ENGROSSED SENATE
BILL NO. 879

By: Hendrick and Cole of the Senate

and

Davis of the House

[motor vehicles - surrender of license -effective date]

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 6-107.1, as amended by Section 1, Chapter 238, O.S.L. 1993 (47 O.S. Supp. 1993, Section 6-107.1), is amended to read as follows:

Section 6-107.1 A. When any district court, municipal court of record or any municipal court in a city or town in which the judge is an attorney licensed to practice law in this state has determined that a person under the age of ~~eighteen (18)~~ twenty-one (21) years has committed any offense described in this section, the court shall notify the Department of Public Safety, on a Notification form prescribed by the Department as provided in Section 6-107.2 of this title.

B. The Notification shall include the name, date of birth, physical description and, if known, the driver license number of the person. The Notification shall contain a recommendation to the Department to cancel or deny driving privileges for a specified period of time, in the discretion of the court, as follows:

1. For a period of six (6) months;

2. For a period of one (1) year; or

3. For a period of ~~six (6) months~~ two (2) years or until the person attains the age of ~~eighteen (18)~~ twenty-one (21) years, whichever period of time is longer.

The court shall send a copy of the Notification to the person first class, postage prepaid.

C. This section applies to any crime, violation, infraction, traffic offense or other offense involving or relating to the possession, use, sale, purchase, transportation, distribution, manufacture, trafficking, cultivation or ~~abuse~~ consumption of beer, alcohol, or any beverage containing alcohol or any controlled dangerous substance pursuant to paragraph 8 of Section 2-101 of Title 63 of the Oklahoma Statutes or any substance 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.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 6-107.2, is amended to read as follows:

Section 6-107.2 A. The Department of Public Safety shall prepare and distribute a Notification form to be used by the courts, as provided in Section 6-107.1 of this title. In addition to any other authority to cancel or deny driving privileges, the Department of Public Safety shall, upon receipt of such completed Notification form from a court, cancel or deny all driving privileges of the person named in the Notification form without hearing, for a period of time recommended by the court.

B. Upon receipt of a second or subsequent Notification from a court relating to the same person, the Department shall cancel or deny driving privileges of the person for a period of ~~one (1) year~~ three (3) years or until the person attains ~~eighteen (18)~~ twenty-one (21) years of age, whichever is longer.

C. Any person whose driving privileges are canceled or denied pursuant to this section may file a petition for relief based upon error or hardship.

1. The petition shall be filed in the district court which notified the Department pursuant to Section 6-107.1 of this title or, if the Notification originated in a municipal court, the petition shall be filed in the district court of the county in which the court is located. A copy of the Notification and a copy of the Department's action canceling or denying driving privileges pursuant to this section, shall be attached to the petition.

2. The district court shall conduct a hearing on the petition and may determine the matter de novo, without notice to the Department, and if applicable, without notice to the municipal court; provided, the district court shall not consider a collateral attack upon the merits of any conviction or determination which has become final.

3. The district court may deny the petition, or in its discretion, issue a written Order to the Department to increase or decrease the period of cancellation or denial to any period or issue a written Order to vacate the Department's action taken pursuant to this section, in its entirety. The content of the Order shall not grant or purport to grant any driving privileges to the person, however such order may direct the Department of Public Safety to do so if the person is otherwise eligible therefor.

D. Upon receipt of a written Order from the appropriate court, the Department shall modify or reinstate any driving privileges as provided in the Order.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 6-205, as last amended by Section 2, Chapter 238, O.S.L. 1993 (47 O.S. Supp. 1993, Section 6-205), is amended to read as follows:

Section 6-205. A. The Department of Public Safety shall forthwith revoke the driver license or driving privilege of any

person, whether adult or juvenile, upon receiving a record of conviction in any municipal, state or federal court within the United States 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 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; ~~or~~

6. A misdemeanor or felony conviction for unlawfully possessing, distributing, dispensing, manufacturing or trafficking in a controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes;

7. Driving or being in actual physical control of a vehicle while under twenty-one (21) years of age with a blood or breath

concentration of two-hundredths (0.02) or more, or evidence of the presence or concentration of other intoxicating substance; or

8. Driving or being in actual physical control of a vehicle while the ability to operate said vehicle is impaired by the consumption of alcohol or 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.

B. The first license revocation under any provision of this section except for paragraph 2 ~~or~~, 6, 7 or 8 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 ~~or~~, 6, 7 or 8 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 or 6 of subsection A of this section shall be governed by the provisions of Section 6-205.1 of this title.

E. The period of license revocation under paragraph 7 of subsection A of this section shall be governed by the provisions of Sections 6-107.1 and 6-107.2 of this title.

