

1 STATE OF OKLAHOMA

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

3 SENATE BILL 2021

By: Coates

4
5
6 AS INTRODUCED

7 An Act relating to motor vehicles; amending
8 47 OS.2001, Sections 11-902 and 751, as last amended
9 by Section 3, Chapter 310, O.S.L. 2009 and Section 4,
10 Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2009,
11 Sections 11-902 and 751), which relate to persons
12 under the influence of alcohol or other intoxicating
13 substance; creating the Brandon Burgett Act; deleting
14 time restriction for second offense; requiring blood
15 test of deceased fatality accident victims;
16 authorizing impound of license plate for certain
17 offense; directing report of blood test results by
18 medical personnel; authorizing impound of vehicle for
19 driving under the influence; providing for
20 noncodification; providing for codification; and
21 providing an effective date.

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

23 SECTION 1. NEW LAW A new section of law not to be
24 codified in the Oklahoma Statutes reads as follows:

25 This act shall be known and may be cited as the "Brandon Burgett
26 Act".

27 SECTION 2. AMENDATORY 47 O.S. 2001, Section 11-902, as
28 last amended by Section 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp.
29 2009, Section 11-902), is amended to read as follows:

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

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

11 2. Is under the influence of alcohol;

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

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

18 B. The fact that any person charged with a violation of this
19 section is or has been lawfully entitled to use alcohol or a
20 controlled dangerous substance or any other intoxicating substance
21 shall not constitute a defense against any charge of violating this
22 section.

23 C. 1. Any person who is convicted of a violation of the
24 provisions of this section shall be deemed guilty of a misdemeanor

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

10 2. Any person who, ~~within ten (10) years after a previous~~
11 ~~conviction of a violation of this section or a violation pursuant to~~
12 ~~the provisions of any law of another state prohibiting the offense~~
13 ~~provided in subsection A of this section,~~ is convicted of a second
14 offense pursuant to the provisions of this section or has a prior
15 conviction in a municipal criminal court of record for the violation
16 of a municipal ordinance prohibiting the offense provided for in
17 subsection A of this section and ~~within ten (10) years of such~~
18 ~~municipal conviction~~ is convicted pursuant to the provision of this
19 section shall be deemed guilty of a felony and shall participate in
20 an assessment and evaluation by an assessment agency or assessment
21 personnel certified by the Department of Mental Health and Substance
22 Abuse Services pursuant to Section 3-460 of Title 43A of the
23 Oklahoma Statutes and shall be sentenced to:
24

- 1 a. follow all recommendations made in the assessment and
2 evaluation for treatment at the defendant's expense,
3 or
4 b. placement in the custody of the Department of
5 Corrections for not less than one (1) year and not to
6 exceed five (5) years and a fine of not more than Two
7 Thousand Five Hundred Dollars (\$2,500.00), or
8 c. treatment, imprisonment and a fine within the
9 limitations prescribed in subparagraphs a and b of
10 this paragraph.

11 However, if the treatment in subparagraph a of this paragraph
12 does not include residential or inpatient treatment for a period of
13 not less than five (5) days, the person shall serve a term of
14 imprisonment of at least five (5) days.

15 3. Any person who is convicted of a second felony offense
16 pursuant to the provisions of this section shall participate in an
17 assessment and evaluation by an assessment agency or assessment
18 personnel certified by the Department of Mental Health and Substance
19 Abuse Services pursuant to Section 3-460 of Title 43A of the
20 Oklahoma Statutes and shall be sentenced to:

- 21 a. follow all recommendations made in the assessment and
22 evaluation for treatment at the defendant's expense,
23 two hundred forty (240) hours of community service and
24 use of an ignition interlock device, or

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

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

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

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

18 a. follow all recommendations made in the assessment and
19 evaluation for treatment at the defendant's expense,
20 followed by not less than one (1) year of supervision
21 and periodic testing at the defendant's expense, four
22 hundred eighty (480) hours of community service, and
23 use of an ignition interlock device for a minimum of
24 thirty (30) days, or

- 1 b. placement in the custody of the Department of
2 Corrections for not less than one (1) year and not to
3 exceed twenty (20) years and a fine of not more than
4 Five Thousand Dollars (\$5,000.00), or
- 5 c. treatment, imprisonment and a fine within the
6 limitations prescribed in subparagraphs a and b of
7 this paragraph.

