

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1556

By: Adair

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 1991, Section 11-1401, which relates to unlawful acts on turnpikes; modifying unlawful acts on turnpikes; providing legislative intent; imposing liability on vehicle owners for failing to comply with toll collection regulations; providing definitions; providing for evidence of toll collection violations; providing monetary penalties for toll collection violations; providing for degree of evidence for liability; prohibiting violations from becoming part of driving record or being used for insurance purposes; providing for notice of liability and prescribing procedure therefor; requiring certain courts to have jurisdiction of violations; establishing defenses to allegations of liability; providing for lessors of vehicles and prescribing procedure for sending notice thereof; defining term; providing defense to allegation of violation; defining term; authorizing the adoption of guidelines; limiting use of certain evidence; providing for suspension of registration of vehicle; providing for payment of certain penalties; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 11-1401, is amended to read as follows:

Section 11-1401. (a) It shall be unlawful for any person to enter that part of a turnpike enclosed by fence except in a vehicle at authorized entrances.

(b) It shall be unlawful for the driver of any vehicle to ~~leave a turnpike without first having paid~~ fail to pay the toll as prescribed by the Turnpike Authority.

(c) It shall be unlawful for any person to cross a turnpike except at grade separations provided for cross traffic or through drainage structures under the turnpike.

(d) It shall be unlawful for any person to travel a turnpike on foot except to leave or service a disabled vehicle, or for any person to hitchhike on a turnpike.

(e) It shall be unlawful for any person to tear down, damage or remove any turnpike fence.

(f) Subsections (a) through (e) of this section shall not apply to officers, employees, agents or contractors of the Turnpike Authority in performance of their duties, or to agents, servants, employees or contractors of public utilities while actually engaged in work in furtherance of construction, maintenance or repair of such public utilities located on, above or below a turnpike.

(g) It shall be unlawful to drive, operate or ride any bicycle or other man-powered vehicle or means of transportation on a turnpike, and the Authority may prohibit any light mechanically-powered vehicle from entering the turnpike, or any

other vehicle which it determines would be injurious to the turnpike surfacing or a traffic hazard.

(h) Any person driving a vehicle on a turnpike shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the turnpike and any other conditions then existing, and no person shall drive any vehicle upon a turnpike at a speed greater than will permit him to bring it to a stop within the assured clear distance ahead.

(i) The Turnpike Authority is hereby authorized to prescribe maximum and minimum speeds for trucks, buses and automobiles using turnpikes. The regulation pertaining to automobiles shall apply to all vehicles not commonly classified as either trucks or buses. Such regulations shall become effective only after approval by the Commissioner of Public Safety, and after signs have been posted on the turnpike giving notice thereof. Such regulations may apply to an entire turnpike project or to selected sections thereof as may be designated by the Turnpike Authority. It shall be a violation of this section to drive a vehicle at a faster rate of speed than such prescribed maximum speed or at a slower rate of speed than such prescribed minimum speed. However, all vehicles shall at all times conform to the requirements of subsection (h) of this section. Copies of such regulations, certified as in effect on any particular date by the Secretary of the Turnpike Authority, shall be accepted in evidence in any court in this state.

(j) It shall be unlawful for any vehicle, except police cars, ambulances, vehicles owned by the Turnpike Authority, its agents or contractors, and vehicles owned by public utilities, their agents, servants, employees or contractors, while actually engaged in construction, maintenance or repair of such public utilities, to cross the center dividing strip of a turnpike, or to travel on any

lane of a turnpike in a direction contrary to the direction of traffic on such lane.

(k) All vehicles traveling on a turnpike shall comply at all times with signs placed on the turnpike regulating traffic thereon.

(l) No vehicle shall move from one lane to another unless the way is clear to do so and upon proper signaling.

