An Act

ENROLLED SENATE
BILL NO. 183

By: Schulz of the Senate

and

Ortega of the House

An Act relating to driving privileges; amending 47 O.S. 2011, Section 6-205.2, as last amended by Section 7, Chapter 259, O.S.L. 2013 (47 O.S. Supp. 2014, Section 6-205.2), which relates to disqualifications from driving privileges; modifying certain restrictions, definitions and penalties; amending 47 O.S. 2011, Section 11-901c, as amended by Section 6, Chapter 207, O.S.L. 2012 (47 O.S. Supp. 2014, Section 11-901c), which relates to unlawful use of cellular telephone; modifying certain restrictions and definitions; and providing an effective date.

SUBJECT: Permissible activity by operator of commercial motor vehicle

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 6-205.2, as last amended by Section 7, Chapter 259, O.S.L. 2013 (47 O.S. Supp. 2014, Section 6-205.2), is amended to read as follows:

Section 6-205.2. A. As used in this section, "conviction" means:

1. A nonvacated adjudication of guilt;

2. A determination that a person has violated or failed to comply with this section in any court or by the Department of Public Safety following an administrative determination;

3. A nonvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

4. A plea of guilty or nolo contendere accepted by the court;

5. The payment of any fine or court costs; or

6. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated.

B. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for a period of not less than one (1) year upon receiving a record of conviction of any of the following disqualifying offenses, when the conviction has become final:

1. Driving, operating or being in actual physical control of a Class A, B or C commercial motor vehicle while having a blood or breath alcohol concentration, as defined in Section 756 of this title, or as defined by the state in which the arrest occurred, of four-hundredths (0.04) or more;

2. Refusing to submit to a test for determination of alcohol concentration, as required by Section 751 of this title, or as required by the state in which the arrest occurred, while operating a Class A, B or C commercial motor vehicle, or if the person is the holder of a commercial driver license, committing the offense while operating any vehicle;

3. Driving or being in actual physical control of a Class A, B or C commercial motor vehicle while under the influence of alcohol or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance, or if the person is the holder of a commercial driver license, committing the offense while operating any vehicle. Provided, the Department shall not additionally disqualify, pursuant to this subsection, if the person's driving privilege has been disqualified in this state

because of a test result or test refusal pursuant to paragraph 1 or 2 of this subsection as a result of the same violation arising from the same incident;

4. Knowingly leaving the scene of a collision which occurs while operating a Class A, B or C commercial motor vehicle, or if the person is the holder of a commercial driver license, committing the offense while operating any vehicle;

5. Any felony during the commission of which a Class A, B or C commercial motor vehicle is used, except a felony involving the manufacture, distribution or dispensation of a controlled dangerous substance, or if the person is the holder of a commercial driver license, committing the offense while operating any vehicle;

6. Operating a commercial motor vehicle while the commercial driving privilege is revoked, suspended, canceled, denied, or disqualified;

7. Manslaughter homicide, or negligent homicide occurring as a direct result of negligent operation of a commercial motor vehicle, or, if the person is the holder of a commercial driver license, committing the offense while operating any vehicle;

8. Fraud related to examination for or issuance of a commercial learner permit or a Class A, B or C driver license; or

9. Failure to submit to skills or knowledge reexamination, or both, for the purpose of issuance of a commercial learner permit or a Class A, B or C driver license within thirty (30) days of receipt of notification from the Department.

C. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for a period of not less than three (3) years upon receiving a record of conviction of any of the disqualifying offenses described in subsection B of this section, committed in connection with the operation of a motor vehicle which is required to be placarded for hazardous materials under 49 C.F.R., Part 172, subpart F, when the conviction has become final.

D. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for life upon receiving a record of conviction in any court of any of the disqualifying offenses described in subsection B of this section after a former conviction of any of the following disqualifying offenses, when the second conviction has become final.

The Department of Public Safety may promulgate rules establishing conditions under which a disqualification for life pursuant to the provisions of this subsection may be reduced to a period of not less than ten (10) years provided a previous lifetime disqualification has not been reduced.

E. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for life upon receiving a record of conviction for any felony related to the manufacture, distribution or dispensation of a controlled dangerous substance in the commission of which a Class A, B or C commercial motor vehicle is used, or if the person is the holder of a commercial driver license, committing the offense while operating any vehicle, when the conviction has become final.

F. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for sixty (60) days upon receiving a record of a second conviction of the person for a serious traffic offense arising out of separate transactions or occurrences within a three-year period, when the convictions have become final. The Department of Public Safety shall disqualify any person from operating a Class A, B or C commercial motor vehicle for one hundred twenty (120) days upon receiving a record of a third conviction of a person for a serious traffic offense arising out of separate transactions or occurrences within a three-year period, when the convictions have become final; provided, the one-hundred-twenty-day period shall run in addition to and shall not run concurrently with any other period disqualification imposed pursuant to this subsection. As used in this subsection, "serious traffic offense" shall mean any of the following offenses committed while operating a commercial motor vehicle:

1. Speeding fifteen (15) miles per hour or more over the limit;

2. Reckless driving;

3. Any traffic offense committed that results in or in conjunction with a motor vehicle collision resulting in a fatality;

4. Erratic or unsafe lane changes;

5. Following too closely;

6. Failure to obtain a commercial driver license;

7. Failure to have in possession of the person a commercial driver license;

8. Failure to have:

a. the proper class of commercial driver license for the class of vehicle being operated,

b. the proper endorsement or endorsements for the type of vehicle being operated, including but not limited to, passengers or type of cargo being transported, or

c. both proper class and proper endorsement, as provided in subparagraphs a and b of this paragraph; ~~or~~

9. Operating a commercial motor vehicle while using a cellular telephone or electronic communication device to write, send or read a text-based communication ~~while the commercial motor vehicle is in motion~~; or

10. Operating a commercial motor vehicle while using a hand-held mobile telephone.

For the purposes of paragraphs 9 and 10 of this subsection, operating a commercial motor vehicle and using an electronic communication device or a hand-held mobile telephone is permissible by the operator when necessary to communicate with law enforcement officials or other emergency services. Further, for the purposes of paragraphs 9 and 10 of this subsection, "operate" means operating on a street or highway, including while temporarily stationary because of traffic, a traffic control device or other momentary delays.

Operating does not include when the driver of a commercial motor vehicle has moved the vehicle to the side of or off a street or highway and has halted in a location where the vehicle can safely remain stationary.

G. Upon the receipt of a person's record of conviction of violating a lawful out-of-service order, when the conviction becomes final the Department shall disqualify the driving privilege of the person as follows:

1. For a first conviction for violating an out-of-service order:

a. except as provided in subparagraph b of this paragraph, the period of disqualification shall be for ~~ninety (90)~~ one-hundred eighty (180) days, or

b. while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 P. app. 180-1813, or while operating a motor vehicle designed for transport of sixteen (16) or more passengers, including the driver, the period of disqualification shall be for one (1) year;

2. For a second conviction within ten (10) years for violating an out-of-service order:

a. except as provided in subparagraph b of this paragraph, the period of disqualification shall be for ~~one (1) year~~ two (2) years, or

b. while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 P. app. 180-1813, or while operating a motor vehicle designed for transport of sixteen (16) or more passengers, including the driver, the period of disqualification shall be for three (3) years; and

3. For a third or subsequent conviction within ten (10) years for violating an out-of-service order, the period of disqualification shall be for three (3) years.

H. Upon determination by the Department that fraudulent information was used to apply for or obtain a Class A, B or C driver license, the Department shall disqualify the driving privilege of the applicant or licensee for a period of sixty (60) days.

I. Any person who drives a Class A, B or C commercial motor vehicle on any public roads, streets, highways, turnpikes or any other public place of this state at a time when the person has been disqualified or when the privilege to do so is canceled, denied, suspended or revoked shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. Each act of driving as prohibited shall constitute a separate offense.

