

TRAFFIC NEWSLETTER

Deputy Director's Office 1905 Lana Avenue NE Salem, Oregon 97314

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2005 LEGISLATION UPDATE

DMV is tracking over 200 bills with the 2005 Oregon Legislature. Many will have impacts on law enforcement, courts and others in addition to DMV.

Here is an update on bills that have passed and have been signed by the governor, or are awaiting the governor's signature. All bills are effective Jan. 1, 2006, unless specified otherwise.

*** NOTE: More information is available at www.leg.state.or.us/bills_laws/home.htm. Under "Measure text," click "Full text of 2005 measures in HTML and PDF" to read the bills. Click "Search for Specific Measure Number" to view the current status of specific bills.

DMV will send out more detailed information as appropriate before law changes take effect.

Accidents:

- **House Bill 2569** – exempts law enforcement officials from filing a motor vehicle accident report, if they are acting in the course of official duty and performing a lawful intervention technique. HB 2569 defines "lawful intervention technique." Governor signed. Effective June 29, 2005. (For detailed information please see the article included in this issue)
- **Senate Bill 78** – requires all drivers to submit accident reports directly to Department of Transportation. Law enforcement or other agencies will no longer accept DMV Motor Vehicle Accident Reports. Governor signed.

Alcohol and drug-related

- **HB 2361** – amends ORS 809.235 and 813.400. The court shall order a person's driving privileges permanently revoked if the person is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010 or if the person is convicted of misdemeanor driving while under the influence of intoxicants in violation of ORS 813.010 or its statutory counterpart in any other jurisdiction for a third or subsequent time. Governor signed.
- **SB 114** – increases the fees for screening interviews of persons convicted of driving under the influence of intoxicants and diagnostic assessments of persons entering into diversion agreements. Governor signed. Effective July 1, 2005.

Commercial Driving Privileges

- **HB 2107** – requires operators of school buses to obtain a school bus endorsement and will establish offenses for which a person can be disqualified from holding a Commercial Driver License. Adds offenses that require suspension of commercial driver license. Will impose additional requirements involving issuance and renewal of a hazardous materials endorsement and allows Department of Transportation to revoke a person's hazardous materials endorsement. Prohibits any action (i.e. diversion) on specific traffic violations by CDL holders that will prevent the conviction from appearing on the driver's record or any applicable suspension from being imposed. The school bus endorsement and hazardous materials endorsement provisions of this bill are effective on passage. All other requirements of this bill are effective on September 30, 2005.

Driving privileges

- **HB 2106** – gives DMV authority to determine by administrative rule the reasons for issuing a replacement license, permit or identification card. This bill does not create, change or eliminate any fee. Governor signed. Effective June 13, 2005.
- **HB 2937** – amends ORS 809.411 directing the Department of Transportation to take suspension action upon receipt of record of conviction of theft under ORS 164.043, 164.045 or 164.055 when the theft was of gasoline. A suspension under this subsection shall continue for a period of six months from the date of suspension. Governor signed.
- **SB 76** – allows any parent or legal guardian of a person under 18 years of age to request cancellation of the driving privilege of that person. Eliminates signatory authority of employer for purpose of making person under 18 years of age eligible for driving privileges. Governor signed.
- **SB 487** – extends the period of validity of driver license and vehicle registrations for members of the Oregon National Guard or military reservists ordered on active duty to locations outside the United States. Governor signed.

Insurance

- **SB 599** – will require courts to dismiss charge for failure to carry proof of compliance with financial responsibility if the person charged delivers proof of compliance and court fee to court clerk prior to scheduled court appearance date. Governor signed.

Miscellaneous

- **HB 2946** – prohibits Department of Transportation from requiring a decal or placard issued to an individual or a family to contain any identifying information about the person to whom the decal or placard is issued. The department may require a decal or placard issued under this section to contain not more than four digits of the driver license or identification card number of the person to whom the decal or placard is issued. Governor signed.

Traffic-Related

- **SB 568** – increases fines and imposes suspension of driving privileges for persons who exceed the speed limit or designated speed by more than 30 miles per hour, or persons who are convicted of driving speeds 100 miles per hour or greater. Governor signed.

Vehicle Equipment

- **HB 3088** – authorizes vehicle dealers to operate vehicles currently registered and titled in any other county, state or territory while displaying a dealer plate. Governor signed.
- **SB 367** – requires drivers and passengers in privately owned commercial vehicles designed and used to transport 15 or fewer persons to use safety belts. Taxicab operators are exempt from this requirement, and it exempts the vehicle from requirement of having child safety systems. Liability is placed on the passenger to ensure proper use of child safety system. Governor signed.

