

THE HOUSE OF REPRESENTATIVES
Wednesday, February, 24, 2010

House Bill No. 2723

HOUSE BILL NO. 2723 - By: SHERRER of the House.

An Act relating to public health and safety; amending 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), which relates to boating under the influence; increasing penalty; providing penalties for subsequent offenses; providing penalty for certain specific situations; requiring certain blood alcohol concentration in order to enhance; requiring filing of certain charges in district court; prohibiting certain enhancement; and providing an effective date.

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

- 1 SECTION 1. AMENDATORY 63 O.S. 2001, Section 4210.8, as amended by
2 Section 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp. 2009, Section 4210.8), is amended to
3 read as follows:
- 4 Section 4210.8 A. It shall be unlawful for any person to operate or be in actual
5 physical control of a vessel upon the waters of this state, except privately owned waters,
6 who:
- 7 1. Has a blood or breath alcohol concentration of ten-hundredths (0.10) or more at
8 the time of a test of the person's blood or breath;
- 9 2. Is under the influence of any other intoxicating substance to a degree which
10 renders such person incapable of safely operating a vessel upon the waters of this state;
11 or

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

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

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

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

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

20 C. 1. Any person convicted of a violation of the provisions of this section shall be
21 deemed guilty of a misdemeanor and for the first offense and be punished by
22 imprisonment in jail for not less than ten (10) days nor more than one (1) year. Any

1 person convicted of a violation for a first offense shall be fined ~~in an amount not to exceed~~
2 more than One Thousand Dollars (\$1,000.00). ~~Any second or subsequent conviction shall~~
3 ~~be punishable by a fine in an amount of not less than One Thousand Dollars (\$1,000.00),~~
4 ~~nor more than Two Thousand Five Hundred Dollars (\$2,500.00).~~

5 2. Any person who, within ten (10) years after a previous conviction of a violation of
6 this section or a violation pursuant to the provisions of any law of another state
7 prohibiting the offense 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 conviction in a municipal
9 criminal court of record for the violation of a municipal ordinance prohibiting the offense
10 provided for in subsection A of this section and within ten (10) years of such municipal
11 conviction is convicted pursuant to the provision of this section shall be deemed guilty of
12 a felony and be sentenced to placement in the custody of the Department of Corrections
13 for not less than one (1) year and not to exceed five (5) years and a fine of not more than
14 Two Thousand Five Hundred Dollars (\$2,500.00).

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

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

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

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

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

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

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

20 10. A person arrested by a law enforcement officer for a violation of this section
21 may be allowed to post a cash bail in an amount set by the arresting law enforcement
22 officer not to exceed the maximum fine provided by this section, or deposit a valid license

1 to operate a motor vehicle in exchange for an official receipt issued by the arresting
2 officer as provided for in Section 1111 et seq. of Title 22 of the Oklahoma Statutes.

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

4 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
5 dated 02-23-10 - DO PASS.