~~a fine~~:

11 1. For a first conviction, ~~of~~ a fine in an amount not less than
12 Five Hundred Dollars (\$500.00) ~~and not~~ nor more than One Thousand
13 Dollars (\$1,000.00), by imprisonment in the county jail for a term
14 not exceeding one (1) year, or by both such fine and imprisonment;

15 2. For a second conviction, ~~of~~ a fine in an amount not less
16 than One Thousand Dollars (\$1,000.00) ~~and not~~ nor more than Two
17 Thousand Dollars (\$2,000.00), by imprisonment in the county jail for
18 a term not exceeding one (1) year, or by both such fine and
19 imprisonment; or

20 3. For a third and subsequent conviction, ~~of~~ a fine in an
21 amount not less than Two Thousand Dollars (\$2,000.00) ~~and not~~ nor
22 more than Five Thousand Dollars (\$5,000.00), ~~or~~ by imprisonment in

1 the county jail for a term not ~~more than~~ exceeding one (1) year, or
2 by both such fine and imprisonment.

3 Any fine imposed pursuant to this subsection shall not be
4 eligible for a suspended or deferred sentence. Each act of driving
5 on the highways as prohibited shall constitute a separate offense.

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

15 E. The Department upon receiving a record of conviction of an
16 offense committed by any person whose license or privilege to
17 operate motor vehicles is under revocation, pursuant to paragraph 1,
18 2, or 3 of subsection A of Section 6-205.1 of this title, or who is
19 disqualified from operating a motor vehicle, pursuant to paragraph
20 1, 2, or 3 of subsection B or paragraph 1, 2, or 3 of subsection C
21 of Section 6-205.2 of this title, or both such revocation and
22 disqualification, shall extend the period of such disqualification
23 or revocation for an additional four-month period of time. The

1 additional orders of disqualification or revocation shall be dated
2 and become effective the day following the date terminating the
3 prior order of disqualification or revocation.

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

14 G. Any fine collected pursuant to a second or subsequent
15 conviction as provided for in subsections B and C of this section,
16 shall be deposited to the Trauma Care Assistance Revolving Fund
17 created in Section ~~1-2522~~ 1-2530.9 of Title 63 of the Oklahoma
18 Statutes.

19 SECTION 2. AMENDATORY 47 O.S. 2001, Section 11-902a, is
20 amended to read as follows:

21 Section 11-902a. A. No person shall knowingly authorize or
22 permit a motor vehicle owned or under the control of that person
23 which is not equipped with an ignition interlock device to be driven

1 upon any street or highway of this state by any person who is
2 required to have an ignition interlock device installed upon the
3 vehicle of that person. A

4 B. No person shall make an overt or conscious attempt to
5 physically disable, disconnect or wire around an ignition interlock
6 device unless certified pursuant to the provisions of subsection D
7 of Section 253 of Title 75 of the Oklahoma Statutes.

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

13 SECTION 3. AMENDATORY 47 O.S. 2001, Section 11-902, as
14 last amended by Section 15, Chapter 418, O.S.L. 2004 (47 O.S. Supp.
15 2004, Section 11-902), is amended to read as follows:

16 Section 11-902. A. It is unlawful and punishable as provided
17 in this section for any person to drive, operate, or be in actual
18 physical control of a motor vehicle within this state who:

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

23 2. Is under the influence of alcohol;

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

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

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

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

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

15 a. follow all recommendations made in the assessment and
16 evaluation with a minimum of twenty-eight (28) days of
17 treatment followed by thirty (30) days of aftercare at
18 the defendant's expense, or

19 b. placement in the custody of the Department of
20 Corrections for not less than one (1) year and not to
21 exceed five (5) years and a fine of not more than Two
22 Thousand Five Hundred Dollars (\$2,500.00), 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 treatment in subparagraph a of this paragraph
5 does not include residential or inpatient treatment for a period of
6 not less than five (5) days, the person shall serve a term of
7 imprisonment of at least five (5) days.

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

14 a. follow all recommendations made in the assessment and
15 evaluation at the defendant's expense with a minimum
16 of twenty-eight (28) days of residential or inpatient
17 treatment followed by ninety (90) days of aftercare at
18 the defendant's expense, two hundred forty (240) hours
19 of community service following the aftercare and use
20 of an ignition interlock device, or

21 b. placement in the custody of the Department of
22 Corrections for not less than one (1) year and not to

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

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

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

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

16 a. follow all recommendations made in the assessment and
17 evaluation at the defendant's expense with a minimum
18 of twenty-eight (28) days residential or inpatient
19 treatment followed by not less than one (1) year of
20 supervision, periodic testing, and aftercare at the
21 defendant's expense, four hundred eighty (480) hours
22 of community service following the period of

1 aftercare, and use of an ignition interlock device for
2 a minimum of thirty (30) days, or

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

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

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

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

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

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

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

1 punished as provided in paragraph 1, 2, 3, 4 or 5 of subsection C of
2 this section.

