

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 298

BY: TALIAFERRO

AS INTRODUCED

AN ACT RELATING TO MOTOR VEHICLES; AMENDING SECTION 2, CHAPTER 242, O.S.L. 1988, 47 O.S. 1981, SECTIONS 11-902, AS LAST AMENDED BY SECTION 109, CHAPTER 51, O.S.L. 1990, 754, AS LAST AMENDED BY SECTION 11, CHAPTER 242, O.S.L. 1988, AND 756, AS LAST AMENDED BY SECTION 1, CHAPTER 217, O.S.L. 1984 (47 O.S. SUPP. 1990, SECTIONS 6-205.1, 11-902, 754 AND 756), WHICH RELATE TO OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL; MODIFYING CERTAIN ALCOHOL CONCENTRATION LEVELS FOR PURPOSES OF DETERMINING PERSONS UNDER THE INFLUENCE OF ALCOHOL, HEARING AND REVOCATION OF DRIVER LICENSE; CLARIFYING STATUTORY REFERENCES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY Section 2, Chapter 242, O.S.L. 1988 (47 O.S. Supp. 1990, Section 6-205.1), is amended to read as follows:

Section 6-205.1 (a) The driver's license or driving privilege of a person who is convicted of any offense as provided in paragraph 2 of subsection (a) of Section 6-205 of ~~Title 47 of the Oklahoma~~

~~Statutes this title~~, or a person who has refused to submit to a test or tests as provided in Section 753 of ~~Title 47 of the Oklahoma Statutes this title~~, or a person whose alcohol concentration is ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or more as provided in Section 754 of ~~Title 47 of the Oklahoma Statutes this title~~, shall be revoked or denied by the Department of Public Safety for the following period, as applicable:

1. The first license revocation under Section 753 of ~~Title 47 of the Oklahoma Statutes this title~~ shall be for one hundred eighty (180) days, of which the first ninety (90) days shall not be modified;

2. The first license revocation under paragraph 2 of subsection (a) of Section 6-205 of ~~Title 47 of the Oklahoma Statutes this title~~ or under Section 754 of ~~Title 47 of the Oklahoma Statutes this title~~ shall be for ninety (90) days, of which the first thirty (30) days shall not be modified;

3. A revocation pursuant to paragraph 2 of subsection (a) of Section 6-205, 753 or 754 of ~~Title 47 of the Oklahoma Statutes this title~~ shall be for a period of one (1) year if within five (5) years preceding the date of arrest relating thereto, a prior revocation commenced under paragraph 2 of subsection (a) of Section 6-205, 753 or 754 of ~~Title 47 of the Oklahoma Statutes this title~~ as shown by the Department's records. Such period shall not be modified; or

4. A revocation pursuant to paragraph 2 of subsection (a) of Section 6-205, 753 or 754 of ~~Title 47 of the Oklahoma Statutes this title~~ shall be for a period of three (3) years if within five (5) years preceding the date of arrest relating thereto, two or more prior revocations commenced under paragraph 2 of subsection (a) of Section 6-205, 753 or 754 of ~~Title 47 of the Oklahoma Statutes this title~~ as shown by the Department's records. Such period shall not be modified.

(b) The term "revocation" as used in this section includes a denial by the Department to issue a driver's license.

(c) Each period of license revocation not subject to modification shall be mandatory and neither the Department nor any court shall grant a license or permit to drive a motor vehicle based upon hardship or otherwise for the duration of such period. The balance of the revocation period, if any, may be modified as provided for in Section 754.1 or 755 of ~~Title 47 of the Oklahoma Statutes~~ this title.

(d) Any appeal shall be governed by Section 6-211 of ~~Title 47 of the Oklahoma Statutes~~ this title.

