

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1822

By: Kannady of the House

and

Holt of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to motor vehicles; amending 47 O.S.
12 2011, Section 6-211, which relates to district court
13 appeals of driver license cancellations, denials,
14 suspensions, and revocations; eliminating reference
15 to certain administrative hearings and appeals
16 process; modifying appeal procedures; clarifying
17 timeline for filing of appeals; amending 47 O.S.
18 2011, Section 6-212.3, as last amended by Section 2,
19 Chapter 393, O.S.L. 2013 (47 O.S. Supp. 2016, Section
20 6-212.3), which relates to ignition interlock
21 devices; requiring certain periodic reporting by
22 device providers; requiring revocation and suspension
23 of driving privileges for interlock violations;
24 amending 47 O.S. 2011, Section 754, which relates to
 temporary driving privileges and administrative
 driver license revocation proceedings; eliminating
 certain administrative hearings and associated
 reports and processes; amending 47 O.S. 2011,
 Sections 754.1, as last amended by Section 4, Chapter
 393, O.S.L. 2013 (47 O.S. Supp. 2016, Section 754.1)
 and 755, which relate to modifications of driver
 license revocations or denials; modifying references;
 eliminating administrative level application
 prerequisite for certain district court modification
 request; and providing an effective date.

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

2 SECTION 1. AMENDATORY 47 O.S. 2011, Section 6-211, is
3 amended to read as follows:

4 Section 6-211. A. Any person denied driving privileges, or
5 whose driving privilege has been canceled, denied, suspended or
6 revoked by the Department, except where such cancellation, denial,
7 suspension or revocation is mandatory, under the provisions of
8 Section 6-205 of this title, or disqualified by the Department,
9 under the provisions of Section 6-205.2 or 761 of this title, shall
10 have the right of appeal to the district court as hereinafter
11 provided. Proceedings before the district court shall be exempt
12 from the provisions of the Oklahoma Pleading and Discovery codes,
13 except that the appeal shall be by petition, without responsive
14 pleadings. The district court is hereby vested with original
15 jurisdiction to hear said petition.

16 B. A person whose driving privilege is denied, canceled,
17 revoked or suspended due to inability to meet standards prescribed
18 by law, or due to an out-of-state conviction or violation, or due to
19 an excessive point accumulation on the traffic record, or for an
20 unlawful license issued, may appeal in the county in which the
21 person resides.

22 C. Any person whose driving privilege is canceled, denied,
23 suspended or revoked may appeal to the district court in the county
24

1 in which the offense was committed upon which the Department based
2 its order.

3 D. A person whose driving privilege is revoked or denied ~~or who~~
4 ~~is denied a hearing~~ pursuant to Section 753 or 754 of this title may
5 appeal to the district court in the county in which the arrest
6 occurred relating to the test refusal or test result, as shown by
7 the records of the Department.

8 E. The petition shall be filed within thirty (30) days after
9 the order has been served upon the person, ~~except a petition~~
10 ~~relating to an implied consent revocation shall be filed within~~
11 ~~thirty (30) days after the Department gives notice to the person~~
12 ~~that the revocation is sustained as provided in Section 754 of this~~
13 ~~title.~~ It shall be the duty of the district court to enter an order
14 setting the matter for hearing not less than fifteen (15) days and
15 not more than thirty (30) days from the date the petition is filed.
16 A certified copy of petition and order for hearing shall be served
17 ~~forthwith by the clerk of the court~~ at the expense of and by the
18 person appealing the revocation upon the Commissioner of Public
19 Safety by certified mail at the Department of Public Safety,
20 Oklahoma City, Oklahoma.

