

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 524

By: Helton of the Senate

and

McCarter of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Department of Public Safety and the Oklahoma Drug and Alcohol Abuse Policy Board; amending 47 O.S. 1991, Section 754, as last amended by Section 9 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, which relates to drug and alcohol tests; providing for certain test within certain time; amending 74 O.S. 1991, Sections 30b, as amended by Section 45, Chapter 247, O.S.L. 1996, and 30d, as amended by Section 1, Chapter 336, O.S.L. 1994 (74 O.S. Supp. 1996, Sections 30b and 30d), which relate to the Oklahoma Drug and Alcohol Abuse Policy Board and the term of certain board; setting term of chairperson; authorizing designees; extending the term of certain board; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 754, as last amended by Section 9 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 754. A. Any arrested person who is under twenty-one (21) years of age and has any measurable quantity of alcohol in the person's blood or breath, or any person twenty-one (21) years of age or older 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, shall immediately surrender his or her license, permit or other evidence of driving privilege to the arresting law enforcement officer. The officer shall seize any 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, the officer 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 a 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 any measurable quantity of alcohol in the person's blood or breath, if the person is under twenty-one (21) years of age, or, if the arrested person is twenty-one (21) years of age or older, an alcohol concentration of ten-hundredths (0.10) or more, accompanied by a sworn report from a law enforcement officer that the officer 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 as prohibited by law, the Commissioner of Public Safety shall revoke the privilege to drive of the arrested person and any nonresident operating privilege 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 if 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. The 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. 1. At any hearing held relevant to this section, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the person by the Commissioner or an authorized representative at least five (5) days prior to the hearing, with reference to all or part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by either party, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders such person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the OSBI for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory absent an

order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

3. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

4. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

F. The hearing shall be before the Commissioner of Public Safety or an 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 an authorized agent directs the hearing be held in some other county; or, the Commissioner or an 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 as prohibited by law, 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 not denied a timely requested breath or blood test,
- c. the breath or blood specimen was obtained from the person within two (2) hours of the ~~actual stop by the officer~~ arrest of the person,
- d. the person, if under twenty-one (21) years of age, was advised that the privilege to drive would be revoked or denied if the test result reflected the presence of any measurable quantity of alcohol,
- e. the person was informed that a separate testing of the sample taken by the breathalyzer can be analyzed by the person at his or her own expense within sixty (60) days of the test date,
- f. the person, if twenty-one (21) years of age or older, was advised that the privilege to drive would be revoked or denied if the test result reflected an alcohol concentration of ten-hundredths (0.10) or more, and
- g. the test result in fact reflects such alcohol concentration;

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 the privilege to drive would be revoked or denied if the person refused to submit to the test or tests.

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

SECTION 2. AMENDATORY 74 O.S. 1991, Section 30b, as amended by Section 45, Chapter 247, O.S.L. 1996 (74 O.S. Supp. 1996, Section 30b), is amended to read as follows:

Section 30b. A. There is hereby created the Oklahoma Drug and Alcohol Abuse Policy Board.

B. A chairperson shall be ~~appointed~~ chosen annually by the members of the Oklahoma Drug and Alcohol Abuse Policy Board ~~at the first meeting~~ to serve a term beginning July 1. The chairperson may establish ~~such~~ committees, subcommittees, or other working groups in order to accomplish the goals of the Board.

C. The Board shall be composed of the following members:

1. The Governor or ~~his~~ designee;
2. The Attorney General or designee;
3. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or designee;
4. The Director of the Oklahoma State Bureau of Investigation or designee;
5. The Commissioner of Public Safety or designee;
6. The Commissioner of the Department of Mental Health and Substance Abuse Services or designee;
7. The Commissioner of Health or designee;
8. The Adjutant General of the Military Department or designee;
9. The Superintendent of Public Instruction or designee;
10. The Director of the Department of Corrections or designee;
11. The Director of the Department of Human Services or designee;
12. The Director of the Alcoholic Beverage Laws Enforcement Commission or designee;
13. The Executive Director of the District Attorneys' Council or designee;

14. The Executive Director of the Oklahoma Commission on Children and Youth or designee;

15. The Executive Director of the Office of Juvenile Affairs or designee; and

16. Two appointees of the Governor, who shall be private citizens appointed to serve for one-year terms.

D. Any other state or local agency or individual may become a nonvoting member of the Board upon approval of a two-thirds (2/3) majority of the voting members set forth in subsection C of this section.

E. Other officers, excluding the chairperson, may be elected at the discretion of the voting Board members.

F. The Board shall hold meetings at least quarterly and at such other times as the chairperson deems necessary.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 30d, as amended by Section 1, Chapter 336, O.S.L. 1994 (74 O.S. Supp. 1996, Section 30d), is amended to read as follows:

Section 30d. The Oklahoma Drug and Alcohol Abuse Policy Board shall cease to exist after July 1, ~~1997~~ 2000.

SECTION 4. 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.