

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1587

BY: LITTLEFIELD

AS INTRODUCED

AN ACT RELATING TO MOTOR VEHICLES; AMENDING 47 O.S. 1981, SECTIONS 6-117, AS LAST AMENDED BY SECTION 4, CHAPTER 349, O.S.L. 1989, 6-201, AS AMENDED BY SECTION 28, CHAPTER 219, O.S.L. 1990, 6-204, AS AMENDED BY SECTION 31, CHAPTER 219, O.S.L. 1990, 6-205, AS LAST AMENDED BY SECTION 1, CHAPTER 286, O.S.L. 1990, SECTION 33, CHAPTER 219, O.S.L. 1990, 6-210, AS AMENDED BY SECTION 37, CHAPTER 219, O.S.L. 1990 AND 6-211, AS LAST AMENDED BY SECTION 38, CHAPTER 219, O.S.L. 1990 (47 O.S. SUPP. 1990, SECTIONS 6-117, 6-201, 6-204, 6-205, 6-205.2, 6-210 AND 6-211), WHICH RELATE TO DRIVER'S LICENSES; MODIFYING INFORMATION WHICH MAY BE A PART OF DRIVING RECORDS; DELAYING APPLICATION FOR LICENSE UNDER CERTAIN CIRCUMSTANCES; MODIFYING PROVISIONS RELATING TO COURT ORDERED LICENSE SURRENDER; CLARIFYING STATUTORY REFERENCE; MODIFYING TYPES OF TRAFFIC OFFENSES FOR WHICH A PERSON MAY BE DISQUALIFIED FROM OPERATING A CLASS A, B OR C COMMERCIAL VEHICLE; AUTHORIZING CERTAIN DRIVER IMPROVEMENT COURSES; MODIFYING CERTAIN PROCEDURES RELATING TO DEPARTMENT OF PUBLIC SAFETY ACTIONS WHICH ADVERSELY AFFECT A PERSON'S LICENSE OR DRIVING PRIVILEGE; PROVIDING FOR CODIFICATION;

PROVIDING EFFECTIVE DATES; AND DECLARING AN
EMERGENCY.

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

SECTION 1. AMENDATORY 47 O.S. 1981, Section 6-117, as last amended by Section 4, Chapter 349, O.S.L. 1989 (47 O.S. Supp. 1990, Section 6-117), is amended to read as follows:

Section 6-117. (a) The Department of Public Safety shall file every application for a license received by it and shall maintain suitable indexes containing, in alphabetical order:

1. All applications denied and on each thereof note the reasons for such denial; and
2. All applications granted; and
3. The name of every licensee whose license has been suspended or revoked by the Department and after each such name note the reasons for such action.

(b) The Department shall also file all accident reports and abstracts of court records of convictions received by it pursuant to the laws of this state and maintain convenient records of such records and reports or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the Department of Public Safety upon any application for license or renewal of license and at other suitable times. Any abstract, index, or other entry relating to a driving record according to the licensing authority in another state or a province of Canada, may be posted upon the driving record of any resident of this state when notice thereof is received by documentation or by electronic transmission.

(c) The Commissioner may cause any or all records kept by the Department of Public Safety to be photographed, microphotographed, photostated, or reproduced on film. Such film or reproducing material shall be of durable material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all detail.

(d) Such photostatic copy, photograph, microphotograph, or photographic film of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy thereof shall be deemed to be a transcript, exemplification, or certified copy of the original. In any driver license proceeding in this state, a certified copy of a person's driving record or any portion thereof which is on file with the Department and relevant to the proceeding, including any abstract, index or other entry received from the licensing authority of another jurisdiction by documentation or electronic transmission, shall be admissible as prima facie evidence, notwithstanding any other provision of law.

(e) If such photostatic copy, photograph, microphotograph, or reproductions on films shall be placed in conveniently accessible files and provisions made for preserving, examining, and using same, the Commissioner is empowered to authorize the disposal, archival storage, or destruction of such records or papers.

