

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3093

By: Reynolds

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5
6 AS INTRODUCED

7 An Act relating to motor vehicles; amending 47 O.S.
8 2001, Section 10-104, as amended by Section 8,
9 Chapter 394, O.S.L. 2005 (47 O.S. Supp. 2009, Section
10 10-104), which relates to duties after motor vehicle
11 accidents; providing for the towing of certain
12 vehicles; amending 47 O.S. 2001, Section 955, as last
13 amended by Section 1, Chapter 14, O.S.L. 2009 (47
14 O.S. Supp. 2009, Section 955), which relates to
15 towing of vehicles from roadway; expanding scope of
16 circumstances for towing vehicles from roadway;
17 providing time limitation for claiming vehicle;
18 authorizing forfeiture of vehicle under certain
19 circumstances; providing for notice of seizure and
20 intended forfeiture; providing notice procedures;
21 providing time limitation and procedures for filing
22 an answer; requiring certain burden of proof by the
23 state; authorizing release of property to certain
24 claimants; requiring forfeiture under certain
circumstances; establishing custody and inventory
requirements; directing that proceeds of the sale be
distributed in certain manner; requiring release of
property under certain circumstances; prohibiting
liability of storage fees under certain
circumstances; directing payment of storage fees;
providing for codification; and providing an
effective date.

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

1 SECTION 1. AMENDATORY 47 O.S. 2001, Section 10-104, as
2 amended by Section 8, Chapter 394, O.S.L. 2005 (47 O.S. Supp. 2009,
3 Section 10-104), is amended to read as follows:

4 Section 10-104. A. The driver of any vehicle involved in an
5 accident resulting in injury to or death of any person or damage to
6 any vehicle which is driven or attended by any person shall give his
7 correct name, address and registration number of the vehicle he is
8 driving, and shall upon request exhibit his driver license and his
9 security verification form, as defined in Section 7-600 of this
10 title, to the person struck or the driver or occupant of or person
11 attending any vehicle collided with, and shall render to any person
12 injured in such accident reasonable assistance, including the
13 carrying, or the making of arrangements for the carrying, of such
14 person to a physician, surgeon or hospital for medical or surgical
15 treatment if it is apparent that such treatment is necessary or if
16 such carrying is requested by the injured person. Any driver who
17 provides information required by this section which is intentionally
18 inaccurate shall be subject to the provisions of Section 10-103 of
19 this title.

20 B. Any driver of any vehicle involved in an accident who could
21 be cited for any traffic offense where said accident resulted in the
22 immediate death or great bodily injury, as defined in subsection B
23 of Section 646 of Title 21 of the Oklahoma Statutes, of any person
24 shall submit to drug and alcohol testing as soon as practicable

1 after such accident occurs. The traffic offense violation shall
2 constitute probable cause for purposes of Section 752 of this title
3 and the procedures found in Section 752 of this title shall be
4 followed to determine the presence of alcohol or controlled
5 dangerous substances within the driver's blood system.

6 C. If any driver of any vehicle involved in an accident
7 resulting in damage or injury does not have a current insurance
8 policy or bond for the motor vehicle as required by the Compulsory
9 Insurance Law, any officer of the Department of Public Safety or any
10 other political subdivision of this state shall cause the vehicle of
11 said driver to be towed as provided in paragraph 6 of subsection A
12 of Section 955 of this title. Such vehicle shall be sold or
13 auctioned to satisfy damage or injury claims. Such vehicle shall
14 remain impounded until such time that all damage or injury claims
15 have been resolved.

