

ENROLLED HOUSE
BILL NO. 1138

By: Webb, Nance and Dank of the
House

and

Helton of the Senate

An Act relating to motor vehicles; amending 47 O.S. 1991, Section 6-201, as last amended by Section 8, Chapter 277, O.S.L. 2000 (47 O.S. Supp. 2000, Section 6-201), which relates to authority of Department of Public Safety to cancel driver license; requiring revocation of driver license under certain circumstances; amending 47 O.S. 1991, Section 6-301, as last amended by Section 344, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (47 O.S. Supp. 2000, Section 6-301), which relates to the unlawful use of a driver license; prohibiting display of certain driver licenses; authorizing seizure and forfeiture of equipment and materials used to produce certain items; providing for notice to certain parties; stating process to be used in forfeiture proceeding; providing for distribution of proceeds from sale; providing for release of property to owner under certain circumstances; requiring knowledge or consent of owner for forfeiture; defining term; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 6-201, as last amended by Section 8, Chapter 277, O.S.L. 2000 (47 O.S. Supp. 2000, Section 6-201), is amended to read as follows:

Section 6-201. A. The Department of Public Safety is hereby authorized to cancel or deny any person's driving privilege upon determining that the person:

1. Is not entitled to a driver license or identification card issued to the person; or
2. Failed to give the required or correct information in the application.

Upon such cancellation or denial, the person to whom the license or card was issued shall surrender the license or card so canceled to the Department. The person may apply for a valid driver license or identification card, if the person is otherwise eligible. Any person whose driving privilege is canceled or denied under the

provisions of this subsection shall have the right to an appeal as provided in Section 6-211 of this title.

B. Upon determination by the Department that any person:

1. Used fraudulent information to apply for or obtain a driver license or identification card;

2. Committed or aided another person in the commission of any act provided in ~~paragraph subparagraph~~ b, c, or e of ~~subsection~~ paragraph 1 of Section 6-301 of this title; or

3. Committed or aided another person in the commission of any act provided in ~~paragraph subparagraph~~ a, b, c, d, e, or f, ~~or g~~ of ~~subsection~~ paragraph 2 of Section 6-301 of this title~~;~~.

~~The~~ the Department shall revoke the person's driving privilege for sixty (60) days. Such period shall not be subject to modification. Upon such revocation, the person to whom the license or card was issued shall surrender the license or card to the Department. The person may apply for a valid identification card, if the person is otherwise eligible.

C. Any person whose driving privilege is revoked under the provisions of subsection B of this section shall obtain a release from the Driver License Fraud Unit of the Department before being considered for reinstatement of driving privileges.

D. Any person whose driving privilege is revoked under the provisions of subsection B of this section shall have the right to an appeal as provided in Section 6-211 of this title.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 6-301, as last amended by Section 344, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (47 O.S. Supp. 2000, Section 6-301), is amended to read as follows:

Section 6-301. It shall be unlawful for any person to commit any of the acts specified in ~~paragraphs~~ paragraph 1 or 2 of this section in relation to an Oklahoma driver's license or identification card authorized to be issued by the Department of Public Safety pursuant to the provisions of Sections 6-101 through ~~6-308~~ 6-309 of this title or any driver license or other evidence of driving privilege or identification card authorized to be issued by the state of origin.

1. It is a misdemeanor for any licensee:

- a. to display or cause or permit to be displayed ~~his~~ one's own license after such license has been suspended, revoked or canceled or to possess ~~his~~ one's own license after having received notice of its suspension, revocation, or cancellation,
- b. to lend ~~his~~ one's own license or identification card to any other person or knowingly permit the use thereof by another,
- c. to display or cause or permit to be displayed or to possess a license or identification card issued to ~~him~~

oneself which bears altered information concerning the date of birth, expiration date, sex, height, eye color, weight or license or card number,

- d. to fail or refuse to surrender to the Department upon its lawful demand any license or identification card which has been suspended, revoked or canceled,
- e. to permit any unlawful use of a license or identification card issued to ~~him~~ oneself, ~~or~~
- f. to do any act forbidden or fail to perform any act required by this chapter, excepting those acts as provided in paragraph 2 of this section, or
- g. to display or represent as one's own, any license or identification card not issued to such person, unless under conditions provided in subparagraph e of paragraph 2 of this section.