THE FOLLOWING BILL REMAINS ELIGIBLE FOR PASSAGE

- **HB 2608** – if passed would require a person to be a citizen of the United States or otherwise be legally present in the United States before a person could receive, renew or replace a driver license, driver permit or identification card.

POLICE, WHILE PERFORMING "PIT" TYPE MANEUVERS DURING ATTEMPTED CRIMINAL APPREHENSION ARE NOW EXEMPT FROM CRASH REPORTING REQUIREMENTS:

Background:

In late 2004, an AAG opinion found that police were not exempt from crash reporting requirements under Oregon law if they utilized a lawful intervention technique (i.e., a PIT maneuver) and the damage was:

- 1.) \$1500 or more to any vehicle (if the police vehicle was damaged) or;
- 2.) \$1500 damage to an uninvolved party's private property or;
- 3.) Any vehicle was damaged to the extent that it had to be towed from the scene or;
- 4.) If there was any injury or;
- 5.) If a death occurred.

Further, it appeared that a crash reported by the police officer who used a PIT maneuver (meeting the required crash reporting criteria in ORS 811.720, specified above) would be listed on that officer's personal driving record. Obviously, there was concern that an officer would be personally liable (in terms of increased insurance rates and some potential for civil liability) for crashes that occurred while in the performance of official duties.

Many departments suspended their policy allowing PIT maneuvers in order to protect their officers from becoming personally liable in these situations.

Knowing that there was a concern among law enforcement agencies with this opinion, DMV chose to take NO ACTION in terms of adding crashes to a police officer's personal driving records from PIT situations. DMV chose to wait for resolution in anticipation of a bill introduced during the 2005 legislative assembly by several interested parties including Attorney General Myers.

HB2569 Introduced to the 2005 Legislative Assembly:

HB2569 was written by the Oregon Council of Police Associations, Deputy Steigler and Attorney General Hardy Myers to provide an exemption to police who performed a "lawful intervention technique" in the course of official duties.

Status:

This bill had an emergency clause, making it effective on passage). It passed both the Senate and the House and was signed into law by Governor Kulongoski on June 29, 2005. It is located in Chapter 405, (2005 Laws). Effective date: June 29, 2005.

Attached is the enrolled bill for your reference. The exemption will be added under the NEW subsection (4) of ORS 811.720 in the 2005-2007 ORS when it has been created and distributed.

You can read the enrolled final version of the law by following this link:

<http://www.leg.state.or.us/05reg/measpdf/hb2500.dir/hb2569.en.pdf>

If you have additional question regarding this or traffic law-enforcement related bills or laws, please call or email: Steve Vitolo, ODOT Safety Division, Program Manager, Law Enforcement and Judicial Programs, (503) 986-4446 (Office), (503) 986-4341 (Fax) or

112*71*240 (Nextel Direct Connect) Visit our Website at: <http://www.oregon.gov/ODOT/TS/>

TURNING THE CORNER AND STILL DRIVING

A new publication developed by the National Highway Traffic Safety Administration in partnership with the National Sheriffs' Association addresses how America's driving population is aging.

Law enforcement is the primary audience for the publication, Turning the Corner and Still Driving.

Law enforcement must prepare for the challenges presented by the aging population. Police chiefs and sheriffs need guidance to identify and locate resources, develop and implement strategies, and train and equip their people to effectively address concerns posed by older drivers in their communities.

To receive a copy, fax an order to 301-386-2194 or visit the NHTSA Web site at www.nhtsa.dot.gov/people/outreach/media/catalog/index.cfm .

For more information, contact Keith D. Williams at 202-366-0543 or keith.williams@nhtsa.dot.gov .

DRIVER SUSPENSION PACKETS HAVE NEW CERTIFICATION

As a reminder for law enforcement agencies, courts, and attorneys that order Driver Suspension Packets, there has been a change to the certification on the First Class Mail register.

Suspension packets include a certified court print, certified copies of applicable suspension notices, and certified copies of the proof of mailing document, which may be the First Class Mail register. First Class Mail registers produced beginning May 16, 2005, no longer have two certification lines.

The double certification will be replaced with a single certification completed by the staff who prepared the suspension orders for mailing. The new single certification is a stamped certification and will continue to be located at the bottom of the register.

The new certification will read: "I hereby certify that on (date) I mailed the notices and/or letters received in the mailroom. Employee Name-DAS Publishing & Distribution."

