

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1432

By: Askins of the House

and

Hendrick of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending 47 O.S. 1991, Section 2-105.4, as last amended by Section 1, Chapter 300, O.S.L. 1996 (47 O.S. Supp. 1996, Section 2-105.4), which relates to salaries of highway patrol officers and employees; modifying list of ranks; amending 47 O.S. 1991, Section 6-103, as last amended by Section 5 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, which relates to persons to whom a driver license shall not be issued; modifying list of persons to whom a driver license shall not be issued; amending 47 O.S. 1991, Section 18-101, as last amended by Section 2, Chapter 245, O.S.L. 1996 (47 O.S. Supp. 1996, Section 18-101), which relates to records of traffic cases; requiring date to be included in abstract of record; amending 47 O.S. 1991, Section 804, as amended by Section 4, Chapter 320, O.S.L. 1995 (47 O.S. Supp. 1996, Section 804), which relates to driving school instructor licenses; modifying time period for testing; amending 47 O.S. 1991, Section 1505, which relates to forfeiture; requiring certain entities to bring action for forfeiture; permitting OSBI attorney to file forfeiture actions; requiring certain proceeds to be paid into certain accounts; amending 47 O.S. 1991, Section 11-702, which relates to vehicles required to stop at railroad crossings; modifying list of vehicles; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 2-105.4, as last amended by Section 1, Chapter 300, O.S.L. 1996 (47 O.S. Supp. 1996, Section 2-105.4), is amended to read as follows:

Section 2-105.4 A. The Commissioner of the Department of Public Safety shall appoint assistants, deputies, officers,

investigators and other employees as may be necessary to carry out the provisions of this title.

B. The Commissioner, subject to the Oklahoma Personnel Act, shall appoint a Chief of the Highway Patrol Division with the rank of Colonel, Assistant Chief of the Highway Patrol Division with the rank of Lieutenant Colonel, and subordinate officers and employees of the Highway Patrol Division, including Colonels, Majors, Captains, First Lieutenants, Supervisors with the rank of Second Lieutenant and Patrolmen, who shall comprise the Highway Patrol Division of the Department of Public Safety.

C. Effective July 1, 1996:

1. The annual salaries for the Commissioner of Public Safety, the Assistant Commissioner of Public Safety and the positions within the Highway Patrol Division, as set out in this section, shall be in accordance and conformity with the following salary schedule, exclusive of longevity pay, as authorized by Section 840-2.18 of Title 74 of the Oklahoma Statutes, and irregular shift pay, as authorized by Section 2-130.1 of this title:

Commissioner of Public Safety

\$68,174.00

Assistant Commissioner of Public Safety

\$64,176.00

Highway Patrol Colonel

\$64,176.00

Highway Patrol Lieutenant Colonel

\$53,266.00

Highway Patrol Major

\$50,140.00

Highway Patrol Captain

\$44,846.00

Highway Patrol First Lieutenant

\$40,122.00

Highway Patrol Supervisor

\$36,286.00

Highway Patrolman

Step 1 \$25,000.00

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|---------|-------------|
| Step 2 | \$25,362.00 |
| Step 3 | \$25,932.00 |
| Step 4 | \$26,520.00 |
| Step 5 | \$27,122.00 |
| Step 6 | \$27,720.00 |
| Step 7 | \$28,356.00 |
| Step 8 | \$28,994.00 |
| Step 9 | \$29,656.00 |
| Step 10 | \$30,332.00 |
| Step 11 | \$31,022.00 |
| Step 12 | \$31,712.00 |
| Step 13 | \$32,422.00 |
| Step 14 | \$33,108.00 |

Probationary Highway Patrolman

\$24,454.00

Cadet Highway Patrolman

\$22,348.00;

2. Each Highway Patrolman shall receive upon the anniversary date of the Patrolman an annual salary increase to the step of the salary schedule provided for in paragraph 1 of this subsection which step number corresponds to the number of completed years of service the Patrolman has accumulated in the Highway Patrol Division of the Department of Public Safety if the Patrolman, within the preceding twelve-month period:

- a. has achieved a satisfactory Performance Rating Score,
- b. has not received any disciplinary action which has resulted in any suspension from the Department, and
- c. has not received any disciplinary action which has resulted in demotion;

Provided, if the number of completed years of service on the anniversary date of the Patrolman is or exceeds fourteen (14) years, said Patrolman shall be assigned to, and his salary adjusted to, Step 14 of said salary schedule;

3. Each highway patrol officer granted a salary increase on July 1, 1995, shall retain said salary increase and thereafter

shall be adjusted to the proper step pursuant to paragraph 2 of this subsection;

4. Notwithstanding the provisions of paragraph 2 of this subsection, in any twelve-month period commencing July 1, 1996, no Highway Patrolman shall receive:

- a. a salary increase which exceeds an increase to the next higher step of the salary schedule provided for in paragraph 1 of this subsection, or
- b. more than one such salary increase to the step of the salary schedule provided for in paragraph 1 of this subsection, unless salary increases are authorized by the Legislature.