(f) Officers and employees of the Department designated by the Commissioner, for the purpose of administering the motor vehicle laws, are authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(g) The Commissioner and such officers of the Department as he may designate are hereby authorized to prepare under the seal of the Department and deliver upon request a certified copy of any record

of the Department, charging a fee of Three Dollars (\$3.00) per sheet, photograph, or any part of a sheet or photograph of any such document or similar document so certified. The certified copy shall be admissible in any proceeding in any court in like manner as the original thereof.

(h) The Department of Public Safety upon request shall prepare and furnish a summary to any person of the traffic record of any person subject to the provisions of the motor vehicle laws of this state. Said summary shall include the enumeration of any motor vehicle accidents, reference to convictions for violations of motor vehicle laws, and any action taken against the person's privilege to operate a motor vehicle, as shown by the files of the Department for the three (3) years preceding the date of the request. For each summary furnished, the Department shall collect the sum of Five Dollars (\$5.00).

(i) There is hereby created in the State Treasury a revolving fund for the Department of Public Safety to be designated the Department of Public Safety Revolving Fund. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all money received by the Department of Public Safety from sale of surplus property, insurance and other reimbursements for damaged property, for the services of highway patrol personnel as approved by the Department if such personnel are representing the Department or are in any uniform of the Department, turnpike enforcement, fees and costs paid by subscribers to the Oklahoma Law Enforcement Telecommunications Systems, refund of federal gasoline tax, court-ordered forfeitures, salvage vehicle inspection and certification fees, inspections fees provided for in subsection H of Section 1111 of this title, reimbursements by state agencies for the use of Department of Public Safety airplanes, fees for meals from users of the Robert R. Lester Law Enforcement Training Academy facilities and federal funds unless otherwise provided by federal

law or regulation. Except as provided for in subsection (j) of this section, all monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Public Safety for the operating expenses of the Department and for vehicles, equipment, personnel and other operating expenses for turnpike enforcement. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

(j) All monies accruing to the credit of the Department of Public Safety Revolving Fund from inspection fees provided for in subsection H of Section 1111 of this title shall be budgeted and expended solely for the purpose of inspections by the Department of Public Safety provided for in Section 1111 of this title and for contracting with local law enforcement agencies for conducting the inspections provided for in Section 1111 of this title.

(k) All monies received by the Commissioner of Public Safety, his officers and his employees shall be remitted to the State Treasurer to be credited to the General Revenue Fund in the State Treasury except as otherwise provided in this section.

SECTION 2. AMENDATORY 47 O.S. 1981, Section 6-201, as amended by Section 28, Chapter 219, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-201), is amended to read as follows:

Section 6-201. A. The Department of Public Safety is hereby authorized to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

B. Upon determination that fraudulent information was used to apply for or obtain a Class A, B or C driver license, the Department shall disqualify said applicant or licensee from applying for said Class A, B or C driver license for a minimum of sixty (60) days.

C. Upon such cancellation, the licensee must surrender the driver's license so canceled to the Department.

~~C.~~ D. Any person whose license is canceled under the provisions of this section shall have the right to an appeal as provided in Section 6-211 of this title.

SECTION 3. AMENDATORY 47 O.S. 1981, Section 6-204, as amended by Section 31, Chapter 219, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-204), is amended to read as follows:

Section 6-204. A. Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the driver's license of such person by the Department as provided in Section 6-205 of this title, the court in which such conviction occurred may require the surrender to it of all driver's licenses then held by the person so convicted and the court shall thereupon forward the same together with a record of such conviction to the Department. Provided however, if the conviction is for driving or being in actual physical control of a motor vehicle while under the influence of alcohol or any other intoxicating substance, the court need not require the surrender of the driver's license, but shall forward a record of the conviction to the Department.

B. Every court, including courts not of record, having jurisdiction over offenses committed under this act, or any other act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward to the Department a record of the conviction of any person in said court for a violation of any said laws other than regulations governing standing or parking, and may recommend the suspension of the driver's license of the person so convicted.