21 F. ~~At a hearing on a revocation by the Department pursuant to~~
22 ~~the implied consent laws as provided in Sections 6-205.1, 753 and~~
23 ~~754 of this title, the court shall not consider the merits of the~~
24 ~~revocation action unless a written request for an administrative~~

1 ~~hearing was timely submitted to the Department and the person~~
2 ~~actually exercised the opportunity to appear as provided in Section~~
3 ~~754 of this title and the Department entered an order sustaining the~~
4 ~~revocation.~~

5 ~~G.~~ Upon a hearing relating to a revocation or disqualification
6 pursuant to a conviction for an offense enumerated in Section 6-205,
7 ~~761, or 6-205.2~~ or 761 of this title, the court shall not consider
8 the propriety or merits of the revocation or disqualification
9 action, except to correct the identity of the person convicted as
10 shown by records of the Department.

11 ~~H.~~ ~~In the event the Department declines to modify, as provided~~
12 ~~in Section 754.1 of this title, a revocation order issued pursuant~~
13 ~~to Section 753, Section 754, paragraph 2 of subsection A of Section~~
14 ~~6-205 or Section 6-205.1 of this title, which is subject to~~
15 ~~modification pursuant to Section 11-906.4 of this title or Section~~
16 ~~6-205.1 of this title, a~~

17 G. A petition for modification may be included with the appeal
18 or separately filed at any time, and the district court may, in its
19 discretion, modify the revocation as provided for in Section 755 of
20 this title; provided, any modification under this subsection shall
21 apply to Class D motor vehicles only.

22 ~~I.~~ H. The court shall take testimony and examine the facts and
23 circumstances, including all of the records on file in the office of
24 the Department of Public Safety relative to the offense committed

1 and the driving record of the person, and determine from the facts,
2 circumstances, and records whether or not the petitioner is entitled
3 to driving privileges or shall be subject to the order of denial,
4 cancellation, suspension or revocation issued by the Department.
5 The court may also determine whether or not, from the person's
6 previous driving record, the order was for a longer period of time
7 than such facts and circumstances warranted. In case the court
8 finds that the order was not justified, the court may sustain the
9 appeal, vacate the order of the Department and direct that driving
10 privileges be restored to the petitioner, if otherwise eligible.
11 The court may, in case it determines the order was justified, but
12 that the period of the suspension or revocation was excessive, enter
13 an order modifying the same as provided by law.

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

22 ~~K.~~ J. In order to stay or supersede any order of the
23 Department, the petitioner may execute and file a cash appeal bond
24 in the sum of Two Hundred Fifty Dollars (\$250.00) with the clerk of

1 the court, to be approved by the court clerk. A certified copy of
2 the bond shall be served along with the notice of hearing and
3 petition.

4 The bond shall be to the State of Oklahoma and conditioned that
5 the petitioner will prosecute the appeal with due diligence and
6 during pendency of the appeal abide by and not violate any of the
7 laws of this state or any other state in the operation of a motor
8 vehicle, and that the petitioner will abide by and perform the final
9 judgment of the court therein, and in case the appeal is finally
10 denied the appellant will pay all court costs incurred in the appeal
11 in the district court. If the petitioner is convicted of a traffic
12 offense during the pendency of the appeal or fails to prosecute the
13 appeal with due diligence, the bond may be forfeited to the court
14 fund upon application by the Department and after hearing before the
15 court in which the appeal is pending.

16 ~~L.~~ K. After filing and approval of the appeal bond and the
17 furnishing thereof to the Department as hereby provided, the
18 Department shall restore driving privileges to the person if
19 otherwise eligible, and the person shall be permitted to operate a
20 motor vehicle pending the appeal, under terms and conditions as
21 prescribed in the bond which shall include the installation of an
22 ignition interlock device on every motor vehicle operated by the
23 person, pursuant to Section 754.1 or 755 of this title, if the
24 person was denied modification pursuant to any provision of

1 paragraph 2 of subsection A of Section 6-205 or Section 6-205.1, 753
2 or 754 of this title; provided, however, if the order of the
3 Department is sustained in final judgment, the court shall, in such
4 final judgment, enter an order extending the period of suspension or
5 revocation for such time as the petitioner was permitted to operate
6 motor vehicles under the provisions of an appeal bond, and the court
7 shall also in such final judgment direct and require the immediate
8 surrender of any driver license or licenses to the Department.