2. It is a felony for any person:

- a. to create, publish or otherwise manufacture an Oklahoma or other state license or identification card or facsimile thereof, or to create, manufacture or possess an engraved plate or other such device for the printing of an Oklahoma or other state license or identification card or facsimile thereof, except as authorized pursuant to this title,
- b. to display or cause or permit to be displayed or to knowingly possess any state counterfeit or fictitious license or identification card,
- c. to display or cause to be displayed or to knowingly possess any state license or identification card bearing a fictitious or forged name or signature,
- d. to display or cause to be displayed or to knowingly possess any state license or identification card bearing the photograph of any person, other than the person named thereon as licensee,
- e. to display or represent as one's own, any license or identification card not issued to him, for the purpose of committing a fraud in any commercial transaction or to mislead a peace officer in the performance of his duties, or
- f. to use a false or fictitious name in any application for a license or identification card or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application.

3. It is a felony for any employee or person authorized to issue licenses or identification cards under this title to knowingly issue a license or identification card or knowingly cause a license or identification card to be issued:

- a. to a person not entitled thereto,
- b. bearing erroneous information thereon, or
- c. bearing the photograph of a person other than the person named thereon.

4. The violation of any of the provisions of paragraph 1 of this section shall constitute a misdemeanor and shall, upon conviction thereof, be punishable by a fine of not less than Twenty-five Dollars (\$25.00), nor more than Two Hundred Dollars (\$200.00); the violation of any of the provisions of ~~paragraphs~~ paragraph 2 or 3 of this section shall constitute a felony and shall, upon conviction thereof, be punishable by a fine not exceeding Ten Thousand Dollars (\$10,000.00) or a term of imprisonment in the State Penitentiary not to exceed seven (7) years, or by both such fine and imprisonment.

5. Notwithstanding any provision of this section, the Commissioner of the Department of Public Safety may, upon the request of the chief administrator of a law enforcement agency, authorize the issuance, display, manufacture and possession of a license which would otherwise be a violation of this section, for the sole purpose of aiding in a criminal investigation. While acting pursuant to such authorization by the Commissioner, such person shall not be prosecuted for a violation under this section. Upon termination of such criminal investigation or upon request of the Commissioner, the chief administrator shall forthwith cause such license to be returned to the Commissioner.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1550.43 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any false or fraudulent identification document, card or certification in violation of Section 1550.41 of Title 21 of the Oklahoma Statutes or any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes that is possessed, transferred, sold or offered for sale in violation of law shall be seized and summarily forfeited when no longer needed as evidence.

B. Any peace officer of this state is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of any identification document, card, or certificate in violation of Section 1550.41 of Title 21 of the Oklahoma Statutes or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes. Said equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

C. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and

2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the state, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At the hearing the party seeking the forfeiture shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of any identification document, card, or certificate in violation of Section 1550.41 of Title 21 of the Oklahoma Statutes or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes with knowledge by the owner of the equipment.

H. The owner or party in interest may prove that the right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due the person is equal to, or in excess of, the value of the equipment as of the date of the seizure.

J. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to the state and shall be sold pursuant to the judgment of the court.

K. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county where the equipment was seized or in the custody of the party seeking the forfeiture. The district attorney or the party seeking the equipment may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the equipment. Equipment which has not been

released by the district attorney or the party seizing the equipment shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

L. The district attorney or the party seizing such equipment shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

M. The proceeds of the sale of any equipment not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the equipment; and

3. The balance to a revolving fund in the office of the county treasurer of the county where the equipment was seized, such fund to be used and maintained as a revolving fund for any purpose by the department that made the seizure with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from the fund may be used to pay costs for the storage of such equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in the fund.

N. The proceeds of the sale of any equipment seized, taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the equipment; and

3. The balance to a revolving fund of the agency seizing such equipment to be used and maintained as a revolving fund for law enforcement purposes by the agency seizing the equipment. Monies from such fund may be used to pay costs for the storage of such equipment if the equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor.

O. When any equipment is forfeited pursuant to this section, the district court of jurisdiction may order that the equipment

seized may be retained by the state, county, or municipal law enforcement agency which seized the equipment for its official use.

P. If the court finds that the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of any identification document, card, or certificate in violation of Section 1550.41 of Title 21 of the Oklahoma Statutes or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes, the court shall order the equipment released to the owner.

Q. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

R. For the purposes of this section, the term "equipment" shall include computers, printers, copy machines, other machines, furniture, supplies, books, records, files, data, currency, or negotiable instruments including, but not limited to, money orders or cashier's checks but shall not include vehicles or real property.

SECTION 4. This act shall become effective November 1, 2001.

Passed the House of Representatives the 15th day of May, 2001.

Presiding Officer of the House
of Representatives

Passed the Senate the 15th day of May, 2001.

Presiding Officer of the Senate