

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2723

By: Sherrer

4  
5  
6 AS INTRODUCED

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

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

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

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

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

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

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

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

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

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

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

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

13       2. Any person who, within ten (10) years after a previous  
14 conviction of a violation of this section or a violation pursuant to  
15 the provisions of any law of another state prohibiting the offense  
16 provided in subsection A of this section, is convicted of a second  
17 offense pursuant to the provisions of this section or has a prior  
18 conviction in a municipal criminal court of record for the violation  
19 of a municipal ordinance prohibiting the offense provided for in  
20 subsection A of this section and within ten (10) years of such  
21 municipal conviction is convicted pursuant to the provision of this  
22 section shall be deemed guilty of a felony and be sentenced to  
23 placement in the custody of the Department of Corrections for not  
24

1 less than one (1) year and not to exceed five (5) years and a fine  
2 of not more than Two Thousand 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 a actions that would be a violation of subsection A of  
18 this section or would be a violation pursuant to the provisions of  
19 any law of another state prohibiting the offense provided in  
20 subsection A of this section, is convicted of a violation of this  
21 section shall 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.

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

52-2-8971 CJB 01/11/10