

ENGROSSED HOUSE
BILL NO. 1331

BY: WILLIAMS of the HOUSE

and

WILKERSON of the SENATE

AN ACT RELATING TO AIRCRAFT AND AIRPORTS; PROHIBITING
CERTAIN ACTS BY PERSONS UNDER THE INFLUENCE OF
INTOXICANTS; DEFINING TERM; PROVIDING PENALTIES;
PROVIDING FOR IMPLIED CONSENT FOR TESTING FOR
INTOXICANTS; PROVIDING PROCEDURES AND REQUIREMENTS
FOR TESTING; PROVIDING FOR RULES AND REGULATIONS;
PROVIDING FOR PAYMENT FOR TESTING; PROVIDING FOR
IMMUNITY FOR PERSONS OR FACILITIES ADMINISTERING
TESTING; REQUIRING CERTAIN WRITTEN REPORT;
PROVIDING FOR REFUSAL TO SUBMIT TO TESTING;
PROVIDING THAT REFUSAL TO SUBMIT TO TESTING IS
ADMISSIBLE AS EVIDENCE; PROHIBITING CERTAIN PERSONS
FROM ALLOWING INTOXICATED PERSONS TO OPERATE
AIRCRAFT AND PROVIDING A PENALTY THEREFOR;
PROVIDING FOR THE INTRODUCTION OF OTHER COMPETENT
EVIDENCE OF INTOXICATION; AMENDING 47 O.S. 1981,
SECTION 759, AS LAST AMENDED BY SECTION 6, CHAPTER
225, O.S.L. 1988 (47 O.S. SUPP. 1990, SECTION 759),
WHICH RELATES TO THE BOARD OF TESTS FOR ALCOHOL AND
DRUG INFLUENCE; MODIFYING DUTIES OF THE BOARD;
PROVIDING CERTAIN RECORDING REQUIREMENTS FOR CIVIL
AIRCRAFT; PROHIBITING CERTAIN ACTS; PROVIDING
PENALTIES; PROHIBITING THE EQUIPPING OF AIRCRAFT
WITH CERTAIN CONTAINERS AND PROVIDING A PENALTY

THEREFOR; PROVIDING FOR SEIZURE AND FORFEITURE IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 1, CHAPTER 55, O.S.L. 1987 (21 O.S. SUPP. 1990, SECTION 1738), WHICH RELATES TO SEIZURE AND FORFEITURE PROCEEDINGS; EXPANDING SCOPE OF PROVISIONS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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 301 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful and punishable as provided in subsection C of this section for any person to operate, or be in actual physical control of an aircraft or to be a crew member of an aircraft within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 5 of this act, of four-hundredths (0.04) or more within two (2) hours after the arrest of such person;

2. Is under the influence of any intoxicant; or

3. Has consumed any intoxicant within the previous eight (8) hours.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use an intoxicant shall not constitute a defense against any charge of violating this section.

As used in this title, the term "intoxicant" shall mean:

1. Any beverage containing alcohol;

2. Any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes;

3. Any substance which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions of the human body; and

4. Any combination of alcohol, controlled dangerous substances, and substances capable of being ingested, inhaled, injected or absorbed into the human body and capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions of the human body.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars (\$1,000.00). Any person who within ten (10) years after a previous conviction of a violation of this section is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction within ten (10) years prior to the conviction pursuant to the provisions of this section, in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section shall be deemed guilty of a felony and shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years, and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00). When a sentence of incarceration is imposed, the person shall be processed through the Lexington Assessment and Reception Center. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the person shall be assigned to the Department of

Mental Health and Substance Abuse Services for substance abuse treatment. The inmate shall be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate was assigned to the Department of Mental Health and Substance Abuse Services, if at the time the sentence of incarceration was imposed, the court determined that the convicted person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the convicted person shall pay. While assigned to such a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the person shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures. In the event a felony conviction does not result in a sentence of incarceration as provided for in this subsection, the person shall be required to serve not less than ten (10) days of community service, or to undergo in-patient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight

(48) consecutive hours, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.

D. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars (\$75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purpose of assisting the court in its final sentencing determination.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. Any person who operates or is in actual physical control of an aircraft or who is a crew member of an aircraft within this state shall be deemed to have given consent to a test or tests of such person's blood or breath, for the purpose of determining the alcohol concentration as defined in Section 5 of this act, and such person's blood, saliva or urine for determining the presence and concentration of any other intoxicant therein as defined in Section 1 of this act, if arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of an aircraft or was a crew member of an aircraft within this state while the person was under the influence of an intoxicant. The test shall be administered by or at the direction of a law enforcement officer after having arrested such person and having reasonable grounds to believe that such person was operating or in actual physical control of an aircraft within this state while under the influence of an intoxicant.

B. The law enforcement agency by which the arresting officer is employed may designate, in accordance with the rules and regulations of the Board of Tests for Alcohol and Drug Influence, hereinafter referred to as the Board, whether blood or breath is to be tested for the alcohol concentration thereof, and whether blood, saliva or urine is to be tested for the presence and concentration of any other intoxicant therein. In the event the law enforcement agency does not designate the test to be administered, breath shall be the substance tested for alcohol concentration. Blood may also be tested to determine the alcohol concentration thereof in the event that breath cannot be tested to determine the alcohol concentration thereof because of the lack of an approved device or qualified person to administer a breath test or because such breath test for any other reason cannot be administered in accordance with the rules and regulations of the Board. In the event the law enforcement agency does not designate the test to be administered, blood, saliva or urine shall be the substance tested for the presence and concentration of any other intoxicant or the combination of alcohol and any other intoxicant therein.