C. For the purposes of this chapter the term "conviction" shall mean a final conviction. Also, for the purposes of this chapter a forfeiture of bail or collateral deposited to secure a defendant's

appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

SECTION 4. AMENDATORY 47 O.S. 1981, Section 6-205, as last amended by Section 1, Chapter 286, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-205), is amended to read as follows:

Section 6-205. A. The Department of Public Safety shall forthwith revoke the driver's license or driving privilege of any person upon receiving a record of conviction in any court of any of the following offenses, when such conviction has become final:

1. Manslaughter or negligent homicide resulting from the operation of a motor vehicle;
2. Driving or being in actual physical control of a motor vehicle while under the influence of alcohol or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance provided however, the Department shall not additionally revoke such license pursuant to this subsection if the person's driving privilege has been revoked because of a test result or test refusal pursuant to ~~an implied consent law~~ Sections 753 or 754 of this title arising from the same circumstances which resulted in the conviction;
3. Any felony during the commission of which a motor vehicle is used;
4. Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
5. Perjury or the making of a false affidavit or statement under oath to the Department under the Uniform Vehicle Code, Section 1-101 et seq. of this title, or under any other law relating to the ownership or operation of motor vehicles;
6. A felony conviction for unlawfully possessing, distributing, dispensing, manufacturing or trafficking in a controlled dangerous

substance as defined in the Uniform Controlled Dangerous Substances Act; or

7. A misdemeanor conviction for unlawfully possessing a controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act while in actual physical control of a motor vehicle.

B. The first license revocation under any provision of this section except for paragraphs 2 and 7 of subsection A of this section shall be for a period of one (1) year. Such period shall not be modified.

C. A license revocation under any provision of this section except for paragraph 2 of subsection A of this section shall be for a period of three (3) years if a prior revocation under this section, except under paragraph 2 of subsection A of this section commenced within the preceding five-year period as shown by the Department's record. Such period shall not be modified.

D. The period of license revocation under paragraph 2 of subsection A of this section shall be governed by the provisions of Section 6-205.1 of this title.

E. The license revocation under paragraph 7 of subsection A of this section shall be for a period of thirty (30) days. Such period shall not be modified.

SECTION 5. AMENDATORY Section 33, Chapter 219, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-205.2), is amended to read as follows:

Section 6-205.2 A. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for a period of not less than one (1) year upon receiving a record of such person's conviction in any court of any of the following offenses, when such conviction has become final:

1. Driving, operating or being in actual physical control of a Class A, B or C commercial motor vehicle while having a blood or

breath alcohol concentration, as defined in Section 756 of Title 47 of the Oklahoma Statutes, of four-hundredths (0.04) or more;

2. Refusing to submit to a test for determination of alcohol concentration, as required by Section 751 of Title 47 of the Oklahoma Statutes, while operating a Class A, B or C commercial motor vehicle;

3. Driving or being in actual physical control of a Class A, B or C commercial motor vehicle while under the influence of alcohol or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance;

4. Knowingly failing to stop and render aid as required under the laws of this state in the event of a motor vehicle accident which occurs while operating a Class A, B or C commercial motor vehicle; or

5. Any felony during the commission of which a Class A, B or C commercial motor vehicle is used, except a felony involving the manufacture, distribution or dispensation of a controlled dangerous substance.

B. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for a period of not less than three (3) years upon receiving a record of such person's conviction in any court of any of the following offenses, committed in connection with the operation of a motor vehicle which is required to be placarded for hazardous materials under 49 C.F.R. Part 172, subpart F, when such conviction has become final:

1. Driving, operating or being in actual physical control of a Class A, B or C commercial motor vehicle while having a blood or breath alcohol concentration, as defined in Section 756 of Title 47 of the Oklahoma Statutes, of four-hundredths (0.04) or more;

2. Refusing to submit to a test for determination of alcohol concentration, as required by Section 751 of Title 47 of the

Oklahoma Statutes, while operating a Class A, B or C commercial motor vehicle;

3. Driving or being in actual physical control of a Class A, B or C commercial motor vehicle while under the influence of alcohol or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance;

4. Knowingly failing to stop and render aid as required under the laws of this state in the event of a motor vehicle accident which occurs while operating a Class A, B or C commercial motor vehicle; or

5. Any felony during the commission of which a Class A, B or C commercial motor vehicle is used, except a felony involving the manufacture, distribution or dispensation of a controlled dangerous substance.

C. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for life upon receiving a record of such person's conviction in any court of any of the following offenses after a former conviction of any of the following offenses, when such second conviction has become final:

1. Driving, operating or being in actual physical control of a Class A, B or C commercial motor vehicle while having a blood or breath alcohol concentration, as defined in Section 756 of Title 47 of the Oklahoma Statutes, of four-hundredths (0.04) or more;

2. Refusing to submit to a test for determination of alcohol concentration, as required by Section 751 of Title 47 of the Oklahoma Statutes, while operating a Class A, B or C commercial motor vehicle;

3. Driving or being in actual physical control of a Class A, B or C commercial motor vehicle while under the influence of alcohol or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance;

4. Knowingly failing to stop and render aid as required under the laws of this state in the event of a motor vehicle accident which occurs while operating a Class A, B or C commercial motor vehicle; or

5. Any felony during the commission of which a Class A, B or C commercial motor vehicle is used, except a felony involving the manufacture, distribution or dispensation of a controlled dangerous substance.

The Department of Public Safety may promulgate rules and regulations establishing conditions under which a disqualification for life pursuant to the provisions of this paragraph may be reduced to a period of not less than ten (10) years.

D. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for life upon receiving a record of such person's conviction in any court for any felony related to the manufacture, distribution or dispensation of a controlled dangerous substance in the commission of which a Class A, B or C commercial motor vehicle is used, when such conviction has become final.

E. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for sixty (60) days upon receiving a record of such person's second conviction in any court for a serious traffic offense arising out of separate transactions or occurrences within a three-year period, when such convictions have become final. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for one hundred twenty (120) days upon receiving a record of such person's third conviction in any court for a serious traffic offense arising out of separate transactions or occurrences within a three-year period, when such convictions have become final. As used in this subsection, "serious traffic

offense" shall mean any of the following offenses committed while operating a commercial motor vehicle:

1. Speeding in excess of fifteen (15) miles per hour over the limit;
2. Reckless driving as defined in Section 11-901 of Title 47 of the Oklahoma Statutes; ~~or~~
3. Any traffic offense committed that results in or in conjunction with a motor vehicle accident resulting in a fatality;
4. Erratic or unsafe lane change;
5. Following too close; or
6. Violating a lawful out of service order issued by the Department as authorized by the Commissioner of Public Safety.

F. Any person who drives a Class A, B or C commercial motor vehicle on any public roads, streets, highways, turnpikes or any other public place of this state at a time when he is disqualified or when his privilege to do so is canceled, denied, suspended or revoked shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. Each act of driving as prohibited shall constitute a separate offense.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-206.1 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Driver improvement courses or defensive driving courses shall be offered only by nonprofit educational institutions of higher learning, governmental or nonprofit organizations.

B. Driver improvement or defensive driving course is a course which offers an educational setting, provides for driving concepts which encourage attitude or behavioral changes in the responsibility of operating a motor vehicle in a safe and responsible manner.

C. It shall be the responsibility of the institution or organization to provide:

1. Adequate facilities which meet or exceed state and local fire, health and safety codes;

2. Adequate equipment, in good working order, and instructional materials for such courses;

3. Qualified instructors who shall:

- a. possess an undergraduate degree and have nine (9) college or university credit hours in traffic safety education, unless said instructor has instructed a complete course of instruction within the preceding twelve (12) months prior to the effective date of this section for an organization or institution previously recognized for point credits by the Department of Public Safety,
- b. have no alcohol or drug related convictions or revocations in the past five (5) years,
- c. have no more than five (5) points accumulated on the driving record in the past three years in accordance with the Oklahoma Mandatory Point System,
- d. have a valid Oklahoma driver license,
- e. complete a course of training through the approved organization or institution;