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

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

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

21 7. In any case in which a defendant is charged with a second or
22 subsequent driving under the influence of alcohol or other
23 intoxicating substance offense within any municipality with a
24 municipal court other than a court of record, the charge shall be

1 presented to the county's district attorney and filed with the
2 district court of the county within which the municipality is
3 located.

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

20 E. When a person is sentenced to imprisonment in the custody of
21 the Department of Corrections, the person shall be processed through
22 the Lexington Assessment and Reception Center or at a place
23 determined by the Director of the Department of Corrections. The
24

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.
24 The agency or assessor shall, within seventy-two (72) hours from the

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

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

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

23 I. Any person who is found guilty of a felony violation of the
24 provisions of this section may be required to submit to electronic

1 monitoring as authorized and defined by Section 991a of Title 22 of
2 the Oklahoma Statutes.

3 J. Any person who, within ten (10) years after a previous
4 conviction of a violation of this section or a violation pursuant to
5 the provisions of law of another state prohibiting the offense
6 provided in subsection A of this section or a violation of a
7 municipal ordinance prohibiting the offense provided in subsection A
8 of this section, pleads guilty or nolo contendere or is convicted of
9 a violation of this section shall not be required to undergo the
10 alcohol and drug substance evaluation program required by subsection
11 G of this section. The court shall, as a condition of any sentence
12 imposed, including deferred and suspended sentences, require the
13 person to participate in and successfully complete all
14 recommendations from the evaluation, such as an alcohol and drug
15 substance abuse treatment program pursuant to Section 3-452 of Title
16 43A of the Oklahoma Statutes.

17 K. Any person who is found guilty of a violation of the
18 provisions of this section who has been sentenced by the court to
19 perform any type of community service shall not be permitted to pay
20 a fine in lieu of performing the community service.

21 L. When a person is found guilty of a violation of the
22 provisions of this section, the court shall order, in addition to
23 any other penalty, the defendant to pay a one-hundred-dollar
24 assessment to be deposited in the Drug Abuse Education and Treatment

1 Revolving Fund created in Section 2-503.2 of Title 63 of the
2 Oklahoma Statutes, upon collection.

3 M. 1. When a person is eighteen (18) years of age or older,
4 and is the driver, operator, or person in physical control of a
5 vehicle, and is convicted of violating any provision of this section
6 while transporting or having in the motor vehicle any child less
7 than eighteen (18) years of age, the fine shall be enhanced to
8 double the amount of the fine imposed for the underlying driving
9 under the influence (DUI) violation which shall be in addition to
10 any other penalties allowed by this section.

11 2. Nothing in this subsection shall prohibit the prosecution of
12 a person pursuant to Section 852.1 of Title 21 of the Oklahoma
13 Statutes who is in violation of any provision of this section.

14 SECTION 3. AMENDATORY 47 O.S. 2001, Section 751, as last
15 amended by Section 4, Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2009,
16 Section 751), is amended to read as follows:

17 Section 751. A. 1. Any person who operates a motor vehicle
18 upon the public roads, highways, streets, turnpikes or other public
19 place or upon any private road, street, alley or lane which provides
20 access to one or more single or multi-family dwellings within this
21 state shall be deemed to have given consent to a test or tests of
22 such person's blood or breath, for the purpose of determining the
23 alcohol concentration as defined in Section 756 of this title, and
24 such person's blood, saliva or urine for determining the presence or