(m) Any person guilty of violating any provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten Dollars (\$10.00) and not more than Two Hundred Dollars (\$200.00) or shall be sentenced to serve a term of not less than five (5) days nor more than thirty (30) days in jail, or by both such fine and imprisonment.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-1401.1 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The Legislature hereby finds and declares that electronic toll collection is a new technology that will offer significant benefits to the motoring public. The benefits will include customer convenience, road congestion relief, cost reductions and increased traffic management. Transactions take place via electromagnetic transmission between a scanner at a toll booth and a small tag attached to the vehicle allowing the toll to be paid automatically without any physical involvement of the driver. The Legislature further finds and declares that implementation of this new technology will require implementation of new methods of toll collection enforcement.

This legislation shall not be construed to affect in any way the power which the Oklahoma Turnpike Authority possesses to establish tolls and other charges in connection with their tolled facilities, including the authority to establish a one-way toll collection system for any of their facilities or a toll discount structure for certain classes of patrons using any of their facilities.

B. For purposes of this section:

1. "Owner" means any person, corporation, partnership, firm, agency, association, lessor or organization who, at the time of the violation and with respect to the vehicle identified in the notice of liability:

- a. is the beneficial or equitable owner of the vehicle,
- b. has title to the vehicle,
- c. is the registrant or co-registrant of the vehicle which is registered with the Oklahoma Tax Commission or similar registering agency of any other state, territory, district, province, nation or other jurisdiction,
- d. subject to the limitations set forth in paragraph 9 of this subsection, uses the vehicle in its vehicle renting and/or leasing business, or
- e. is a person entitled to the use and possession of a vehicle subject to a security interest in another person;

2. "Photo-monitoring system" means a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one or more photographs, one or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of toll collection regulations;

3. "Toll collection regulations" means those rules and regulations of the Oklahoma Turnpike Authority providing for and requiring the payment of tolls and/or charges prescribed by the Authority for the use of turnpikes under its jurisdiction or those rules and regulations of the Authority making it unlawful to refuse to pay or to evade or to attempt to evade the payment of all or part of any toll and/or charge for the use of turnpikes under the jurisdiction of the Authority;

4. "Vehicle" means every device in, upon or by which a person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks;

5. "Lessor" shall mean any person, corporation, firm, partnership, agency, association or organization engaged in the business of renting or leasing vehicles to any lessee under a rental agreement, lease or otherwise wherein the said lessee has the exclusive use of said vehicle for any period of time;

6. "Lessee" shall mean any person, corporation, firm, partnership, agency, association or organization that rents, leases or contracts for the use of one or more vehicles and has exclusive use thereof for any period of time; and

7. "Electronic toll collection system" shall mean a system of collecting tolls or charges which is capable of charging an account holder the appropriate toll or charge by transmission of information from an electronic device on a motor vehicle to the toll lane, which information is used to charge the account the appropriate toll or charge.

C. 1. Notwithstanding any other provision of law, there shall be imposed monetary liability on the owner of a vehicle for failure of an operator thereof to comply with the toll collection regulations of the Oklahoma Turnpike Authority in accordance with the provisions of this section.

2. The owner of a vehicle shall be liable for a civil penalty imposed pursuant to this section if the vehicle was used or operated with the permission of the owner, express or implied, in violation of toll collection regulations, and such violation is evidenced by information obtained from a photo-monitoring system. However, no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of the vehicle has been convicted of a violation of toll collection regulations for the same incident.

3. A certificate, sworn to or affirmed by an agent of the Authority or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a photo-monitoring system shall be prima facie evidence of the facts contained therein and shall be admissible in any proceeding charging a violation of toll collection regulations. The photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection and admission into evidence in any proceeding to adjudicate the liability for the violation.

4. An owner found liable for a violation of toll collection regulations pursuant to this section shall for a first violation be liable for a monetary penalty not to exceed Fifty Dollars (\$50.00) or two times the toll evaded, whichever is greater; for a second violation, both within eighteen (18) months, be liable for a monetary penalty not to exceed One Hundred Dollars (\$100.00) or five times the toll evaded, whichever is greater; and for a third or subsequent violation, all within eighteen (18) months, be liable for a monetary penalty not to exceed One Hundred Fifty Dollars (\$150.00) or ten times the toll evaded, whichever is greater.