9 ~~M.~~ L. An appeal may be taken by the person or by the Department
10 from the order or judgment of the district court to the Supreme
11 Court of the State of Oklahoma as otherwise provided by law.

12 SECTION 2. AMENDATORY 47 O.S. 2011, Section 6-212.3, as
13 last amended by Section 2, Chapter 393, O.S.L. 2013 (47 O.S. Supp.
14 2016, Section 6-212.3), is amended to read as follows:

15 Section 6-212.3 A. Whenever the records of the Department of
16 Public Safety reflect the revocation of the driving privilege of a
17 person as provided in subsection A of Section 6-205.1 of this title,
18 the Department shall require the installation of an ignition
19 interlock device, at the expense of the person, as provided in
20 subsection D of this section, after the mandatory period of
21 revocation, as prescribed by Section 6-205.1 of this title, for the
22 following period, as applicable:

23 1. For a first revocation and if the person refused to submit
24 to a test or tests, or had a blood or breath alcohol concentration

1 of fifteen hundredths (0.15) or more, for a period of one and one-
2 half (1 1/2) years following the mandatory period of revocation or
3 until the driving privileges of the person are reinstated, whichever
4 is longer;

5 2. For a second revocation, for a period of four (4) years
6 following the mandatory period of revocation or until the driving
7 privileges of the person are reinstated, whichever is longer; or

8 3. For a third or subsequent revocation, for a period of five
9 (5) years following the mandatory period of revocation or until the
10 driving privileges of the person are reinstated, whichever is
11 longer.

12 B. Whenever the records of the Department of Public Safety
13 reflect a person is classified as an excessive user of alcohol or of
14 a combination of alcohol and any other intoxicating substance, and
15 inimical to public safety, in accordance with rules promulgated by
16 the Department, the person shall, upon request for reinstatement of
17 driving privileges from revocation or suspension based upon the
18 conviction or the status as an excessive user, provide proof of
19 installation of an ignition interlock device approved by the Board
20 of Tests for Alcohol and Drug Influence, at the expense of the
21 person, as provided in subsection D of this section.

22 C. The Department shall require, as a condition of
23 reinstatement, the device to be installed upon any vehicle owned or
24 leased, as reflected on the vehicle registration, by an employer of

1 the person for use by the person, except when the employer requests
2 the ignition interlock device not be installed. The request shall
3 be in writing and notarized on the official letterhead of the
4 employer and provided by the person to the Department; provided, a
5 request shall not be accepted by the Department under the following
6 circumstances:

7 1. When the person is self-employed or owns part or all of the
8 company or corporation, or exercises control over some part of the
9 business which owns or leases the vehicle;

10 2. When the person is employed by a relative who is within the
11 first degree of consanguinity or who resides in the same household;
12 or

13 3. When the person has had a prior revocation pursuant to
14 paragraph 2 of subsection A of Section 6-205 of this title or to
15 Section 753 or 754 of this title.

16 The person shall comply with all provisions of law and rule
17 regarding ignition interlock devices.

18 D. 1. The requirements of subsection A or B, as applicable, of
19 this section shall be a prerequisite and condition for reinstatement
20 of driving privileges, in addition to other conditions for driving
21 privilege reinstatement provided by law or by rule of the
22 Department. Upon request and eligibility, the Department shall
23 issue a restricted driver license to the person, upon payment of a
24 restricted driver license fee of Fifty Dollars (\$50.00) and all

1 other appropriate fees by the person. The restricted driver license
2 and the driving record of the person shall indicate by an
3 appropriate restriction that the person is only authorized to
4 operate a vehicle upon which an ignition interlock is installed. If
5 the person is operating a motor vehicle owned or leased by an
6 employer who has not given permission for an ignition interlock
7 device to be installed, the employer shall provide the person with a
8 letter, on official letterhead of the employer, which the person
9 shall carry in his or her immediate possession at all times when
10 operating a motor vehicle and shall display for examination and
11 inspection upon demand of a peace officer.