16 SECTION 2. AMENDATORY 47 O.S. 2001, Section 955, as last
17 amended by Section 1, Chapter 14, O.S.L. 2009 (47 O.S. Supp. 2009,
18 Section 955), is amended to read as follows:

19 Section 955. A. Any officer of the Department of Public Safety
20 or any other political subdivision of this state is hereby
21 authorized to cause to be towed any vehicle found upon the roadway
22 when:

23 1. Report has been made that the vehicle has been stolen or
24 taken without the consent of its owner;

1 2. The officer has reason to believe the vehicle has been
2 abandoned as defined in Sections 901 and 902 of this title;

3 3. The person driving or in control of the vehicle is arrested
4 for an alleged offense for which the officer is required by law to
5 take the person arrested or summoned before a proper magistrate
6 without unnecessary delay;

7 4. At the scene of an accident, when the owner or driver is not
8 in a position to take charge of the vehicle and direct or request
9 its proper removal; ~~or~~

10 5. The officer has probable cause that the person operating the
11 vehicle has not been granted driving privileges or that the driving
12 privileges of the person are currently suspended, revoked, canceled,
13 denied, or disqualified; or

14 6. The officer determines that the person does not have a
15 current insurance policy or bond for the motor vehicle as required
16 by the Compulsory Insurance Law.

17 B. A licensed wrecker operator is not liable for damage to a
18 vehicle, vessel, or cargo that obstructs the normal movement of
19 traffic or creates a hazard to traffic and is removed in compliance
20 with the request of a law enforcement officer, unless there is
21 failure to exercise reasonable care in the performance of the act or
22 for conduct that is willful or malicious.

23 C. Each officer of the Department shall use the services of the
24 licensed wrecker operator whose location is nearest to the vehicle

1 to be towed in all instances in subsection A of this section. The
2 requests for services may be alternated or rotated among all
3 licensed wrecker operators who are located within a reasonable
4 radius of each other. In like manner, the officer shall advise any
5 person requesting information as to the availability of a wrecker or
6 towing service, the name of the nearest licensed wrecker operator,
7 giving equal consideration to all licensed wrecker operators located
8 within a reasonable radius of each other. In cities of less than
9 fifty thousand (50,000) population, all licensed wrecker operators
10 located near or in the city limits of such cities shall be
11 considered as being equal distance and shall be called on an equal
12 basis as nearly as possible. In counties bordering other states, if
13 the officer deems safety and time considerations warrant, the
14 officer may call a wrecker or towing service that is not on the
15 rotation log.

16 D. Any officer of the Department who has been requested by a
17 person in need of wrecker or towing service to call a specific
18 wrecker or towing service for such person, and who calls a different
19 wrecker or towing service other than the one requested, without the
20 consent of the person, except where hazardous conditions exist,
21 shall be suspended from the Department, without compensation, for a
22 period of thirty (30) days, except in instances where a vehicle is
23 removed from the roadway under the authority of paragraphs 3 and 4
24 of subsection A of this section.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 965 of Title 47, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Any owner or lienholder of a vehicle that has been towed
5 pursuant to the provisions of subsection C of Section 10-104 of
6 Title 47 of the Oklahoma Statutes shall settle any pending claim
7 arising out of the accident prior to claiming said vehicle. If the
8 owner or lienholder does not settle pending claims, the vehicle
9 shall be sold as provided in Section 4 of this act and any proceeds
10 from such sale shall be used to satisfy any damage claims.

11 B. Any owner or lienholder of a vehicle that has been towed
12 pursuant to the provisions of paragraph 6 of subsection A of Section
13 955 of Title 47 of the Oklahoma Statutes shall have a period of not
14 more than ninety (90) days in which to claim said vehicle. Upon the
15 expiration of the ninety-day period and failure by the owner or
16 lienholder to claim the vehicle, said vehicle shall be subject to
17 forfeiture pursuant to the provisions of Section 3 of this act.

18 SECTION 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 966 of Title 47, unless there is
20 created a duplication in numbering, reads as follows:

21 A. Any officer of the Department of Public Safety shall be
22 authorized to seize any vehicle that has been towed pursuant to
23 subsection C of Section 10-104 of Title 47 of the Oklahoma Statutes
24 or paragraph 6 of subsection A of Section 955 of Title 47 of the

1 Oklahoma Statutes and has been unclaimed pursuant to the provisions
2 of Section 3 of this act.

3 B. Notice of seizure and intended forfeiture proceeding shall
4 be filed in the office of the clerk of the district court for the
5 county wherein such vehicle is seized and shall be given to all
6 owners and parties in interest.