4. A course of study designed to inform the participant of driver improvement and defensive driving concepts while encouraging attitude or behavioral changes in the responsibility of operating a motor vehicle in a safe and responsible manner. The curriculum, which means the complete lesson plans which include instructional strategy, presentation methods and resources utilized to incorporate the concepts of traffic safety, must provide for but not limited to the following:

- a. driver personality traits - behavioral attitudes,

- b. driver qualifications and limitations,
- c. effects of alcohol and other drugs,
- d. current accident prevention and defensive driving techniques: speed control, perception, reactions, lane positioning, safe turning and passing, occupant restraints, following distance and rules of the road; and

5. Provide at least eight (8) hours of classroom instruction.

D. Organizations or institutions desirous of making application shall submit the following to the Department of Public Safety:

- 1. evidence of organizational or institutional status which meet statutory requirements,
- 2. copy of proposed course curriculum which includes lesson objectives, presentation materials, instructional strategy and resources utilized,
- 3. certification that instructors meet statutory requirements, and
- 4. upon Department of Public Safety approval said organization or institution shall be considered for point credits as set forth in this section.

E. The Department of Public Safety is authorized to grant a two (2) point credit towards the Oklahoma Point System Regulations to any person who successfully completes a course pursuant to this section provided only one such course shall be acknowledged once every twenty-four (24) months.

F. The Department upon giving of notice and hearing may decline to grant credit points to any organization or institution for:

- 1. Unethical conduct of an instructor or official of an institution or organization;
- 2. Failure to satisfactorily resolve citizens complaints;
- 3. Falsify or misrepresent any document or information to the Department or student;

4. Failure of organization or instructor to meet statutory requirements;

5. Conflict of interest by the organization or institution and/or its personnel; or

6. Failure of organization, institution or instructor to continue to meet statutory requirements as provided for in this section.

G. Course enrollment will be limited to not more than thirty (30) students with an enrollment fee of Twenty-five Dollars (\$25.00) per student.

H. Enrollment in the course shall not be limited to persons ordered to enroll, attend and successfully complete the course.

I. The organization or institution shall within fifteen (15) days of the completion certify to the Department of Public Safety all persons who successfully complete the course on a form approved or furnished by the Department. This shall include the persons full name, address, date of birth and driver license number.

J. Department personnel shall be admitted to any course without charge, upon request and display of proper credentials.

K. Each organization or institution shall develop auditing procedures which could be utilized to show compliance with this section.

L. Any point credit allowed must comply with the Department's Point System Regulations.

SECTION 7. AMENDATORY 47 O.S. 1981, Section 6-210, as amended by Section 37, Chapter 219, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-210), is amended to read as follows:

Section 6-210. Any resident or nonresident whose driver's license or ~~right or~~ privilege to operate a motor vehicle in this state has been denied, cancelled, suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license, permit or registration certificate issued by any

other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-210.1 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. In the interests of public safety and in order to provide an effective and speedy resolution of issues relating to individual driving privileges, the Legislature declares that this section and Section 6-211 of this title shall provide the exclusive procedure in all Department actions which adversely affect a person's driver license or driving privilege.

B. The serving of any notice or any order upon the recipient of such actions may be made in accordance with Sections 2-116, 753 and 754 of this title.

C. Any person whose driver's license or driving privilege has been withdrawn, denied, canceled, suspended or revoked, in whole or in part for any reason, may file a written request for administrative review by the Department in accordance with this section.

D. Such written request for administrative review may be served upon the Department in person or by mail, but must be received by the Department within fifteen (15) days from the date the person is given notice of the action affecting the license or privilege. The burden shall be upon the person to show the request for administrative review was timely served upon the Department.

E. The written request for administrative review shall be served upon the Division of the Department of Public Safety which issued the notice or order, or as may be otherwise prescribed in the notice or order.