Provided, however, such Patrolman shall receive the salary increase which results from a promotion to another position within the Highway Patrol Division; and

5. The steps prescribed for the position of Highway Patrolman in the salary schedule provided for in paragraph 1 of this subsection are for salary and compensation purposes only. No Highway Patrolman shall be reassigned to another such step of said salary schedule for the purposes of demotion, discipline, promotion, incentive, reward or for any other reason other than the salary increase provided for in paragraph 2, 3 or 4 of this subsection.

D. The provisions of this section shall supersede all existing laws covering the salaries for the Commissioner of Public Safety, the Assistant Commissioner of Public Safety and the positions in the Highway Patrol Division of the Department of Public Safety.

E. Upon graduation from the Highway Patrol Academy, each Cadet Highway Patrolman shall be promoted to and shall receive the salary for the position of Probationary Highway Patrolman. Upon completion of the one-year probationary period, as required in subsection (b) of Section 2-105 of this title, each Probationary Highway Patrolman shall be promoted to and shall receive the salary for Step 1 of the position of Highway Patrolman, as provided for in paragraph 1 of subsection C of this section.

Thereafter, the salary of such Patrolman shall be subject to the provisions of subsection C of this section.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 6-103, as last amended by Section 5 of Enrolled House Bill No. 1436 of the 1st Session of 46th Oklahoma Legislature, is amended to read as follows:

Section 6-103. A. Except as otherwise provided by law, the Department of Public Safety shall not issue a driver's license to:

1. Any person who is under eighteen (18) years of age, except that the Department may issue a Class D license to any person who:

a. is sixteen (16) years of age before January 1, 1997, or

b. attains sixteen (16) years of age on or after January 1, 1997, and meets the requirements of Section 6-107.3 of this title;

2. Any unemancipated person who is sixteen (16) or seventeen (17) years of age and whose custodial parent or guardian objects to the issuance of a license or permit by filing an objection pursuant to Section 6-103.1 of this title;

3. Any person whose driving privilege has been suspended, revoked, canceled or denied in this state or any other state until the driving privilege has been reinstated by the state withdrawing the privilege;

4. Any person whose driving privilege has been revoked for a period of three (3) years pursuant to the provisions of paragraph 4 of Section 6-205.1 of this title, until the ~~person has furnished a report from a licensed physician that the person has been free from alcohol or drug abuse for at least the preceding twelve-month period~~ the passage of the three-year period;

5. Any person who is required by Section 6-101 et seq. of this title to take an examination, unless the person shall have successfully passed the examination;

6. Any person who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

7. Any person who is physically deformed or who is afflicted with any mental disease or physical condition that would impair the driving ability of the person or when the Commissioner of Public Safety, from information concerning the person or from the records and reports on file in the Department of Public Safety, determines that the operation of a motor vehicle by such person on the highways would be inimical to public safety or welfare;

8. Any person who is a nonresident, as defined in Section 1-137 of this title;

9. Any alien unless such person presents valid documentation of identity issued pursuant to the laws of the United States; or

10. Any person who possesses a valid license to operate a motor vehicle issued by another state until the other state license has been surrendered.

B. Any applicant who is denied a license under the provisions of subsection A of this section shall have the right to an appeal as provided in Section 6-211 of this title.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 18-101, as last amended by Section 2, Chapter 245, O.S.L. 1996 (47 O.S. Supp. 1996, Section 18-101), is amended to read as follows:

Section 18-101. A. Every magistrate or judge of a court shall keep or cause to be kept a record of every traffic complaint, traffic citation, or other legal form of traffic charge deposited with or presented to the court or its traffic-violations bureau, and shall keep a record of every official action by the court or its traffic-violations bureau, including, but not limited to, a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every traffic complaint, citation or other legal form of traffic charge deposited with or presented to the court or traffic-violations bureau.

B. Within ten (10) days after the conviction or forfeiture of bail of a person upon a charge of violating any law regulating the operation of vehicles on highways every magistrate of the court or clerk of the court of record, in which the conviction was had or bail was forfeited, shall prepare and immediately forward to the

Department of Public Safety an abstract of the record covering the case in which the person was convicted or forfeited bail, which shall be certified by the person required to prepare the abstract to be true and correct. A report shall not be made of any conviction:

1. Involving the illegal parking or standing of a vehicle;
2. Involving speeding if the speed limit is not exceeded by more than ten (10) miles per hour; or
3. Rendered by a nonlawyer judge, unless, within a period not to exceed the preceding reporting period for Mandatory Continuing Legal Education, the judge has completed courses held for municipal judges which have been approved by the Oklahoma Bar Association Mandatory Legal Education Commission for at least six (6) hours of continuing legal education credit or attendance of at least one (1) day of a state judicial conference, and the Department of Public Safety receives verification of such attendance, from the judge. In the case of attendance of a continuing legal education course, verification may be made by a statement of attendance signed by the course registration personnel. In the case of verification of attendance of a state judicial conference, a statement of attendance signed by the Administrative Director of the Courts or a designee shall be sufficient verification.