7 C. Notice shall be given by the Department according to one of
8 the following methods:

9 1. Upon each owner or party in interest whose right, title or
10 interest is of record in the Oklahoma Tax Commission, by mailing a
11 copy of the notice by certified mail to the address as given upon
12 the records of the Tax Commission;

13 2. Upon each owner or party in interest whose name and address
14 are known to the attorney in the office of the agency prosecuting
15 the action to recover unpaid fines, by mailing a copy of the notice
16 by registered mail to the last-known address; or

17 3. Upon all other owners or interested parties, whose addresses
18 are unknown, but who are believed to have an interest in the
19 vehicle, by one publication in a newspaper of general circulation in
20 the county where the seizure was made.

21 D. Within forty-five (45) days after the mailing or publication
22 of the notice, the owner of the vehicle and any other party in
23 interest or claimant may file a verified answer and claim to the
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1 vehicle described in the notice of seizure and of the intended
2 forfeiture proceeding.

3 E. If at the end of forty-five (45) days after the notice has
4 been mailed or published there is no verified answer on file, the
5 court shall hear evidence of the matter and shall order the vehicle
6 forfeited to the state, if such fact is proved.

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

9 G. At a hearing in a proceeding against the vehicle, evidence
10 that the owner did not have a current insurance policy or bond for
11 the motor vehicle as required by the Compulsory Insurance Law shall
12 be satisfied by the state by a preponderance of the evidence.

13 H. The claimant of any right, title, or interest in the vehicle
14 may prove a lien, mortgage, or conditional sales contract to be a
15 bona fide or innocent ownership interest and that such right, title,
16 or interest was created without any knowledge or reason to believe
17 that the property was being, or was to be, used for the purpose
18 charged.

19 I. In the event of such proof, the court shall order the
20 property released to the bona fide or innocent owner, lienholder,
21 mortgagee or vendor if the amount due him or her is equal to, or in
22 excess of, the value of the vehicle as of the date of the seizure,
23 it being the intention of this section to forfeit only the right,
24 title or interest of the purchaser.

1 J. If the amount due to such person is less than the value of
2 the property, or if no bona fide claim is established, the vehicle
3 shall be forfeited to the state and sold under judgment of the
4 court.

5 K. Any vehicle taken or detained under this section shall not
6 be repleviable, but shall be deemed to be in the custody of the
7 Department, subject only to the orders and decrees of the court or
8 the official having jurisdiction thereof; said official shall
9 maintain a true and accurate inventory and record of the vehicle
10 seized under the provisions of this section.

11 L. The proceeds of the sale of any vehicle shall be distributed
12 as follows, in the order indicated:

13 1. To the bona fide or innocent purchaser, conditional sales
14 vendor or mortgagee of the property, if any, up to the amount of his
15 interest in the vehicle, when the court declaring the forfeiture
16 orders a distribution to such person;

17 2. To the payment of the actual expenses of preserving the
18 vehicle and legitimate costs related to the civil forfeiture
19 proceedings; and

20 3. The balance to the Department of Public Safety Revolving
21 Fund to be used for enforcement of the Compulsory Insurance Law.

22 M. If the court finds that the state failed to satisfy the
23 required showing provided for in subsection G of this section, the
24 court shall order the property released to the owner or owners.

1 N. Except as provided for in subsection P of this section, a
2 bona fide or innocent owner, lienholder, mortgagee or vendor that
3 recovers the vehicle pursuant to this section shall not be liable
4 for storage fees.

5 O. Except as provided for in subsection P of this section,
6 storage fees shall be paid by the agency which is processing the
7 seizure and forfeiture from funds generated by seizure and
8 forfeiture actions.

9 P. The bona fide or innocent owner, lienholder, mortgagee or
10 vendor shall reclaim the seized vehicle within thirty (30) days of
11 written notice from the seizing agency. If such person fails to
12 reclaim the property within the thirty-day time period, then storage
13 fees may be assessed against their secured interest.

14 SECTION 5. This act shall become effective November 1, 2010.

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