1 concentration of any other intoxicating substance therein as defined
2 in this section, if arrested for any offense arising out of acts
3 alleged to have been committed while the person was operating or in
4 actual physical control of a motor vehicle upon the public roads,
5 highways, streets, turnpikes or other public place or upon any
6 private road, street, alley or lane which provides access to one or
7 more single or multi-family dwellings while under the influence of
8 alcohol or other intoxicating substance, or the combined influence
9 of alcohol and any other intoxicating substance, or if the person is
10 involved in a traffic accident that resulted in the immediate death
11 or serious injury of any person and is removed from the scene of the
12 accident to a hospital or other health care facility outside the
13 State of Oklahoma before a law enforcement officer can effect an
14 arrest. Any person operating a motor vehicle who dies as a result
15 of a fatality accident shall have their blood tested for alcohol
16 concentration as defined in Section 756 of this title.

17 2. A law enforcement officer, having reasonable grounds to
18 believe that such person was operating or in actual physical control
19 of a motor vehicle while under the influence may direct the
20 administration of or administer the test or tests.

21 As used in this title, the term "other intoxicating substance"
22 shall mean any controlled dangerous substance as defined in the
23 Uniform Controlled Dangerous Substances Act and any other substance,
24 other than alcohol, which is capable of being ingested, inhaled,

1 injected or absorbed into the human body and is capable of adversely
2 affecting the central nervous system, vision, hearing or other
3 sensory or motor functions.

4 B. The law enforcement agency by which the arresting officer is
5 employed may designate, in accordance with the rules of the Board of
6 Tests for Alcohol and Drug Influence, hereinafter referred to as the
7 Board, whether blood or breath is to be tested for the alcohol
8 concentration thereof, and whether blood, saliva or urine is to be
9 tested for the presence or concentration of any other intoxicating
10 substance therein.

11 In the event the law enforcement agency does not designate the
12 test to be administered, breath shall be the substance tested for
13 alcohol concentration. Blood may also be tested to determine the
14 alcohol concentration thereof in the event that breath cannot be
15 tested to determine the alcohol concentration thereof because of the
16 lack of an approved device or qualified person to administer a
17 breath test or because such breath test for any other reason cannot
18 be administered in accordance with the rules of the Board.

19 In the event the law enforcement agency does not designate the
20 test to be administered, blood, saliva or urine shall be the
21 substance tested for the presence or concentration of any other
22 intoxicating substance or the combination of alcohol and any other
23 intoxicating substance.

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1 C. In the event the person is incapable of submitting to and
2 successfully completing, by reason of illness or injury or other
3 physical disability, the test to be administered, an alternate test
4 may be administered in accordance with the rules of the Board.

5 D. Any person who is unconscious or otherwise incapable of
6 refusing to submit to a test of such person's blood or breath to
7 determine the alcohol concentration thereof, or to a test of such
8 person's blood, saliva or urine to determine the presence or
9 concentration of any other intoxicating substance therein, shall be
10 deemed not to have withdrawn the consent provided by subsection A of
11 this section, and such test may be administered as provided herein.

12 An unconscious person who has been issued a citation by a law
13 enforcement officer for one of the offenses listed in subsection A
14 of this section is arrested for purposes of this section. The
15 arresting officer must leave a copy of the citation with the
16 arrested person which may be accomplished by handing it to the
17 arrested person, or by leaving it with the personal effects of the
18 arrested party, so as to inform the unconscious person of the
19 arrest.

20 Any person who has been arrested for one of the offenses listed
21 in subsection A of this section who is unconscious or injured and
22 who requires immediate medical treatment as determined by a treating
23 physician may be released on the person's own recognizance for
24 medical reasons by the arresting officer. The arresting officer who

1 releases an arrested person on the person's own recognizance must
2 indicate the release on the face of the citation. Any person
3 released on his or her own recognizance for medical reasons shall
4 remain at liberty pending the filing of charges.