12 2. The restricted driver license fee authorized by this section
13 shall be remitted to the State Treasurer to be credited to the
14 Department of Public Safety Restricted Revolving Fund. All monies
15 accruing to the credit of the Department of Public Safety Restricted
16 Revolving Fund from restricted driver license fees shall be budgeted
17 and expended solely for the purpose of administering the provisions
18 of this section.

19 3. The installation of an ignition interlock device, as
20 required by this subsection, shall not be construed to authorize the
21 person to drive unless the person is otherwise eligible to drive.

22 E. Installation of an ignition interlock device pursuant to
23 subsection A or B of this section shall run concurrently with a
24

1 court order, if any, for installation of an ignition interlock
2 device, or devices pursuant to the same conviction.

3 F. The person shall pay the monthly maintenance fee, not to
4 exceed Twenty-five Dollars (\$25.00) per month, for each ignition
5 interlock device installed pursuant to this section. The person
6 shall comply with all provisions of law regarding ignition interlock
7 devices.

8 G. The ignition interlock device provider shall ~~make available~~
9 report to the Department ~~regular reports~~ monthly of violations, if
10 any, for each ignition interlock device installed pursuant to this
11 section.

12 H. Pursuant to Section 6-113 of this title, the Department ~~may~~
13 shall revoke or suspend the driving privileges of the person for
14 reports from the provider which indicate attempts by the person to
15 operate a motor vehicle when the person is under the influence of
16 alcohol.

17 I. The Department shall promulgate rules necessary to implement
18 and administer this section.

19 SECTION 3. AMENDATORY 47 O.S. 2011, Section 754, is
20 amended to read as follows:

21 Section 754. A. Any arrested person who is under twenty-one
22 (21) years of age and has any measurable quantity of alcohol in the
23 person's blood or breath, or any person twenty-one (21) years of age
24 or older whose alcohol concentration is eight-hundredths (0.08) or

1 more as shown by a breath test administered according to the
2 provisions of this title, or any arrested person who has refused to
3 submit to a breath or blood test, shall immediately surrender his or
4 her driver license, permit or other evidence of driving privilege to
5 the arresting law enforcement officer. The officer shall seize any
6 driver license, permit, or other evidence of driving privilege
7 surrendered by or found on the arrested person during a search.

8 B. If the evidence of driving privilege surrendered to or
9 seized by the officer has not expired and otherwise appears valid,
10 the officer shall issue to the arrested person a dated receipt for
11 that driver license, permit, or other evidence of driving privilege
12 on a form prescribed by the Department of Public Safety. This
13 receipt shall be recognized as a driver license and shall authorize
14 the arrested person to operate a motor vehicle for a period not to
15 exceed thirty (30) days. The receipt form shall contain and
16 constitute a notice of revocation of driving privilege by the
17 Department effective in thirty (30) days. The evidence of driving
18 privilege and a copy of the receipt form issued to the arrested
19 person shall be attached to the sworn report of the officer and
20 shall be submitted by mail or in person to the Department within
21 seventy-two (72) hours of the issuance of the receipt. The failure
22 of the officer to timely file this report shall not affect the
23 authority of the Department to revoke the driving privilege of the
24 arrested person.

1 C. Upon receipt of a written blood or breath test report
2 reflecting that the arrested person, if under twenty-one (21) years
3 of age, had any measurable quantity of alcohol in the person's blood
4 or breath, or, if the arrested person is twenty-one (21) years of
5 age or older, a blood or breath alcohol concentration of eight-
6 hundredths (0.08) or more, accompanied by a sworn report from a law
7 enforcement officer that the officer had reasonable grounds to
8 believe the arrested person had been operating or was in actual
9 physical control of a motor vehicle while under the influence of
10 alcohol as prohibited by law, the Department shall revoke or deny
11 the driving privilege of the arrested person for a period as
12 provided by Section 6-205.1 of this title. Revocation or denial of
13 the driving privilege of the arrested person shall become effective
14 thirty (30) days after the arrested person is given written notice
15 thereof by the officer as provided in this section or by the
16 Department as provided in Section 2-116 of this title.