SECTION 2. AMENDATORY 47 O.S. 1981, Section 11-902, as last amended by Section 109, Chapter 51, O.S.L. 1990 (47 O.S. Supp. 1990, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in subsection C of this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a

controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars (\$1,000.00). Any person who within ten (10) years after a previous conviction of a violation of this section is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction after October 31, 1984, and within ten (10) years prior to the conviction pursuant to the provisions of this section, in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section shall be deemed guilty of a felony and shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years, and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00). When a sentence of incarceration is imposed, the person shall be processed through the Lexington Assessment and Reception Center. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the person shall be assigned to the Department of Mental Health and Substance

Abuse Services for substance abuse treatment. The inmate shall be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate was assigned to the Department of Mental Health and Substance Abuse Services, if at the time the sentence of incarceration was imposed, the court determined that the convicted person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the convicted person shall pay. While assigned to such a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the person shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures. In the event a felony conviction does not result in a sentence of incarceration as provided for in this subsection, the person shall be required to serve not less than ten (10) days of community service, or to undergo in-patient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight (48) consecutive hours,

notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.

D. The Department of Mental Health and Substance Abuse Services and the Department of Corrections may certify to the Department of Public Safety that a person has successfully completed a treatment program provided for in subsection C of this section and is successfully complying with any follow-up treatment required by the Department of Corrections. In such case, the person shall be given credit therefor as fulfillment of all provisions of Section 11-902.3 of this title and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing his privilege to drive. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked license when the applicant meets the statutory requirements which affect his existing driving privilege.

E. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars (\$75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purpose of assisting the court in its final sentencing determination.

SECTION 3. AMENDATORY 47 O.S. 1981, Section 754, as last amended by Section 11, Chapter 242, O.S.L. 1988 (47 O.S. Supp. 1990, Section 754), is amended to read as follows:

Section 754. A. Any arrested person whose alcohol concentration is ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or more as shown by a breath test administered according to the provisions of this title, or any arrested person who has refused to

submit to a breath or blood test for alcohol concentration, shall immediately surrender his license, permit or other evidence of driving privilege to the arresting law enforcement officer. This officer shall seize any such license, permit or other evidence of driving privilege surrendered by the arrested person or found on the arrested person during a search.

B. If the license, permit or other evidence of driving privilege seized by the officer has not expired and otherwise appears valid to the officer, he shall issue to the arrested person a dated receipt for that license, permit or other evidence of driving privilege on a form prescribed by the Department. This receipt shall be recognized as a license and shall authorize the arrested person to operate a motor vehicle for a period not to exceed thirty (30) days. The receipt form shall contain and constitute a notice of revocation of driving privilege by the Department of Public Safety effective in thirty (30) days. The seized license, permit or other evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be attached to the sworn report of the arresting officer and shall be submitted by mail or in person to the Commissioner of Public Safety or his designated representative within seventy-two (72) hours of the issuance of the receipt. The failure of the arresting officer to timely file this report shall not affect the authority of the Department to revoke the driving privilege of the arrested person.

C. Upon receipt of a written blood or breath test report reflecting that the arrested person had an alcohol concentration of ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or more, accompanied by a sworn report from a law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, the Commissioner of

Public Safety shall revoke the license to drive of the arrested person and any nonresident operating privilege for a period of ninety (90) days or more as provided by Section ~~2~~ 6-205.1 of this ~~act~~ title. If the arrested person is a resident without a license or permit to operate a motor vehicle in this state, the Commissioner shall deny to that person the issuance of a license or permit for a period of ninety (90) days or more as provided by Section ~~2~~ 6-205.1 of this ~~act~~ title. Revocation of the license of the arrested person shall become effective thirty (30) days after the arrested person is given written notice thereof by the arresting officer as hereinbefore provided or by the Department as provided in Section 2-116 of this title.

D. Upon the written request of a person whose privilege to drive has been revoked or denied, the Commissioner of Public Safety shall grant the person an opportunity to be heard provided the request is received by the Department within fifteen (15) days after the notice of the revocation is given in accordance with this section or Section 2-116 of this title. Such a request shall also operate to stay the revocation or denial by the Department until the disposition of the hearing unless the person is under suspension or revocation for some other reason. The Department may issue a temporary driving permit pending disposition of the hearing. If the hearing request is not timely filed, the revocation shall be sustained.