J. Upon the receipt of the record of a conviction of a person of a railroad highway grade crossing offense in a commercial motor vehicle, pursuant to Sections 11-701 or 11-702 of this title or Section 11-1115 of this title, or upon receipt of an equivalent conviction from any state, when the conviction becomes final, the Department shall disqualify the driving privileges of the person convicted as follows:

1. The first conviction shall result in disqualification for sixty (60) days;

2. The second conviction within three (3) years shall result in disqualification for one hundred twenty (120) days; and

3. The third or subsequent conviction within three (3) years shall result in disqualification for one (1) year.

K. The Department, upon receipt of a written notice of immediate disqualification issued by the Federal Motor Carrier Safety Administration under 49 CFR 383.52, shall immediately disqualify the person's commercial driving privilege for the period of time specified on the written notice.

L. The periods of disqualification as defined by this section shall not be modified. A person may not be granted driving

privileges to operate a Class A, B or C commercial vehicle until the disqualification is reinstated.

M. When any record of conviction, as specified in this section, is received by the Department and pertains to a nonresident operator of a Class A, B or C commercial motor vehicle, or if the nonresident operator is the holder of a commercial driver license, a record of the conviction pertaining to the nonresident operator of any vehicle, the Department shall not disqualify the person and shall report the conviction to the licensing jurisdiction in which the license of the nonresident to operate the commercial vehicle was issued.

N. Any person who is disqualified from driving under the provisions of this section shall have the right of appeal, as provided in Section 6-211 of this title.

SECTION 2. AMENDATORY 47 O.S. 2011, Section 11-901c, as amended by Section 6, Chapter 207, O.S.L. 2012 (47 O.S. Supp. 2014, Section 11-901c), is amended to read as follows:

Section 11-901c. A. It shall be unlawful for any person to operate a commercial motor vehicle or for a public transit driver to operate a motor vehicle on any street or highway within this state while ~~using~~:

1. Using a cellular telephone or electronic communication device to write, send, or read a text-based communication ~~while the motor vehicle is in motion~~; or

2. Using a hand-held mobile telephone while operating a commercial motor vehicle.

For the purposes of paragraphs 1 and 2 of this subsection, using a hand-held mobile telephone is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

B. Any person who violates the provisions of subsection A of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of Five Hundred Dollars ($500.00).

C. As used in this section:

1. "Cellular telephone" means an analog or digital wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular telephones;

2. "Electronic communication device" means an electronic device that permits the user to manually transmit a communication of written text by means other than through an oral transfer or wire communication. This term does not include a voice-activated global positioning or navigation system that is affixed to a motor vehicle;

3. "Operate" means operating on a street or highway, including while temporarily stationary because of traffic, a traffic control device or other momentary delays. Operating does not include when the driver of a commercial motor vehicle has moved the vehicle to the side of or off a street or highway and has halted in a location where the vehicle can safely remain stationary;

4. "Public transit driver" means:

a. any operator of a public transit vehicle owned and operated by the State of Oklahoma, any public trust authority, county, municipality, town or city within this state,

b. any operator of a school bus or multi-passenger motor vehicle owned and approved to operate by the State Department of Education or any school district within this state, or

c. any operator, conductor or driver of a locomotive engine, railway car or train of cars; and

~~4.~~ 5. "Write, send, or read a text-based communication", also known as texting, means manually entering alphanumeric text into, sending text, or reading text from, an electronic device, and includes, but is not limited to, short message service (SMS), e-mailing, instant messaging (IM), a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication. As used in this paragraph, texting does not include:

a. using voice commands to select or enter a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call,

b. inputting, selecting, or reading information on a global positioning system or navigation system, or

c. using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this part, including, but not limited to, fleet management systems, dispatching devices, smart phones, citizens band radios, and music players.

D. This act shall not apply to railroads and railroad operating employees regulated by the Federal Railroad Administration.

SECTION 3. This act shall become effective November 1, 2015.

Passed the Senate the 11th day of March, 2015.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2015.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 28th
day of April, 2015, at 3:35 o'clock P M.
By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 1st
day of May, 2015, at 11:49 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 1st
day of May, 2015, at 2:25 o'clock P. M.
By: Joe Ann McNaughton-Hayes