F. The written request shall contain the following:

1. The licensee's full legal name, driver license number, if any, date of birth, full address and telephone number, if any;

2. A reference to the specific license denial, cancelation, suspension or revocation action for administrative review;

3. The specific factual and/or legal reason(s) showing why the Department action is not justified;

4. The date of the request;

5. The signature of the requestor or his designated attorney.

G. If the request is not timely received, the Department may accordingly issue an Administrative Review Order denying review for this reason. However, the Department may in its discretion grant administrative review for just cause.

H. If the request is timely received, the Department shall conduct an administrative review of the action as provided herein.

I. The administrative review shall be informal and the reviewer shall review the issues presented in the request in light of records on file with the Department. No adversary hearing shall be scheduled and neither the rules of discovery, nor the rules of evidence shall apply to the administrative review.

J. During an administrative review, the Department may conduct interviews by telephone or in person and may in its discretion informally meet with the requestor, the attorney for the requestor and others to review the merits of the license action. The Department may receive additional information or documentation from the requestor, department personnel, the licensing authority in another jurisdiction and others to substantiate whether there is a factual or legal reason why the withdrawal, denial, cancelation, suspension or revocation action should not be taken.

K. The Department may stay any action of driver license withdrawal, denial, cancelation, suspension or revocation pending administrative review and may grant temporary driving privileges if satisfied that the person is otherwise eligible.

L. If the Department finds a factual or legal reason why the action should not be taken, it shall enter an Administrative Review Order vacating the action and include the reason therefor in the Order.

M. If the Department does not find sufficient factual or legal reason to vacate the action, it shall enter an Administrative Review Order affirming the action, with an effective date of the license withdrawal, denial, cancelation, suspension or revocation specified thereon.

SECTION 9. AMENDATORY 47 O.S. 1981, Section 6-211, as last amended by Section 38, Chapter 219, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-211), is amended to read as follows:

Section 6-211. A. ~~Any person denied a license, or whose license has been canceled, suspended or revoked by the Department, except where such cancellation, denial or revocation is mandatory, under the provisions of~~ aggrieved by an Administrative Review Order issued by the Department as provided in Section 6-205 6-210.1 of this title, shall have the right to file a petition in the district court as hereinafter provided. Such district court is hereby vested with original jurisdiction to hear said petition, ~~except that in case of an appeal from a driver's license revocation under the implied consent laws as provided in Sections 753 and 754 of this title, the court is hereby vested with appellate jurisdiction and shall hear said petition de novo.~~ Provided however, no petition shall be filed, nor shall the court consider the merits of such petition unless a copy of the Administrative Review Order issued by the Department as provided for in Section 6-210.1 of this title is attached thereto.

B. The petition shall be filed in said district court within fifteen (15) days after the Administrative Review Order has been served. it shall be the duty of the district court to enter an order setting same for hearing not less than fifteen (15) days and

not more than thirty (30) days from the date the petition is filed.

A true copy of petition and order for hearing shall be served forthwith by the petitioner or attorney for the petitioner upon the Legal Division at the Department of Public Safety, Oklahoma City, Oklahoma in person or by mail.

C. The hearing shall be a special proceeding conducted by the court de novo without a jury.

D. Venue shall be as follows:

1. A person ~~whose driving privilege or license is denied, canceled or suspended due to~~ aggrieved by Department action for inability to meet standards prescribed by law, or due to an out-of-state conviction or violation, or due to an excessive point accumulation on the traffic record, or for an unlawful license issued, may ~~appeal~~ petition the district court in the county in which he resides.

~~E. 2. Any person whose license or driving privilege is canceled, denied, suspended or revoked may appeal to~~ aggrieved by Department action taken as a result of conviction or failure to appear in court in this state, or under the implied consent laws of this state, may petition the district court in the county in which the offense was committed upon which the Department based its order.

~~D. A person whose license is revoked as a result of a test refusal or test result pursuant to Section 753 or 754 of this title may appeal to the district court in the county in which the arrest occurred relating to the test refusal or test result, as shown by the records of the Department.~~

3. A person aggrieved by Department action taken under the Compulsory Insurance Law or Financial Responsibility Law of this state may petition the district court in the county where the offense or accident occurred.