17 ~~D. Upon the written request of a person whose driving privilege~~
18 ~~has been revoked or denied by notice given in accordance with this~~
19 ~~section or Section 2-116 of this title, the Department shall grant~~
20 ~~the person an opportunity to be heard if the request is received by~~
21 ~~the Department within fifteen (15) days after the notice. The sworn~~
22 ~~report of the officer, together with the results of any test or~~
23 ~~tests, shall be deemed true, absent any facial deficiency, should~~
24 ~~the requesting person fail to appear at the scheduled hearing. A~~

1 ~~timely request shall stay the order of the Department until the~~
2 ~~disposition of the hearing unless the person is under cancellation,~~
3 ~~denial, suspension or revocation for some other reason. The~~
4 ~~Department may issue a temporary driving permit pending disposition~~
5 ~~of the hearing, if the person is otherwise eligible. If the hearing~~
6 ~~request is not timely filed, the revocation or denial shall be~~
7 ~~sustained.~~

8 ~~E. 1. At any hearing held relevant to this section, a report~~
9 ~~of the findings of the laboratory of the Oklahoma State Bureau of~~
10 ~~Investigation, the medical examiner's report of investigation or~~
11 ~~autopsy report, or a laboratory report from a forensic laboratory~~
12 ~~operated by the State of Oklahoma or any political subdivision~~
13 ~~thereof, which has been made available to the person by the~~
14 ~~Commissioner or an authorized representative at least five (5) days~~
15 ~~prior to the hearing, with reference to all or part of the evidence~~
16 ~~submitted, when certified as correct by the persons making the~~
17 ~~report shall be received as evidence of the facts and findings~~
18 ~~stated, if relevant and otherwise admissible in evidence. If the~~
19 ~~report is deemed relevant by either party, the court shall admit the~~
20 ~~report without the testimony of the person making the report, unless~~
21 ~~the court, pursuant to this subsection, orders the person to appear.~~

22 ~~2. When any alleged controlled dangerous substance has been~~
23 ~~submitted to the laboratory of the OSBI for analysis, and the~~
24 ~~analysis shows that the submitted material is a controlled dangerous~~

1 ~~substance, the distribution of which constitutes a felony under the~~
2 ~~laws of this state, no portion of the substance shall be released to~~
3 ~~any other person or laboratory absent an order of a district court.~~
4 ~~The defendant shall additionally be required to submit to the court~~
5 ~~a procedure for transfer and analysis of the subject material to~~
6 ~~ensure the integrity of the sample and to prevent the material from~~
7 ~~being used in any illegal manner.~~

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

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

22 ~~F. The hearing before the Commissioner of Public Safety or a~~
23 ~~designated hearing officer shall be conducted in the county of~~
24 ~~arrest or may be conducted by telephone conference call. The~~

1 ~~hearing may be recorded and its scope shall cover the issues of~~
2 ~~whether the officer had reasonable grounds to believe the person had~~
3 ~~been operating or was in actual physical control of a vehicle upon~~
4 ~~the public roads, highways, streets, turnpikes or other public place~~
5 ~~of this state while under the influence of alcohol, any other~~
6 ~~intoxicating substance, or the combined influence of alcohol and any~~
7 ~~other intoxicating substance as prohibited by law, and whether the~~
8 ~~person was placed under arrest.~~

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

- 12 ~~a. if timely requested by the person, the person was not~~
13 ~~denied a breath or blood test,~~
- 14 ~~b. the specimen was obtained from the person within two~~
15 ~~(2) hours of the arrest of the person,~~
- 16 ~~c. the person, if under twenty-one (21) years of age, was~~
17 ~~advised that driving privileges would be revoked or~~
18 ~~denied if the test result reflected the presence of~~
19 ~~any measurable quantity of alcohol,~~
- 20 ~~d. the person, if twenty-one (21) years of age or older,~~
21 ~~was advised that driving privileges would be revoked~~
22 ~~or denied if the test result reflected an alcohol~~
23 ~~concentration of eight hundredths (0.08) or more, and~~

1 modification under this paragraph shall apply to Class D motor
2 vehicles only.