C. The abstract must be made upon a form furnished by the Department and shall include:

1. The name, address and driver license number, if any, of the person charged;
2. The registration number of the vehicle involved; and
3. The nature and date of the offense, the date of hearing, the plea, the judgment, or if bail was forfeited, the amount of the fine or forfeiture.

D. Every court of record shall also forward a like report to the Department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

E. The failure, refusal, or neglect of any judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be ground for removal.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 804, as amended by Section 4, Chapter 320, O.S.L. 1995 (47 O.S. Supp. 1996, Section 804), is amended to read as follows:

Section 804. ~~(A)~~ A. No person shall act as an instructor on or after ~~the effective date of this act~~ August 10, 1967, unless such person applies for and obtains from the Commissioner a license in the manner and form prescribed by the Commissioner.

~~(B)~~ B. ~~Regulations~~ Rules adopted by the Commissioner shall state the requirements for an instructor's license, including requirements concerning moral character, physical condition, knowledge of the courses of instruction, motor vehicle laws and safety principles and practices, previous personnel and employment records, and such other matters as the Commissioner may prescribe for the protection of the public.

~~(C)~~ C. Except for instructors of commercial truck driver training schools and motorcycle operator training courses, instructors of commercial driver training schools shall:

1. Possess a valid Oklahoma driver license and be properly licensed for the type of vehicle used for instruction;
2. Be at least twenty-one (21) years of age;
3. Not have been previously convicted of a felony;
4. Not have had driving privileges suspended, canceled, revoked or denied within the last one (1) year;
5. Not have been previously convicted of unlawfully possessing or using alcohol or drugs within the last three (3) years;
6. Not have a driving record reflecting more than five (5) point violations;
7. Receive a score of at least eighty percent (80%) on a driver license written examination administered ~~biannually~~ biennially;

8. Receive a score of at least eighty percent (80%) on a standard driver license road test administered ~~biannually~~ biennially;

9. Possess a high school diploma or General Equivalency Diploma; and

10. Possess a minimum of six (6) semester hours of Driver Education I and Driver Education II, and a minimum of three (3) semester hours of General Safety Education at an accredited college or university or an equivalent course offered by a nationally recognized commercial driver instructor course approved by the Department of Public Safety.

SECTION 5. AMENDATORY 47 O.S. 1991, Section 1505, is amended to read as follows:

Section 1505. A. The following are subject to forfeiture unless obtained by theft, fraud or conspiracy to defraud and the rightful owner is known or can be identified and located:

1. any tool;
2. any implement; or
3. any instrumentality, including but not limited to, any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of Section ~~3~~ 1503 of this ~~act~~ title or to promote or facilitate a violation of Section ~~3~~ 1505 of this ~~act~~ title.

B. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section where the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of Section ~~3~~ 1503 of this ~~act~~ title.

C. Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or omission which the owner proves to have been committed or omitted without the owner's knowledge or consent.

D. 1. Seizing agencies will utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identity of any other person having a right or interest in a seized motor vehicle or motor vehicle part. In its reasonable identification and owner location attempts, the seizing agency will cause the stolen motor vehicle files of the state police to be searched for stolen or wanted information on motor vehicles similar to the seized motor vehicle or consistent with the seized motor vehicle part.

2. Where a motor vehicle or motor vehicle part has an apparent value in excess of One Thousand Dollars (\$1,000.00),

- a. the seizing agency shall consult with an expert of the type specified in paragraph 4 of Section ~~2~~ 1502 of this ~~act~~ title,
- b. the seizing agency shall also request searches of the on-line and off-line files of the National Crime Information Center (NCIC) and the National Automobile Theft Bureau (NATB) when the state police files have been searched with negative results.

E. A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party where the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.

F. Property, described in subsection A of this section, seized and held for forfeiture, shall not be subject to replevin and is subject only to the order and judgments of a court of competent jurisdiction hearing the forfeiture proceedings.

G. 1. The district attorney in the county where the seizure occurs, or the attorney for the Oklahoma State Bureau of Investigation (OSBI) in cases investigated by the OSBI, shall bring an action for forfeiture in a court of competent jurisdiction. The forfeiture action shall be brought within sixty (60) days from the date of seizure except where the ~~district~~ attorney prosecuting the forfeiture in the sound exercise of discretion determines that no forfeiture action should be brought

because of the rights of property owners, lienholders, or secured creditors, or because of exculpatory, exonerating, or mitigating facts and circumstances.

