

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1769

By: Corn

AS INTRODUCED

An Act relating to the Department of Public Safety; amending 47 O.S. 2001, Section 2-117, as last amended by Section 8, Chapter 190, O.S.L. 2005 (47 O.S. Supp. 2005, Section 2-117), which relates to police authority of the Department; authorizing the Department to arrest and detain undocumented aliens; specifying procedure for post-arrest detention, notification and release; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 2-117, as last amended by Section 8, Chapter 190, O.S.L. 2005 (47 O.S. Supp. 2005, Section 2-117), is amended to read as follows:

Section 2-117. A. The Commissioner of Public Safety and each officer of the Department of Public Safety, as designated and commissioned by the Commissioner, are hereby declared to be peace officers of the State of Oklahoma and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of the state. Such officers shall have the powers and authority now and hereafter vested by law in other peace officers, including the right and power of search and seizure, except the serving or execution of civil process, and the right and power to investigate and prevent crime and to enforce the criminal laws of this state.

B. The officers of the Department shall have the following authority, responsibilities, powers and duties:

1. To enforce the provisions of this title and any other law regulating the operation of vehicles or the use of the highways,

including, but not limited to, the Motor Carriers Act of this state, or any other laws of this state by the direction of the Governor;

2. To arrest without writ, rule, order or process any person detected by them in the act of violating any law of the state;

3. To arrest any person determined to be an undocumented alien by reason of the inability or failure to produce proof of U.S. citizenship or valid documents or a visa issued by the U.S. Citizenship and Immigration Services. Whenever the Department has undocumented alien arrestees in custody, it shall immediately notify the U.S. Immigration and Customs Enforcement of such arrest and shall detain the person until custody is assumed by the U.S. Immigration and Customs Enforcement;

4. When the officer is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the jurisdiction of the Oklahoma Highway Patrol Division, to continue in pursuit of such violator or suspected violator into whatever part of the state may be reasonably necessary to effect the apprehension and arrest of the same, and to arrest such violator or suspected violator wherever the violator may be overtaken;

~~4.~~ 5. To assist in the location of stolen property, including livestock and poultry or the carcasses thereof, and to make any inspection necessary of any truck, trailer or contents thereof in connection therewith;

~~5.~~ 6. At all times to direct all traffic in conformance with law and, in the event of a fire, or other emergency, or to expedite traffic, or to insure safety, to direct traffic as conditions may require, notwithstanding the provisions of law;

~~6.~~ 7. To require satisfactory proof of ownership of the contents of any motor vehicle, including livestock, poultry or the carcasses thereof. In the event that the proof of ownership is not satisfactory, it shall be the duty of the officer to take the motor

vehicle, driver, and the contents of the motor vehicle into custody and deliver the same to the sheriff of the county wherein the cargo, motor vehicle and driver are taken into custody;

~~7.~~ 8. When on duty, upon reasonable belief that any vehicle is being operated in violation of any provisions of this title, or any other law regulating the operation of vehicles, to require the driver thereof to stop and exhibit his or her driver license and the certificate of registration issued for the vehicle, if required to be carried in the vehicle pursuant to paragraph 3 of subsection A of Section 1113 of this title, and submit to an inspection of such vehicle, the license plates and certificate of registration thereon, if applicable, or to any inspection and test of the equipment of such vehicle;

~~8.~~ 9. To inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof;

~~9.~~ 10. To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways and bench warrants issued for nonpayment of fines and costs for moving traffic violations;

~~10.~~ 11. To investigate and report traffic collisions on all interstate and defense highways and on all highways outside of incorporated municipalities, and may investigate traffic collisions within any incorporated municipality upon request of the local law enforcement agency, and to secure testimony of witnesses or of persons involved;

~~11.~~ 12. To investigate reported thefts of motor vehicles, trailers and semitrailers;

~~12.~~ 13. To stop and inspect any motor vehicle or trailer for such mechanical tests as may be prescribed by the Commissioner to

determine the roadworthiness of the vehicle. Any vehicle which may be found to be unsafe for use on the highways may be ordered removed from said highway until such alterations or repairs have been made that will render said vehicle serviceable for use on the highway;

~~13.~~ 14. To stop and inspect the contents of all motor vehicles to ascertain whether or not the provisions of all general laws are being observed;

~~14.~~ 15. To enforce the laws of the state relating to the registration and licensing of motor vehicles;

~~15.~~ 16. To enforce the laws relating to the operation and use of vehicles on the highway;

~~16.~~ 17. To enforce and prevent, on the roads of the state highway system, the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed for the protection of the highway pavements and structures on such highways;