3 B. As a prerequisite and condition of any modification, the
4 person shall be required to have installed an ignition interlock
5 device approved by the Board of Tests for Alcohol and Drug
6 Influence, at the person's own expense, upon every motor vehicle
7 operated by the person. The Department shall require, as a
8 condition of modification, the device to be installed upon any
9 vehicle owned or leased, as reflected on the vehicle registration,
10 by an employer of the person for use by the person, except when the
11 employer requests the ignition interlock device not be installed.
12 The request shall be in writing and notarized on the official
13 letterhead of the employer and provided by the person to the
14 Department; provided, a request shall not be accepted by the
15 Department under the following circumstances:

16 1. When the person is self-employed or owns part or all of the
17 company or corporation, or exercises control over some part of the
18 business which owns or leases the vehicle;

19 2. When the person is employed by a relative who either is
20 within the first degree of consanguinity or who resides in the same
21 household; or

22 3. When the person has had a prior revocation pursuant to
23 paragraph 2 of subsection A of Section 6-205 of this title or to
24 Section 753 or 754 of this title.

1 The person shall comply with all provisions of law and rule
2 regarding ignition interlock devices.

3 C. Upon the issuance of a modification order pursuant to this
4 section or Section 755 of this title, or under the provisions of
5 paragraph 1, 2, or 3 of subsection A or paragraph 1, 2, or 3 of
6 subsection B of Section 6-205.1 of this title, for a violation of
7 this title, the person shall pay a modification fee of One Hundred
8 Seventy-five Dollars (\$175.00) to the Department. For each
9 modification fee collected pursuant to the provisions of this
10 subsection, One Hundred Dollars (\$100.00) shall be remitted to the
11 State Treasurer to be credited to the General Revenue Fund in the
12 State Treasury and Seventy-five Dollars (\$75.00) shall be remitted
13 to the State Treasurer to be credited to the Department of Public
14 Safety Restricted Revolving Fund. All monies accruing to the credit
15 of the Department of Public Safety Restricted Revolving Fund from
16 modification fees shall be budgeted and expended solely for the
17 purpose of administering the provisions of this section ~~and Section~~
18 ~~755 of this title.~~

19 D. The Board of Tests for Alcohol and Drug Influence shall
20 promulgate such rules as are necessary to implement and administer
21 the provisions of this subsection relating to ignition interlock
22 devices and the providers of such devices.

23 SECTION 5. AMENDATORY 47 O.S. 2011, Section 755, is
24 amended to read as follows:

1 Section 755. ~~If the revocation or denial is sustained, the~~
2 ~~person whose license or permit to drive or nonresident operating~~
3 ~~privilege has been revoked or denied may file a petition for appeal~~
4 ~~in the district court in the manner and subject to the proceedings~~
5 ~~provided for in Section 6-211 of this title.~~ The district court may
6 modify the revocation or denial, occurring pursuant to Section 753
7 or 754 of this title, when it is determined by the court that the
8 person whose license or permit to drive has been revoked or denied
9 has no other adequate means of transportation and may enter a
10 written order directing the Department of Public Safety to allow
11 driving, subject to the limitations of Section 6-205.1 of this title
12 and the requirement of an ignition interlock device as provided in
13 Section 754.1 of this title; provided, any modification under this
14 paragraph shall apply to Class D motor vehicles only.

15 SECTION 6. This act shall become effective November 1, 2017.

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17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
18 ENVIRONMENTAL, dated 02/09/2017 - DO PASS, As Amended and
19 Coauthored.
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