

SHORT TITLE: An Act relating to motor vehicles;
removing mandatory revocation period; providing for
appeal; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1081

By: Stipe

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 6-205, as last amended by Section 2, Chapter 238, O.S.L. 1993, 6-205.1, as last amended by Section 2, Chapter 314, O.S.L. 1993 and 6-211 (47 O.S. Supp. 1993, Sections 6-205 and 6-205.1), which relate to mandatory license revocation, periods of license revocation and appeal; modifying language; authorizing modification of revocation periods; deleting language; providing revocation period for certain conviction; removing mandatory revocation period; providing for appeal; repealing 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), which relates to mandatory periods of revocation and which is a duplicate section; and providing an effective date.

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

SECTION 1. 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shall not additionally revoke such license pursuant to this subsection if the person's driving privilege has been revoked because of a test result or test refusal pursuant to Sections 753 or 754 of this title arising from the same circumstances which resulted in the conviction;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.

B. The first license revocation under any provision of this section, except for paragraph 2 or 6 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 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.

SECTION 2. 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~~ may 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~~ may 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~~ may 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~~ Such period may 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,~~ periods provided for in this section 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 3. AMENDATORY 47 O.S. 1991, 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 Section 6-205 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.

B. A person whose driving privilege or license is denied, canceled or suspended due to 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 in the county in which he resides.

C. Any person whose license or driving privilege is canceled, denied, suspended or revoked may appeal to 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.

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.

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 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.

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 filed at any time and said district court may in its discretion modify the revocation as provided for in Section 755 of this title ~~except for any revocation period which is not subject to modification as provided in Section 6-205.1 of this title.~~

I. 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, and determine from said facts, circumstances and records whether the petitioner is entitled to a license or shall be subject to the order of 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. 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 was excessive, enter an order modifying the same.

J. The testimony of any hearing pursuant to this section shall 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. In order to stay or supersede any order of suspension 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 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.

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.

M. An appeal may be taken by the licensee 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.

SECTION 4. 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 5. This act shall become effective September 1, 1994.

44-2-1727 NP