3 E. When a person is sentenced to imprisonment in the custody of
4 the Department of Corrections, the person shall be processed through
5 the Lexington Assessment and Reception Center or at a place
6 determined by the Director of the Department of Corrections. The
7 Department of Corrections shall classify and assign the person to
8 one or more of the following:

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

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

14 F. The Department of Public Safety is hereby authorized to
15 reinstate any suspended or revoked driving privilege when the person
16 meets the statutory requirements which affect the existing driving
17 privilege.

18 G. Any person who is found guilty of a violation of the
19 provisions of this section shall be ordered to participate in, prior
20 to sentencing, an alcohol and drug substance abuse evaluation and
21 assessment program offered by a certified assessment agency or
22 certified assessor for the purpose of evaluating and assessing the
23 receptivity to treatment and prognosis of the person. The court

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

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

22 H. Any person who is found guilty of a violation of the
23 provisions of this section may be required by the court to attend a

1 victims impact panel program, if such a program is offered in the
2 county where the judgment is rendered, and to pay a fee, not less
3 than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars
4 (\$25.00) as set by the governing authority of the program and
5 approved by the court, to the program to offset the cost of
6 participation by the defendant, if in the opinion of the court the
7 defendant has the ability to pay such fee.

8 I. Any person who is found guilty of a second or subsequent
9 violation of the provisions of this section, shall ~~be ordered by the~~
10 ~~court to have installed, after the conclusion of the mandatory~~
11 ~~revocation period pursuant to Section 6-205.1 of this title, as a~~
12 prerequisite and condition of reinstatement of a driver license
13 pursuant to subsection F of this section an ignition interlock
14 device approved by the Board of Tests for Alcohol and Drug Influence
15 at the person's own expense on every motor vehicle ~~owned by the~~
16 ~~person and on the vehicle regularly~~ operated by the person, ~~if such~~
17 ~~vehicle is not owned by the person pursuant to Sections 754.1 and~~
18 ~~755 of this title, an ignition interlock device approved by the~~
19 ~~Board of Tests for Alcohol and Drug Influence at the person's own~~
20 ~~expense for a period of not less than six (6) twelve (12) months nor~~
21 ~~more than three (3) years. The person shall; provided, however, the~~
22 Department of Public Safety shall not require as a condition of
23 reinstatement of a driver license the installation of an ignition

1 interlock device on any vehicle owned or leased by an employer of
2 the person without the employer's written permission to install the
3 ignition interlock device on any vehicle operated by the person
4 during the course of employment, except when the person is self-
5 employed or employed by relatives within the first degree of
6 consanguinity or who reside in the same household. The permission
7 to install the ignition interlock device shall be in writing on the
8 official letterhead of the employer. The person shall comply with
9 all provisions of law regarding ignition interlock devices and pay
10 the monthly maintenance fee for each ignition interlock device
11 installed pursuant to this subsection. ~~The installation of an~~
12 ~~ignition interlock device, as required by this subsection, shall not~~
13 ~~be construed to authorize the person to drive unless the person is~~
14 ~~otherwise eligible to drive.~~

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

19 K. Any person who, within ten (10) years after a previous
20 conviction of a violation of this section or a violation pursuant to
21 the provisions of law of another state prohibiting the offense
22 provided in subsection A of this section or a violation of a
23 municipal ordinance prohibiting the offense provided in subsection A

1 of this section, pleads guilty or nolo contendere or is convicted of
2 a violation of this section shall not be required to undergo the
3 alcohol and drug substance evaluation program required by subsection
4 G of this section. The court shall, as a condition of any sentence
5 imposed, including deferred and suspended sentences, require the
6 person to participate in and successfully complete all
7 recommendations from the evaluation, such as an alcohol and drug
8 substance abuse treatment program pursuant to Section 3-452 of Title
9 43A of the Oklahoma Statutes.

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

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

20 SECTION 4. This act shall become effective July 1, 2005.

21 SECTION 5. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY AND HOMELAND
4 SECURITY, dated 2-21-05 - DO PASS, As Coauthored.