F. The period of license revocation under paragraph 8 of subsection A of this section shall be governed by the provisions of Section 761 of this title.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 6-205.1, as last amended by Section 2, Chapter 314, O.S.L. 1993 (47 O.S. Supp. 1993, 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 or 6 of subsection A of Section 6-205 of this title, or a person who has refused to submit to a test or tests as provided in Section 753 of this title, or a person whose alcohol concentration is ten-hundredths (0.10) or more as provided in Section 754 of 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 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 this title or under Section 754 of this title shall be for ninety (90) days, of which the first thirty (30) days shall not be modified;

3. The first license revocation under paragraph 6 of subsection A of Section 6-205 of this title shall be for one hundred eighty (180) days, which may be modified;

4. A revocation pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of 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 or 6 of subsection A of Section 6-205, 753 or 754 of this title as shown by the Department's records. Such period shall not be modified; ~~or~~

~~4.~~ 5. A revocation pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of 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 or 6 of subsection A of Section 6-205, 753 or 754 of this title as shown by the Department's records. The first eighteen (18) months shall not be modified; or

6. For persons under twenty-one (21) years of age at the time of committing an offense, a revocation pursuant to paragraph 2 or 6

of subsection A of Section 6-205, 753, 754, 761 or 11-902 of this title shall be for a period of one (1) year for a first offense and for a period of three (3) years or until said person reaches twenty-one (21) years of age, whichever period of time is longer, for any second or subsequent offense committed while the person is under twenty-one (21) years of age. The first license revocation shall not be modified. Any second or subsequent license revocation may be modified after the first eighteen (18) months.

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 this title.

D. Any appeal shall be governed by Section 6-211 of this title.

SECTION 5. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 13, Chapter 276, O.S.L. 1993 (47 O.S. Supp. 1993, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in 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) 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, 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 and within ten (10) years of such municipal conviction is convicted under the provision 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).

D. When a person is sentenced to the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center. The Department of Corrections shall classify and assign the person to one or more of the following:

1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section ~~13~~ 612 of ~~this act~~ Title 57 of the Oklahoma Statutes;

2. The Electronic Monitoring Program pursuant to Section ~~5~~ 510.9 of ~~this act~~ Title 57 of the Oklahoma Statutes with participation in a substance abuse treatment program and follow-up treatment;

3. A correctional facility operated by the Department of Corrections; or

4. Other alternative to incarceration authorized by law.

E. In the event a felony conviction does not result in the person being sentenced to the custody of the Department of Corrections, the person shall be required to serve not less than ten (10) days of community service, or to undergo inpatient 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.

F. 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 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 3-453 of Title 43A of the Oklahoma Statutes and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing his privilege to drive.

G. 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.

H. 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. If a person is sentenced to the custody of the Department of Corrections and the court has received a written evaluation report pursuant to this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence and any other sanction authorized by law for failure or refusal to comply with an order of the court.

I. Any person who is found guilty of a violation of the provisions of this section may be required by the court to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Five Dollars ($5.00) nor more than Fifteen Dollars ($15.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 751, is amended to read as follows:

Section 751. A. Any person who operates a motor vehicle upon the public roads, highways, streets, turnpikes or other public place within this state shall be deemed to have given consent to a test or tests of such person's blood or breath, for the purpose of determining the alcohol concentration as defined in Section 756 of this title, and such person's blood, saliva or urine for determining the presence and concentration of any other intoxicating substance therein as defined in this section, if arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place while under the influence of alcohol or other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance <u>or in violation of Section 10 of this act</u>. The test shall be administered by or at the direction of a law enforcement officer after having arrested such person and having reasonable grounds to believe that such person was operating or in actual physical control of a motor vehicle within this state while under the influence of alcohol or any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance <u>or that the person being under twenty-one (21) years of age was operating or in actual physical control of a motor vehicle within this state after having consumed alcohol or other intoxicating substance, or the combination of alcohol and other intoxicating substance in violation of Section 10 of this act</u>.

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 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.

B. The law enforcement agency by which the arresting officer is employed may designate, in accordance with the rules and regulations of the Board of Tests for Alcohol and Drug Influence, hereinafter referred to as the Board, whether blood or breath is to be tested for the alcohol concentration thereof, and whether blood, saliva or urine is to be tested for the presence and concentration of any other intoxicating substance therein. In the event the law enforcement agency does not designate the test to be administered, breath shall be the substance tested for alcohol concentration. Blood may also be tested to determine the alcohol concentration thereof in the event that breath cannot be tested to determine the alcohol concentration thereof because of the lack of an approved device or qualified person to administer a breath test or because such breath test for any other reason cannot be administered in accordance with the rules and regulations of the Board. In the event the law enforcement agency does not designate the test to be administered, blood, saliva or urine shall be the substance tested for the presence and concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance therein.