4. In all other cases venue shall be in the county of petitioner's resident within this state.

~~E. The petition shall be filed in said district court within thirty (30) days after the order has been served upon the licensee except a petition relating to an implied consent revocation shall be filed within thirty (30) days after the Department gives notice to the licensee that the revocation is sustained as provided in Section 754 of this title. It shall be the duty of the district court to enter an order setting same for hearing not less than fifteen (15) days and not more than thirty (30) days from the date the petition is filed. A certified copy of petition and order for hearing shall be served forthwith by the clerk of said court upon the Commissioner of Public Safety by certified mail at the Department of Public Safety, Oklahoma City, Oklahoma~~ Upon considering a petition where the Department has denied administrative review, the court shall first decide whether the request for administrative review was timely served upon the Department as required by Section 6-210.1 of this title. If the court determines the request was timely served, or in the event the petitioner shows the court just cause for failing to timely serve the request as required by Section 6-210.1 of this title, the court shall proceed to hear the merits of the petition as hereinafter provided. If the court finds the request for administrative review was not timely served upon the Department as required by Section 6-210.1 and the petitioner fails to show sufficient cause therefor to the court, the petition for de novo hearing on the merits of the license action taken by the Department shall be denied.

~~F. At a hearing on a revocation by the Department under the implied consent laws as provided in Section 6-205.1, 753 and 754 of this title, the court shall not consider the merits of the revocation action unless a written request for an administrative hearing was timely submitted to the Department as provided in Section 754 of this title and the Department entered an order denying the hearing or sustaining the revocation.~~

~~G.~~ Upon a hearing relating to a ~~revocation~~ Department action pursuant to a conviction ~~for an offense listed under Section 6-205 of this title~~, the court shall not consider the propriety or merits of the ~~revocation~~ action except as to the correct identity of the person convicted as shown by records of the Department. The court shall not consider a collateral attack upon the merits of any traffic or criminal conviction, bond forfeiture, or other basis for the license action as shown by the records of the Department, which could have been timely appealed to the appropriate court or authority.

~~H.~~ ~~In the event the Department declines to modify a revocation order issued pursuant to Section 753, 754, paragraph 2 of subsection A of Section 6-205 or Section 6-205.1 of this title, a petition therefor may be included with the appeal or separately~~ G. The petition may include a request for the court to grant a modification of the license action in case of extreme and unusual hardship for a reason provided by Section 754.1 of this title or a separate petition therefor may be filed at any time and said. The district court may in its discretion modify the ~~revocation as provided for license actions for the reasons~~ in Section ~~755~~ 754.1 of this title except for any ~~revocation~~ period which is not subject to modification as provided in ~~Section~~ Sections 6-205, 6-205.1 and 6-205.2 of this title or any other provision of law and the petitioner is otherwise eligible for a license to drive.

~~H.~~ H. The court shall take testimony and examine the facts and circumstances, including all of the records on file in the office of the Department of Public Safety relative to the offense committed and the driving record of said licensee petitioner, and determine from said facts, circumstances and records whether the petitioner is entitled to a license or shall be subject to the order of withdrawal of driving privileges, denial, cancellation, suspension or revocation issued by the Department. The court may also determine

whether, from the licensee's previous driving record, said order was for a longer period of time than ~~such facts and circumstances~~ warranted by law. In case the court finds that the order was not justified, the court may ~~sustain the appeal~~, vacate the order of the Department and direct that the license be restored to the petitioner. The court may, in case it determines the order was justified, but that the period of the ~~suspension~~ action was excessive under the law, enter an order ~~modifying~~ correcting the same.

~~J.~~ I. The testimony of any hearing pursuant to this section ~~shall~~ may be taken by the court stenographer and preserved for the purpose of appeal and, in case the Department files notice of appeal from the order of the court as provided herein, the court shall order and direct the court clerk to prepare and furnish a complete transcript of all pleadings and proceedings, together with a complete transcript taken at said hearing at no cost to the Department, except the cost of transcribing.

