

1 ENGROSSED HOUSE
2 BILL NO. 2723

By: Sherrer and Roan of the
House

3 and

4 Burrage of the Senate
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8 An Act relating to public health and safety; amending
9 63 O.S. 2001, Section 4210.8, as amended by Section
10 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp. 2009,
11 Section 4210.8), which relates to boating under the
12 influence; increasing penalty; providing penalties
13 for subsequent offenses; providing penalty for
14 certain specific situations; requiring certain blood
15 alcohol concentration in order to enhance punishment;
16 requiring filing of certain charges in district
17 court; prohibiting certain enhancement; and providing
18 an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 4210.8, as
amended by Section 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp. 2009,
Section 4210.8), is amended to read as follows:

Section 4210.8 A. It shall be unlawful for any person to
operate or be in actual physical control of a vessel upon the waters
of this state, except privately owned waters, who:

1 1. Has a blood or breath alcohol concentration of ten-
2 hundredths (0.10) or more at the time of a test of the person's
3 blood or breath;

4 2. Is under the influence of any other intoxicating substance
5 to a degree which renders such person incapable of safely operating
6 a vessel upon the waters of this state; or

7 3. Is under the influence of alcohol and any other intoxicating
8 substance to a degree which renders such person incapable of safely
9 operating a vessel upon the waters of this state.

10 As used in this section, the term "other intoxicating substance"
11 shall mean any controlled dangerous substance as defined in the
12 Uniform Controlled Dangerous Substances Act or any other substance,
13 other than alcohol, which is capable of being ingested, inhaled,
14 injected or absorbed into the human body and is capable of adversely
15 affecting the central nervous system, vision, hearing or other
16 sensory or motor functions.

17 B. 1. Any person operating a vessel upon the waters of this
18 state, except privately owned waters, shall be deemed to have given
19 consent to a test or tests of such person's blood, breath, saliva or
20 urine for the purpose of determining the presence and concentration
21 of alcohol or any other intoxicating substance. Such tests shall be
22 performed within two (2) hours of an arrest and in the same manner
23 as provided for in Section 752 of Title 47 of the Oklahoma Statutes.

1 2. Evidence that the person has refused to submit to a test or
2 tests as required by this section shall be admissible upon the trial
3 of any criminal action or proceeding arising out of acts alleged to
4 have been committed in violation of the provisions of this section.

5 ~~3. Any person refusing to submit to such test or tests shall be
6 in violation of this section and subject to the fines provided for
7 herein.~~

8 C. 1. Any person convicted of a violation of the provisions of
9 this section shall be deemed guilty of a misdemeanor ~~and~~ for the
10 first and second offense and be punished by imprisonment in jail for
11 not less than ten (10) days nor more than one (1) year. Any person
12 convicted of a violation for a first or second offense shall be
13 fined ~~in an amount not to exceed~~ more than One Thousand Dollars
14 (\$1,000.00). ~~Any second or subsequent conviction shall be
15 punishable by a fine in an amount of not less than One Thousand
16 Dollars (\$1,000.00), nor more than Two Thousand Five Hundred Dollars
17 (\$2,500.00).~~

18 2. Any person who, within ten (10) years after a previous
19 conviction of a violation of this section or a violation pursuant to
20 the provisions of any law of another state prohibiting the offense
21 provided in subsection A of this section, is convicted of a third
22 offense pursuant to the provisions of this section shall be deemed
23 guilty of a felony and be sentenced to placement in the custody of
24 the Department of Corrections for not less than one (1) year and not

1 to exceed five (5) years and a fine of not more than Two Thousand
2 Five Hundred Dollars (\$2,500.00).

3 3. Any person who is convicted of a second felony offense
4 pursuant to the provisions of this section shall be sentenced to
5 placement in the custody of the Department of Corrections for not
6 less than one (1) year and not to exceed ten (10) years and a fine
7 of not more than Five Thousand Dollars (\$5,000.00).

8 4. Any person who is convicted of a third or subsequent felony
9 offense pursuant to the provisions of this section shall be
10 sentenced to placement in the custody of the Department of
11 Corrections for not less than one (1) year and not to exceed twenty
12 (20) years and a fine of not more than Five Thousand Dollars
13 (\$5,000.00).

14 5. Any person who, within ten (10) years after a previous
15 conviction of a violation of murder in the second degree or
16 manslaughter in the first degree in which the death was caused as a
17 result of actions that would be a violation of subsection A of this
18 section or would be a violation pursuant to the provisions of any
19 law of another state prohibiting the offense provided in subsection
20 A of this section, is convicted of a violation of this section shall
21 be deemed guilty of a felony.

22 6. Provided, however, a conviction from another state shall not
23 be used to enhance punishment pursuant to the provisions of this
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1 subsection if that conviction is based on a blood or breath alcohol
2 concentration of less than ten-hundredths (0.10).

3 7. In any case in which a defendant is charged with a second or
4 subsequent violation of any law that would be a violation of the
5 offense provided in subsection A of this section within any
6 municipality with a municipal court other than a court of record,
7 the charge shall be presented to the county's district attorney and
8 filed with the district court of the county within which the
9 municipality is located.

10 8. A conviction under this section shall not be used to enhance
11 punishment pursuant to Sections 11-902 or 11-904 of Title 47 of the
12 Oklahoma Statutes.

13 9. A conviction pursuant to Sections 11-902 or 11-904 of Title
14 47 of the Oklahoma Statutes shall not be used to enhance punishment
15 pursuant to a conviction under this section.

16 10. A person arrested by a law enforcement officer for a
17 violation of this section may be allowed to post a cash bail in an
18 amount set by the arresting law enforcement officer not to exceed
19 the maximum fine provided by this section, or deposit a valid
20 license to operate a motor vehicle in exchange for an official
21 receipt issued by the arresting officer as provided for in Section
22 1111 et seq. of Title 22 of the Oklahoma Statutes.

23 SECTION 2. This act shall become effective November 1, 2010.
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