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

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

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

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

SECTION 7. AMENDATORY 47 O.S. 1991, Section 754, as amended by Section 7, Chapter 238, O.S.L. 1993 (47 O.S. Supp. 1993, Section 754), is amended to read as follows:

Section 754. A. Any arrested person whose alcohol concentration is ten-hundredths (0.10) 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, <u>or any arrested person under twenty-one (21) years of age whose alcohol concentration is two-hundredths (0.02) or more as shown by a breath test administered according to the provisions of this title,</u> 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) or more, <u>or an arrested person under twenty-one (21) years of age had an alcohol concentration of two-hundredths (0.02) or more</u> 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 <u>or the arrested person being under twenty-one (21) years of age had consumed alcohol in violation of Section 10 of this act</u>, the Commissioner of Public Safety shall revoke the license to drive of the arrested person and any nonresident operating privilege for a period as provided by Section 6-205.1 of this 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 as provided by Section 6-205.1 of this 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, <u>or the person being under twenty-one (21) years of age had consumed alcohol or other intoxicating substance, or the combination of alcohol and other intoxicating substance in</u>

violation of Section 10 of this act, 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 (0.10) or more,

c. the person was advised that his privilege to drive would be revoked or denied if the test result reflected an alcohol concentration of two-hundredths (0.02) or more when the person is twenty-one (21) years of age or younger,

d. the test result in fact reflects such alcohol concentration, and

~~d.~~ e. 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 8. AMENDATORY 47 O.S. 1991, 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, or while a person under twenty-one (21) years of age was driving or in actual physical control of a motor vehicle after consuming alcohol or other intoxicating substance, or a combination of alcohol and any other intoxicating substance in violation of Section 10 of this act, 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)~~ 1. Evidence that there was, at the time of the test, an alcohol concentration of two-hundredths (0.02) or more is prima facie evidence that the person, if under twenty-one (21) years of age, has consumed alcohol or other intoxicating substance or the combination of alcohol and other intoxicating substance in violation of Section 10 of this act;

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

~~(b)~~ 3. Evidence that there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less

than ten-hundredths (0.10) 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) but less than ten-hundredths (0.10) 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)~~ 4. Evidence that there was, at the time of the test, an alcohol concentration of ten-hundredths (0.10) or more shall be admitted as prima facie evidence that the person was under the influence of alcohol;

~~(d)~~ 5. 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; and

~~(e)~~ 6. 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 9. AMENDATORY 47 O.S. 1991, Section 761, as amended by Section 17, Chapter 217, O.S.L. 1992 (47 O.S. Supp. 1993, Section 761), is amended to read as follows:

Section 761. A. Any person who operates a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol, or 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 shall be subject to a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

B. Upon the receipt of any person's record of conviction of driving while impaired, when such conviction has become final, the Department of Public Safety shall suspend the driving privilege of such person, as follows:

1. The first suspension shall be for thirty (30) days;

2. The second suspension shall be for a period of six (6) months. Such suspension shall not be subject to modification; and

3. The third or subsequent suspension shall be for twelve (12) months. Such suspension shall not be subject to modification.

Provided, however, the Department shall not suspend such privilege pursuant to this subsection if said person's driving privilege has been revoked based upon a test result or test refusal pursuant to Section 753 or Section 754 of this title arising from the same circumstances which resulted in the conviction.

C. The violations as set out in this section shall not be bondable under Section 1115.3 of Title 22 of the Oklahoma Statutes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 762 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful and punishable as provided in this section for any person under the age of twenty-one (21) years 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 two-hundredths (0.02) 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; or

2. Has evidence of the presence and concentration of other intoxicating substance as shown by analysis of such person's blood, breath, saliva or urine specimen in accordance with the provisions of Sections 752 and 759 of Title 47 of the Oklahoma Statutes.

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

C. As used in this section, 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.

D. Every person who is convicted of a violation of the provisions of this section shall for a first offense be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or shall be required to complete a minimum of twenty (20) hours of community service, or both such fine and community service. Any second or subsequent violation committed before the person has reached twenty-one (21) years of age shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) or by not less than forty (40) hours of community service, or by both such fine and community service. The court may assess additional community service hours in lieu of any fine specified in this section.

E. The penalties provided in this section shall be in addition to any other penalties authorized by law.

SECTION 11. REPEALER 47 O.S. 1991, Section 6-205.1, as last amended by Section 3, Chapter 238, O.S.L. 1993 (47 O.S. Supp. 1993, Section 6-205.1), is hereby repealed.

SECTION 12. This act shall become effective September 1, 1994.

Passed the Senate the 9th day of March, 1994.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1994.

Speaker of the House of Representatives