E. The hearing shall be before the Commissioner of Public Safety or his authorized agent, in the troop headquarters of the Oklahoma Highway Patrol nearest the county wherein the alleged events occurred for which the person was arrested, unless the Commissioner of Public Safety or his authorized agent directs the hearing be held in some other county; or, the Commissioner or his authorized agent may schedule the hearing by telephone and conduct the hearing by telephone conference call. The hearing may be

recorded and its scope shall cover the issues of whether the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, and whether the person was placed under arrest.

1. If the revocation or denial is based upon a breath or blood test result and a sworn report from a law enforcement officer, the scope of the hearing shall also cover the issues as to whether:

- a. the testing procedures used were in accordance with existent rules of the Board of Tests for Alcohol and Drug Influence,
- b. the person was advised that his privilege to drive would be revoked or denied if the test result reflected an alcohol concentration of ~~ten-hundredths~~ eight-hundredths (0.08) or more,
- c. the test result in fact reflects such alcohol concentration, and
- d. the breath or blood specimen was obtained from the person within two (2) hours of his arrest;

2. If the revocation or denial is based upon the refusal of the person to submit to a breath or blood test, reflected in a sworn report by a law enforcement officer, the scope of the hearing shall also include whether:

- a. the person refused to submit to the test or tests, and
- b. the person was informed that his privilege to drive would be revoked or denied if the person refused to submit to the test or tests.

F. After the hearing, the Commissioner of Public Safety or his authorized agent shall order the revocation or denial rescinded or sustained.

SECTION 4. AMENDATORY 47 O.S. 1981, Section 756, as last amended by Section 1, Chapter 217, O.S.L. 1984 (47 O.S. Supp. 1990, Section 756), is amended to read as follows:

Section 756. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or 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, evidence of the alcohol concentration in the blood or breath of the person as shown by analysis of the blood or breath of the person performed in accordance with the provisions of Sections 752 and 759 of this title or evidence of the presence and concentration of any other intoxicating substance as shown by analysis of such person's blood, breath, saliva, or urine specimens in accordance with the provisions of Sections 752 and 759 of this title is admissible. Evidence that the person has refused to submit to either of said analyses is also admissible. For the purpose of this title:

(a) evidence that there was, at the time of the test, an alcohol concentration of ~~five-hundredths (0.05)~~ four-hundredths (0.04) or less is prima facie evidence that the person was not under the influence of alcohol;

(b) evidence that there was, at the time of the test, an alcohol concentration in excess of ~~five-hundredths (0.05)~~ four-hundredths (0.04) but less than ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) is relevant evidence that the person's ability to operate a motor vehicle was impaired by alcohol. However, no person shall be convicted of the offense of operating or being in actual physical control of a motor vehicle while such person's ability to operate

such vehicle was impaired by alcohol solely because there was, at the time of the test, an alcohol concentration in excess of ~~five-hundredths (0.05)~~ four-hundredths (0.04) but less than ~~ten-hundredths (0.10)~~ eight-hundredths in the blood or breath of the person in the absence of additional evidence that such person's ability to operate such vehicle was affected by alcohol to the extent that the public health and safety was threatened or that said person had violated a state statute or local ordinance in the operation of a motor vehicle;

(c) evidence that there was, at the time of the test, an alcohol concentration of ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or more shall be admitted as prima facie evidence that the person was under the influence of alcohol;

(d) alcohol concentration shall mean grams of alcohol per one hundred (100) milliliters of blood if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested;

(e) to be admissible, such evidence must first be qualified by establishing that such test was administered to the person within two (2) hours after the arrest of the person.

SECTION 5. This act shall become effective September 1, 1991.

43-1-691 NP