

ENGROSSED HOUSE AMENDMENT  
TO  
ENGROSSED SENATE BILL NO. 813

BY: DOUGLASS of the SENATE  
and  
BRYANT of the HOUSE

( FIREARMS - AMENDING 21 O.S., SECTION 1738 -  
FORFEITURE OF CERTAIN VEHICLES -  
EMERGENCY )

AUTHORS: Add the following House Coauthors: WEESE, JOHNSON (Rob)  
and APPLE

AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
entire bill and insert

AN ACT RELATING TO CRIMES AND PUNISHMENTS; SPECIFYING  
PROCEDURE FOR DISPOSITION OF REMAINS OF A HUMAN  
FETUS; REQUIRING PROMULGATION OF CERTAIN RULES;  
MAKING CERTAIN VIOLATIONS A FELONY; AUTHORIZING THE  
SUSPENSION OR WITHDRAWAL OF CERTAIN LICENSES UNDER  
CERTAIN CIRCUMSTANCES; AMENDING 21 O.S. 1991,  
SECTION 1738, WHICH RELATES TO SEIZURE AND  
FORFEITURE OF CERTAIN VEHICLES; PROVIDING  
ADDITIONAL CRIMES FOR WHICH VEHICLES MAY BE SEIZED  
AND FORFEITED; AND DECLARING AN EMERGENCY.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1169 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No person, hospital or related institution as such term is defined by Section 1-701 of Title 63 of the Oklahoma Statutes, or physician licensed to practice medicine pursuant to Chapter 11 or Chapter 14 of Title 59 of the Oklahoma Statutes shall provide for the disposition of the remains of a human fetus, resulting from an abortion, whether induced or occurring accidentally or spontaneously, except through cremation, interment by burial, or release of the remains to family members for appropriate burial, cremation or other disposition in a dignified and sanitary manner. For the purposes of this section, the term "remains of a human fetus" means the remains of the dead offspring of a human being that has reached a stage of development so that there are cartilaginous structures, fetal or skeletal parts after an abortion or miscarriage, whether or not the remains have been obtained by induced, spontaneous, or accidental means.

B. 1. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall immediately promulgate emergency rules for the proper disposition of the remains of a human fetus by physicians or by employees or agents of the physician. The disposition of remains of a human fetus by hospitals and related institutions licensed by the Oklahoma State Department of Health shall be subject to rules promulgated by the Oklahoma State Board of Health for such disposition.

2. The Oklahoma State Board of Health shall immediately promulgate rules for the disposition of remains of a human fetus by hospitals, related institutions and laboratories.

C. The standards developed by the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners and any rules promulgated by the Oklahoma State Board of

Health relating to disposition of the remains of a human fetus shall provide for the handling and disposition of the remains of a human fetus and shall allow for the release of remains to family members for appropriate burial, cremation or other disposition in a dignified and sanitary manner.

D. The State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners and the Oklahoma State Board of Health shall cooperatively establish uniform rules so as to provide policy, enforcement and programmatic consistency for any such handling and disposal of the remains of a human fetus.

E. 1. Any person who violates the provisions of this section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the State Penitentiary for not more than five (5) years or by a fine not to exceed Ten Thousand Dollars (\$10,000.00) or by both such fine and imprisonment.

2. The violation of the provisions of this section or any rule or regulation promulgated by the Oklahoma State Board of Health related to the disposal of the remains of a human fetus by any hospital or related institution licensed by the Oklahoma State Department of Health shall be grounds for suspension or withdrawal of the license so issued to such hospital or related institution.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1738, is amended to read as follows:

Section 1738. A. Any commissioned peace officer of this state is authorized to seize any vehicle owned by or registered to the defendant used in the commission of any armed robbery offense defined in Section 801 of this title, or any vehicle owned by or registered to the defendant which is used in the commission of the offense of shooting another with a firearm or discharging any firearm in violation of Section 652 of this title, or any vehicle owned or operated by the defendant from which a firearm is unlawfully pointed in violation of Section 1289.16 of this title, or

any vehicle owned or operated by the defendant used in conjunction with reckless conduct while in possession of a weapon in violation of Section 1289.11 of this title, or any vehicle, airplane, vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or equipment owned by or registered to the defendant which is used in the attempt or commission of any act of burglary in the first or second degree, larceny of livestock, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma Statutes. Said property may be held as evidence until a forfeiture has been declared or a release ordered.

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

C. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title, or interest is of record in the Tax Commission or with the county clerk for filings under the Uniform Commercial Code, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes;

2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property 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 property and any other party in interest or claimant may file a verified answer and claim to the property 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 property 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 state shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection A of this section with knowledge by the owner of the property.

H. The claimant of any right, title, or interest in the property may prove his lien, mortgage, or conditional sales contract to be bona fide and that his right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser.

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

judgment of the court, as on sale upon execution, except as otherwise provided for by law.

K. Property 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 wherein the property was seized. The district attorney shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the district attorney may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the district attorney shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

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

M. Attorney fees shall not be assessed against the state or the district attorney for any actions or proceeding pursuant to Section 1701 et seq. of this title.

N. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

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

2. To the payment of the actual reasonable expenses of preserving the property;

3. To the victim of the crime to compensate said victim for any loss he may have incurred as a result of the act for which such property was forfeited; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the office of the arresting authorities; one-third (1/3) of said fund to be used and maintained as a revolving fund by the district attorney for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

O. This fund shall be limited to One Hundred Thousand Dollars (\$100,000.00) at any one time in counties with population in excess of three hundred thousand (300,000) and Twenty-five Thousand Dollars (\$25,000.00) at any one time in counties with population less than three hundred thousand (300,000). Any amount in excess of these figures shall be placed in the general fund of the county. Whenever any property is forfeited pursuant to this section, the district court of jurisdiction may order that the property seized may be retained by the state, county, or municipal law enforcement agency which seized the property for its official use.

P. If the court finds that the property was not used in the attempt or commission of an act specified in subsection A of this section, the court shall order the property released to the owner as his right, title, or interest appears on record in the Tax Commission as of the seizure.

Q. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be

forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection A of this section. No property 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, and by any person other than such owner while such property 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.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 23rd day of April, 1992.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1992.

President of the Senate