~~17.~~ 18. To investigate and report to the Corporation Commission and the Oklahoma Tax Commission violation of their rules and the laws governing the transportation of persons and property by motor transportation companies and all other motor carriers for hire;

~~18.~~ 19. To investigate and report violations of all laws relating to the collection of excise taxes on motor vehicle fuels;

~~19.~~ 20. To regulate the movement of traffic on the roads of the state highway system;

~~20.~~ 21. Whenever possible, to determine persons causing or responsible for the breaking, damaging, or destruction of any improved surfaced roadway, structure, sign, marker, guardrail, or any other appurtenance constructed or maintained by the Department of Transportation, and to arrest persons responsible therefor and to bring them before the proper officials for prosecution;

~~21.~~ 22. To investigate incidents involving an employee of the Department, when such incidents are related to the performance of the duties of the employee; and

~~22.~~ 23. To initiate or assist in manhunts and fugitive apprehensions.

C. Whenever any person is arrested by a patrol officer for a traffic violation the provisions of Sections 16-101 through 16-114 of this title shall apply.

D. 1. Except as provided in this subsection, the powers and duties conferred on the Commissioner and officers of the Department of Public Safety shall not limit the powers and duties of sheriffs or other peace officers of the state or any political subdivision of the state.

2. The Oklahoma Highway Patrol Division shall have primary law enforcement authority respecting traffic-related offenses upon the National System of Interstate and Defense Highways, and may have special law enforcement authority on those portions of the federal-aid primary highways and the state highway system which are located within the boundaries and on the outskirts of a municipality, and designated by the Commissioner of Public Safety for such special law enforcement authority. As used in this subsection "outskirts of a municipality" means and shall be determined by presence of the following factors:

- a. low land use density,
- b. absence of any school or residential subdivision requiring direct ingress or egress from the highway, and
- c. a scarcity of retail or commercial business abutting the highway.

3. The Commissioner may designate any portion of the National System of Interstate and Defense Highways, and those portions of the federal-aid primary highways and the state highway system which are

located within the boundaries of and on the outskirts of a municipality for special traffic-related enforcement by the Oklahoma Highway Patrol Division and issue a written notice to any other law enforcement agency affected thereby. Upon receipt of such notice, the affected law enforcement agency shall not regulate traffic nor enforce traffic-related statutes or ordinances upon such designated portion of the National System of Interstate and Defense Highways or such designated portions of the federal-aid primary highways and the state highway system without prior coordination and written approval of the Commissioner.

4. Any person may request the Commissioner to investigate the traffic-related enforcement practices of a municipal law enforcement agency whose jurisdiction includes portions of the federal-aid primary highways, the state highway system, or both located within the boundaries of and on the outskirts of the municipality. Such request shall state that the requester believes the enforcement practices are being conducted:

- a. within the boundaries of and on the outskirts of the municipality, and
- b. for the purpose of generating more than fifty percent (50%) of the revenue needed for the operation of the municipality.

5. Upon receipt of a request pursuant to paragraph 4 of this subsection, the Commissioner shall investigate the traffic-related enforcement practices of the municipal law enforcement agency and the receipts and expenditures of the municipality. Both the law enforcement agency and the municipality shall cooperate fully with the Commissioner in such an investigation. Upon the completion of the investigation, the Commissioner shall submit a report of the results of the investigation to the Attorney General, who shall make a determination within sixty (60) days of receipt of the report as to whether the enforcement practices of the municipal law

enforcement agency are being conducted as provided in subparagraphs a, b and c of paragraph 4 of this subsection. Upon a determination that the enforcement practices are not being conducted in such a manner, the Attorney General shall notify the Commissioner in writing, and the Commissioner shall take no action to make a designation as provided in paragraph 3 of this subsection. Upon a determination that the enforcement practices are being conducted as provided in subparagraphs a, b and c of paragraph 4 of this subsection, the Attorney General shall notify the Commissioner in writing, and the Commissioner shall make the designation of special traffic-related enforcement as provided in paragraph 3 of this subsection, which shall stay in force for such time as determined by the Commissioner.

E. Nothing in this section shall limit a member of the Oklahoma Highway Patrol Division from requesting assistance from any other law enforcement agency nor limit officers of such agency from rendering the requested assistance. The officer and the law enforcement agency responding to the request of the member of the Oklahoma Highway Patrol Division or sheriff's department shall have the same rights and immunities as are possessed by the Oklahoma Highway Patrol Division.

F. No state official shall have any power, right, or authority to command, order, or direct any commissioned law enforcement officer of the Department of Public Safety to perform any duty or service contrary to the provisions of this title or any other laws of this state.

SECTION 2. This act shall become effective November 1, 2006.

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