~~K.~~ J. In order to stay ~~or supersede~~ any order of withdrawal of driving privileges, cancelation, suspension or revocation by the Department, the petitioner may ~~at the time of filing his petition execute and file an appeal bond in the sum of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00) with one or more sureties, with the clerk of the court, to be approved by the court clerk. A certified copy of the bond with the approval of the court clerk endorsed thereon shall be served~~ serve a request therefor upon the Department along with the notice of hearing and petition.

~~Said bond shall be to the State of Oklahoma and conditioned that appellant will prosecute said appeal with due diligence and during pendency of said appeal abide by and not violate any of the laws of the State of Oklahoma in the operation of a motor vehicle on the highways, and that appellant will abide by and perform the final~~

~~judgment of the court therein, and in case said appeal is finally denied said appellant will pay all court costs incurred in said appeal in the district court. If the petitioner is convicted of a traffic offense during the pendency of said appeal and fails to prosecute said appeal with due diligence, his appeal bond may be forfeited to the court fund upon application by the district attorney or the Attorney General and after hearing before the court in which his appeal is pending~~ Following receipt of such request, notice of hearing and petition, the Department shall, if the petitioner is otherwise eligible, grant the request and temporarily restore any driving privileges surrendered as a result of the Department's Administrative Review Order, pending the decision of the district court.

K. In the event the Department action has been stayed pending the district court hearing, the Department action shall be placed into effect immediately upon the district court rendering a decision sustaining the Department action and the petitioner shall have the duty to forthwith surrender any evidence of driving privilege to the Department representative appearing in court, unless the court by order specifies another date for the Department action to be placed into effect.

~~L. After filing and approval of said bond and the furnishing thereof to the Department as hereby provided, the Department shall restore to him any valid driver's license theretofore surrendered and he shall be permitted under such license to operate a motor vehicle upon the highways pending said appeal, under terms and conditions as prescribed in said bond; provided, however, if the order of the Department is sustained in final judgment, the court shall, in such final judgment, enter an order extending the period of suspension or revocation for such time as the appellant was permitted to operate motor vehicles under the provisions of said bonds, and the court shall also in such final judgment direct and~~

~~require the immediate surrender to it of such license or licenses which shall be by the court forthwith forwarded to the Department of Public Safety~~ A person granted temporary driving privileges during administrative review by the Department or district court hearing shall not be entitled to credit relating to the license action for such driving period. A person whose driving privilege is under suspension, revocation or other action according to the records of the Department shall be entitled to credit relating to the license action only during the time that the person's driver license is physically surrendered and in the custody of the Department or an authorized representative thereof.

M. An appeal may be taken by the ~~licensee~~ petitioner or by the Department of Public Safety from the order or judgment of the district court to the Supreme Court of the State of Oklahoma. Said appeal shall be taken by either party, ~~by filing in the Supreme Court within twenty (20) days after the date of the final order a petition in error with a complete transcript of the record of said district court, including all the pleadings, proceedings and judgment therein. Provided that, upon request of the party appealing from said judgment and upon application made to the district court judge, an order shall be granted directing the court clerk to furnish to said party all of the original records and transcripts of testimony on file in said court and said original court files may then be attached to the petition in said Supreme Court. Said appeal shall be heard and presented in the Supreme Court upon said transcript and record, and shall be advanced and set for hearing or submission on said record within thirty (30) days after the filing of said appeal in the Supreme Court~~ in accordance with rules promulgated by the Supreme Court, which in its discretion may require briefs and/or oral argument. The appeal shall be advanced on the docket for timely disposition as prescribed by the Supreme Court.

SECTION 10. Sections 1 through 4, 6 and 7 of this act shall become effective July 1, 1991.

SECTION 11. Sections 8 and 9 of this act shall become effective January 1, 1992.

SECTION 12. Section 5 of this act shall become effective April 1, 1992.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-5870

DDL