5 E. In addition to any test designated by the arresting officer,
6 the arrested person may also designate any additional test to be
7 administered to determine the concentration of alcohol, or the
8 presence or concentration of any other intoxicating substance or the
9 combination of alcohol and any other intoxicating substance. The
10 cost of such additional test shall be at the expense of the arrested
11 person.

12 A sufficient quantity of any specimen obtained at the
13 designation of the arrested person shall be available to the law
14 enforcement agency employing the arresting officer. Such specimens
15 shall be treated in accordance with the rules applicable to the
16 specimens obtained by an arresting officer.

17 F. When a law enforcement officer has determined that the blood
18 alcohol content of an individual is to be tested for the presence or
19 concentration of alcohol, other intoxicating substance, or the
20 combination of alcohol and any other intoxicating substance, the law
21 enforcement officer shall inform the individual to be tested that
22 the withdrawal of blood shall only be performed by certain medical
23 personnel as provided for in Section 752 of this title.

24

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-205.3 of Title 47, unless
3 there is created a duplication in numbering, reads as follows:

4 A. When any law enforcement officer arrests a person for
5 operating a motor vehicle while the person's driver license or
6 permit has been suspended or revoked pursuant to Section 6-205 of
7 this title, or Section 753 of this title, and if the motor vehicle
8 operated by the person is owned in whole or part by the person, the
9 motor vehicle license plate shall be impounded by the law
10 enforcement officer for no less than ninety (90) days.

11 B. If the court determines it is in the best interest of
12 dependents of the offender, the court shall instruct the Oklahoma
13 Tax Commission to issue a temporary license plate to the vehicle,
14 and the license plate shall indicate that the original plate has
15 been impounded.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 752.1 of Title 47, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Any licensed medical doctor, licensed osteopathic physician,
20 licensed chiropractic physician, registered nurse, licensed
21 practical nurse, physician's assistant, certified by the State Board
22 of Medical Licensure and Supervision, an employee of a hospital or
23 other health care facility authorized by the hospital or health care
24 facility to withdraw blood, or other qualified person authorized by

1 the Board of Tests for Alcohol and Drug Influence who withdraws
2 blood from any person involved in a motor vehicle accident shall
3 notify, as soon as reasonably possible, the nearest peace officer or
4 law enforcement agency if the health care provider has reason to
5 believe, as a result of any test performed in the course of medical
6 treatment, that the:

7 1. Person's blood alcohol concentration meets or exceeds the
8 limits under Section 756 of this title; or

9 2. Person is younger than twenty-one (21) years of age and has
10 any measurable blood, breath, or urine alcohol concentration in the
11 person's body.

12 B. The report under subsection A shall consist of the:

13 1. Name of the person being treated;

14 2. Date and time of the administration of the test; and

15 3. Results disclosed by the test.

16 C. A health care provider participating in good faith in making
17 a report or assisting an investigator from a law enforcement agency
18 pursuant to this section is immune from any liability, civil or
19 criminal, that otherwise might result by reason of those actions.

20 D. A report under subsection B may not be used to support a
21 finding of probable cause that a person who is not a driver of a
22 vehicle has committed an offense.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 11-902c of Title 47, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The Department of Public Safety shall impound any motor
5 vehicle involved in the commission of an eligible offense as
6 provided in Section 11-902 of Title 47 of the Oklahoma Statutes.
7 The provisions of this section shall apply to any person who has
8 been previously convicted of an offense under Section 11-902 of
9 Title 47 of the Oklahoma Statutes and who on or after the effective
10 date of this act is convicted of an offense under Section 11-902 of
11 Title 47 of the Oklahoma Statutes within ten (10) years of any prior
12 conviction under Section 11-902 of Title 47 of the Oklahoma
13 Statutes.

14 B. The impoundment of the motor vehicle shall be for the same
15 time period as any revocation of driving privileges pursuant to
16 Section 6-205.1 of Title 47 of the Oklahoma Statutes.

17 SECTION 7. This act shall become effective November 1, 2010.

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