5. An imposition of liability pursuant to this section shall be based upon a preponderance of evidence as submitted. An imposition of liability pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the motor vehicle operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

6. a. A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of toll collection regulations. The notice shall be mailed no later than thirty (30) days after the alleged violation. Personal delivery on the

owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the mailing of the notice.

- b. A notice of liability shall contain the name and address of the person alleged to be liable as an owner for a violation of toll collection regulations pursuant to this section, the registration number of the vehicle involved in the violation, the location where the violation took place, the date and time of the violation and the identification number of the photo-monitoring system which recorded the violation or other document locator number.
- c. The notice of liability shall be prepared and mailed by the Authority and shall contain information advising the person charged of the manner and the time in which he may contest the liability alleged in the notice. The notice of liability shall also contain a warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

7. All violations shall be heard and determined by the district court having jurisdiction in the county in which the violation is alleged to have occurred in the same manner as other turnpike violations are heard and determined.

8. If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had

not been recovered by such time. If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was stolen, but not as yet reported to the police as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations pursuant to this section that the vehicle was reported as stolen within two (2) hours after the discovery of the theft by the owner. For purposes of asserting the defense provided by this paragraph it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the court having jurisdiction.

9. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to paragraph 6 of this subsection shall not be liable for the violation of the toll collection regulations provided that the owner sends to the Authority and to the court having jurisdiction a copy of the rental, lease or other contract document covering the vehicle on the date of the violation, with the name and address of the lessee clearly legible, within fifteen (15) days after receiving the original notice of liability. Failure to send such information within the time period shall render the lessor liable for the penalty prescribed by this section. If the lessor complies with the provisions of this paragraph, the lessee of the vehicle on the date of the violation shall be deemed to be the owner of the vehicle for purposes of this section and shall be subject to liability for the violation of toll collection regulations, provided that the Authority mails a notice of liability to the lessee within ten (10) days after the court having jurisdiction deems the lessee to be the owner.

10. Except as provided in paragraph 9 of this subsection, if a person receives a notice of liability pursuant to this section it shall be a valid defense to an allegation of liability for a violation of toll collection regulations that the individual who

received the notice of liability was not the owner of the vehicle at the time the violation occurred. If the owner liable for a violation of toll collection regulations pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

11. In adopting procedures for the preparation and mailing of a notice of liability, the Authority shall adopt guidelines to ensure adequate and timely notice to all electronic toll collection system account holders to inform them when their accounts are delinquent. An owner who is an account holder under the electronic toll collection system shall not be found liable for a violation of this section unless the authority has first sent a notice of delinquency to the account holder and the account holder was in fact delinquent at the time of the violation.

12. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of toll collection regulations.

13. Notwithstanding any other provision of law, all photographs, microphotographs, videotape or other recorded images prepared pursuant to this section shall be for the exclusive use of the Authority in the discharge of its duties under this section and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the action or proceeding relates to the imposition of or indemnification for liability pursuant to this section. The Authority shall not sell, distribute or make available in any way, the names and addresses of electronic toll collection system account holders, without the consent of the account holders to any entity that will use the information for any commercial purpose.

14. Upon the receipt of a notification from a court that an owner of a motor vehicle failed to appear on the return date or a

new subsequent adjourned date, or failed to pay any penalty imposed by a court following entry of a final decision, in response to five or more notices of liability or other process, issued within an eighteen-month period charging the owner with a violation of toll collection regulations in accordance with the provisions of this section, the Oklahoma Tax Commission shall suspend the registration of the vehicle or vehicles involved in the violation or the privilege of operation of any motor vehicle owned by the registrant. The suspension shall take effect no less than thirty (30) days from the date on which notice thereof is sent by the Commission to the person whose registration or privilege is suspended and shall remain in effect until such registrant has appeared in response to the notices of liability or has paid the penalty. All penalties collected pursuant to the provisions of this section shall be paid to the Authority.

SECTION 3. 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.

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