STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1151 BY: BENSON of the HOUSE

and

MILES-LaGRANGE of the SENATE

COMMITTEE SUBSTITUTE

(PUBLIC HEALTH AND SAFETY - AMENDING 63 O.S. 1981, SECTION 2-506, AS LAST AMENDED BY SECTION 27, CHAPTER 264, O.S.L. 1990 - SEIZURE OF PROPERTY - MODIFYING DISPOSITION OF PROCEEDS FROM THE SALE OF SUCH PROPERTY -

EFFECTIVE DATE)

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

SECTION 1. AMENDATORY 63 O.S. 1981, Section 2-506, as last amended by Section 27, Chapter 264, O.S.L. 1990 (63 O.S. Supp. 1990, Section 2-506), is amended to read as follows:

Section 2-506. A. Any peace officer of this state shall seize the following property:

1. Any property described in paragraph 4 or 6 of subsection A of Section 2-503 of this title. Such property shall be held as evidence until a forfeiture has been declared or release ordered;

2. Any property described in subsection B of Section 2-503 of this title; or

3. Any property described in subsection C of Section 2-503 of this title.

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 by the agency seeking forfeiture 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, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;

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

3. Upon all other owners or interested parties, 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)~~ thirty (30) 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)~~ thirty (30) 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 shall order the property forfeited to the state, if such fact is proved.

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

G. At a hearing in a proceeding against property described in paragraphs 4 and 6 of subsection A or subsections B and C of Section 2-503 of this title, the requirements set forth in said paragraph or

subsection, respectively, shall be satisfied by the state by a preponderance of the evidence.

H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide or innocent ownership interest 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 shall 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 sold under judgment of the court, as on sale upon execution, except as otherwise provided for in Section 2-503 of this title.

K. Property taken or detained under 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, subject only to the orders and decrees of the court or the official having jurisdiction thereof. The provisions of this subsection shall not apply to property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission. Property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic

Beverage Laws Enforcement Commission shall be subject to the provisions of subsection D of Section 2-503 of this title.

L. The proceeds of the sale of any property not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission 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 expenses of preserving the property; and~~ all court costs and disbursements from the court fund in conjunction with the case praying for the forfeiture of any property seized;

3. To the payment of actual expenses of preserving the property seized;

4. When the defendant is unable to pay due to indigence, to the nonpayment of a fine and court costs imposed pursuant to the provisions of Section 2-415 of this title, subject to apportionment as provided in Section 2-416 of this title;

~~3. The balance to~~ 5. To the payment of the cost of any court-appointed or publicly supported counsel who provides representation in a case brought pursuant to Section 2-415 or 2-416 of this title; and

6. To a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse education or any lawful purpose and maintained by the district attorney in his discretion for that purpose with a yearly accounting to the board of

county commissioners in whose county the fund is established and to the District Attorneys Council~~; provided, the balance of the proceeds of such sale of property forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title~~. Said revolving fund shall be audited by the State Auditor and Inspector at least every two (2) years in the manner provided in Section 171 of Title 19 of the Oklahoma Statutes. Said audit shall include, but not be limited to, a compliance audit. A district attorney shall enter into agreements with municipal, county or state agencies to return to the agency a percentage of not less than fifty percent (50%) of proceeds of the sale of any property seized by the agency and forfeited under the provisions of this section.

M. Whenever any vehicle, airplane or vessel is forfeited under this act, Section 2-101 et seq. of this title, the district court of jurisdiction may order that the vehicle, airplane or vessel seized may be retained by the state, county or city law enforcement agency which seized the vehicle, airplane or vessel for its official use.

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

SECTION 2. This act shall become effective September 1, 1991.

43-1-1054 MHR