2. The ~~district~~ attorney prosecuting the forfeiture shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record in the the Oklahoma Tax Commission, the Department of Public Safety, the Federal Aviation Agency, or any other department of the state, or any other state or territory of the United States, or of the federal government if such property is required to be registered in any such department.

3. Notice of the proceeding shall be given to any such other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.

4. The owner of the property, or any person having, or claiming, right, title, or interest in the property may within sixty (60) days after the mailing of such notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.

5. The ~~district~~ attorney prosecuting the forfeiture shall show at a forfeiture hearing, by a preponderance of the evidence, that such property was used in the commission of a violation of Section ~~3~~ 1503 of this ~~act~~ title, or was used or possessed to facilitate such violation.

6. The owner of property may show by a preponderance of the evidence that the owner did not know, and did not have reason to know, that the property was to be used or possessed in the commission of any violation or that any of the exceptions to forfeiture are applicable.

7. Unless the ~~district~~ attorney prosecuting the forfeiture shall make the showing required of it, the court shall order the property released to the owner. Where the ~~prosecutor~~ attorney prosecuting the forfeiture has made such a showing, the court may order:

- a. the property be destroyed by the agency which seized it or some other agency designated by the court,

- b. the property be delivered and retained for use by the agency which seized it or some other agency designated by the court, or
- c. the property be sold at public sale.

H. A copy of a forfeiture order shall be filed with the sheriff of the county in which the forfeiture occurs and with each federal or state department with which such property is required to be registered. Such order, when filed, constitutes authority for the issuance to the agency to whom the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.

I. Proceeds from sale at public auction, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property, shall be paid to the general fund of the county of seizure, the special agency account of the Oklahoma State Bureau of Investigation, or treasury of the governmental unit employing the seizing agency.

J. No motor vehicle, either seized under Section 4 1504 of this ~~act~~ title or forfeited under this section, shall be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either an assigned or replacement vehicle identification number plate as may be appropriate under laws or regulations of this state.

K. No motor vehicle part having any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number shall be disposed of upon forfeiture except by destruction thereof, except that this provision shall not apply to any such motor vehicle part which is assembled with and constitutes part of a motor vehicle.

L. No motor vehicle or motor vehicle part shall be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part which is unidentifiable shall be the subject of a written report sent by the seizing agency to the Department of Public Safety which report shall include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where the same is held or stored.

M. When a seized unidentifiable motor vehicle or motor vehicle part has been held for sixty (60) days or more after the notice to the Department of Public Safety specified in subsection L of this section, has been given, the seizing agency, or its agent, shall cause the motor vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of the time and place of sale shall be posted in a conspicuous place for at least thirty (30) days prior to the sale on the premises where the motor vehicle or motor vehicle part has been stored.

N. When a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of One Thousand Dollars (\$1,000.00) or less, the seizing agency shall authorize the disposal of the motor vehicle or motor vehicle part, provided that no such disposition shall be made less than sixty (60) days after the date of seizure.

O. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part shall be deposited in the ~~General Revenue Fund~~ special agency account of the ~~state~~ Oklahoma State Bureau of Investigation, or treasury of the governmental unit employing the seizing agency after deduction of any reasonable and necessary towing and storage charges.

P. Seizing agencies will utilize their best efforts to arrange for the towing and storing of motor vehicles and motor vehicle parts in the most economical manner possible. In no event shall the owner of a motor vehicle or a motor vehicle part be

required to pay more than the minimum reasonable costs of towing and storage.

Q. A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable shall be held subject to the order of the court in which the criminal action is pending or, if a request for its release from such custody is made until the district attorney has notified the defendant or the defendant's attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination which in no event shall exceed fourteen (14) days from the date of service upon the defense of the notice of request for return of property as provided herein, the property shall be released to the person making such request after satisfactory proof of such person's entitlement to the possession thereof. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

R. When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least one (1) year from the date of the transaction.

S. When an applicant for a certificate of title or salvage certificate presents to the Oklahoma Tax Commission proof that the applicant purchased or acquired a motor vehicle at a public sale conducted pursuant to this section and such fact is attested to by the seizing agency, the Oklahoma Tax Commission shall issue a certificate of title, salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the affidavit of the seizing agency that a state-assigned number was applied for and affixed to the motor vehicle prior to the time

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that the motor vehicle was released by the seizing agency to the purchaser.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 11-702, is amended to read as follows:

Section 11-702. (a) The driver of any motor vehicle carrying passengers for hire, or of any bus, as that term is defined in Section 1-105 of this title, owned or operated by a licensed child care facility while carrying children, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

SECTION 7. This act shall become effective November 1, 1997.

46-1-7525 LAC