For more information, contact the DMV Record Services Unit at (503) 947-4031.

"IMPROPER USE" OF VEHICLE SAFETY RESTRAINTS

Most traffic crash injuries and deaths are attributed to one of three main behavioral factors: occupant safety belt use, speeding drivers, or impaired drivers.

Since Oregon's safety belt law became effective in December 1990, belt use has almost doubled, while the involvement of speeding or impaired drivers in crashes has remained relatively constant. Coincident with an increase in restraint use from 48% to 94%, Oregon has witnessed a 45% decline in crash injury rates and a 34% decline in crash fatality rates. This would be expected because safety belts are estimated to be 45-65% effective in reducing the risk of fatal injuries.

Oregon's 1990 safety belt law inserted the word "proper" into the requirements for safety belt or child safety system use by all passenger vehicle occupants. Comprehensive and ongoing public education and enforcement campaigns, including support from the courts, have achieved a level of compliance that places Oregon third highest among all U.S. states and territories.

However, DMV records indicate that over 30,000 safety belt convictions occur annually, and ODOT Crash Analysis and Reporting data indicate that 47% or 217 of Oregon's 466 occupant fatalities in 2003 were unrestrained or improperly restrained.

At 100% belt use, at least 120 of the 217 unrestrained and improperly restrained occupants could have been saved.

Those improperly restrained are placing the shoulder belt behind the back or under the arm, failing to wear both parts of a two-part belt system, or placing two persons in one belt system. These practices do not meet the “proper use” requirements of ORS 811.210 and result in severe injuries to the unbelted occupant and to other occupants when the improperly belted occupant slides out of the belt and collides with other occupants.

Oregon police officers have been educated on the fatal consequences of misuse through the Three Flags Campaign and are citing more frequently for misuse. The ODOT Safety Division occasionally is asked to provide documentation that will support the defense of misuse citations in court. The following is the basis of that support.

While ORS 811.210 does not state that “misuse” of a safety belt system is illegal in so many words, the statute does repeatedly require “proper” use. This is the essence of an Oregon Attorney General Opinion issued March 30, 1992, in response to ODOT asking whether ORS 811.210 was violated by misuse as well as nonuse of safety belts.

The opinion reasoned that because the word “proper” was inserted before “use” at five separate locations in statute, it was obviously the express intent to not limit enforcement to non-use. Further, the opinion states that a court would construe “properly secured” to include misuse in order to avoid unreasonable or absurd trial results.

The opinion identifies situations of misuse to include wearing a seatbelt loosely or use of one part of a two-part belt system, including fastening the shoulder belt behind the back.

While most people would generally recognize that there is only one correct way to wear a lap and shoulder belt system, 2001 amendments to Oregon’s restraint laws included the generally accepted NHTSA definition of “proper fit” for a lap and shoulder belt system at 811.210(b) to help drivers determine when belt-positioning booster seats would no longer be needed for children: “Proper fit means the lap belt of the safety belt or safety harness is positioned low across the thighs, and the shoulder belt is positioned over the collarbone and away from the neck.”

The Oregon Driver’s Manual and ODOT safety belt brochures include graphics illustrating the correct use of safety belt systems, describe legal requirements for proper use, and warn of the dangers of misuse.

When a shoulder belt is placed under the arm, it is resting over the ribs. The ribs are not as strong as the collar bone and when broken, they are likely to damage vital internal organs. Placing the shoulder belt behind the back or under the arm renders the shoulder belt portion useless in terms of holding the occupant in position inside the vehicle. “In position” means inside the car, back from the dashboard, steering wheel or other seating, and away from a deploying airbag.

Decapitations have occurred to occupants who wore the automatic shoulder belt but failed to manually fasten their lap belt. The lap belt would have held them in the car and prevented the ejection causing the decapitation.

Given Oregon’s strong education and enforcement campaigns, some speculate that misuse is occurring most commonly among individuals who resisted belt use due to discomfort of the shoulder belt fit. Shoulder belt fit may be made more comfortable in several ways: use the built-in adjuster, adjust seating position and/or use a padded belt cover to alleviate rubbing of the shoulder belt against the neck.

Many types of after-market belt adjusters are available but are not safety tested, regardless of what the labels indicate. The National Highway Traffic Safety Administration has not tested or endorsed any such products, and instead warns that such products may degrade the overall effectiveness of a belt system. The extent of degradation has not been quantified by NHTSA. For more information, contact Carla Levinski, ODOT Occupant Protection Program Manager, at 503-986-4199.