C. In the event the person is incapable of submitting to and successfully completing, by reason of illness or injury or other physical disability, the test to be administered, an alternate test may be administered in accordance with the rules and regulations of the Board.

D. Any person who is unconscious or otherwise incapable of refusing to submit to a test of such person's blood or breath to determine the alcohol concentration thereof, or to a test of such person's blood, saliva or urine to determine the presence and concentration of any other intoxicant therein, shall be deemed not to have withdrawn the consent provided by subsection A of this section, and such test may be administered as provided herein.

E. In addition to any test designated by the arresting officer, the arrested person may also designate any additional test to be administered to determine the concentration of alcohol, any other intoxicant or the combination of alcohol and any other intoxicant. The cost of such additional test shall be at the expense of the arrested person.

A sufficient quantity of any specimen obtained at the designation of the arrested person shall be available to the law enforcement agency employing the arresting officer. Such specimens shall be treated in accordance with the same rules and regulations applicable to the specimens obtained by an arresting officer.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 303 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, certified by the State Board of Medical Licensure and Supervision, an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer may withdraw blood for purpose of having a determination made of its concentration of alcohol or other intoxicant. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of this title.

B. No person specified in subsection A of this section, no employer of such a person, and no hospital or other health care facility where blood is withdrawn, shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer by the provisions of Section 2 or 4 of this act, if the act is performed in a reasonable

manner according to generally accepted clinical practice. If the person specified in subsection A of this section is presented with a written statement by the person whose blood is to be withdrawn or a duly authorized peace officer that the person whose blood is to be withdrawn has agreed to the withdrawal of blood or an order from a court of competent jurisdiction that blood be withdrawn, the person authorized to withdraw the blood and the hospital or other health care facility where the withdrawal occurs may rely on such a statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person specified in subsection A of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer under the provisions of Section 2 or 4 of this act or when acting pursuant to court order.

C. The blood, breath, saliva or urine specimens obtained shall be tested by the appropriate test as determined by the Board to determine the alcohol concentration thereof, or the presence and concentration of any other intoxicant which might have affected the ability of the person tested to operate an aircraft safely.

D. When blood is withdrawn or saliva or urine is collected for the appropriate test as determined by the Board of its alcohol or other intoxicant concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, saliva or urine specimen shall be retained by a laboratory approved by the Board, in accordance with the rules and

regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, saliva or urine specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional blood, saliva or urine specimen prior to the completion of the independent analysis, except the analyst performing the independent analysis and agents of the analyst.

E. When a test of breath is performed for the purpose of determining the alcohol concentration thereof, a sufficient quantity of breath, or of the alcohol content of a fixed or measured quantity of breath, shall be obtained, in accordance with the rules and regulations of the Board to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess specimen of breath, or of its alcohol content, shall be retained by the law enforcement agency employing the arresting officer, in accordance with the rules and regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person, or his or her attorney, may direct that such specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional specimen of breath, or of its alcohol content, prior to the completion of the independent analysis thereof, except the analyst performing the independent analysis and agents of the analyst.

F. The costs of collecting blood, breath, saliva or urine specimens for the purpose of determining the alcohol or other intoxicant thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer. The cost of collecting, retaining and sending or

delivering to an independent laboratory the excess specimens of blood, breath, saliva or urine for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such specimen of blood, breath, saliva or urine shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

G. Tests pursuant to the provisions of this title, whether administered by or at the direction of a law enforcement officer or administered independently, at the option of the tested person, on the excess specimen of such person's blood, breath, saliva or urine, to be considered valid and admissible in evidence under the provisions of this title, shall have been administered or performed in accordance with the rules and regulations of the Board.

H. Any person who has been arrested for any offense arising out of acts alleged to have been committed while the person was under the influence of an intoxicant and was operating or in actual physical control of an aircraft or was a crew member of an aircraft, who is not requested by a law enforcement officer to submit to a test shall be entitled to have an independent test of his or her blood, breath, saliva or urine which is appropriate as determined by the Board for the purpose of determining its alcohol concentration or of any other intoxicant therein, performed by a person of his or her own choosing who is qualified as stipulated in this section. The arrested person shall bear the responsibility for making all necessary arrangements for the administration of such independent test and for the independent analysis of any specimens obtained, and bear all costs thereof. The failure or inability of the arrested person to obtain an independent test shall not preclude the

admission of other competent evidence bearing upon the question of whether such person was under the influence of an intoxicant.

I. A written report of the results of the test administered by or at the direction of the law enforcement officer shall be made available to the tested person, or his or her attorney, to the law enforcement agency employing the arresting officer, the district attorney of the county in which the alleged violation of Section 1 of this act occurred, and to the Federal Aviation Administration Flight Standards District Office having jurisdiction over the county in which the alleged violation of Section 1 of this act occurred. The results of the tests provided for in this title shall be admissible in civil actions.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 304 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. If a conscious person under arrest refuses to submit to testing of his or her blood or breath for the purpose of determining the alcohol concentration thereof, or to a test of his or her blood, saliva or urine for the purpose of determining the concentration of any intoxicant, none shall be given, unless the investigating officer has probable cause to believe that the person under arrest, while intoxicated, has operated or has been a crew member on an aircraft in such a manner as to have caused the death or serious physical injury of any other person or persons. In such event, such test otherwise authorized by law may be made in the same manner as if a search warrant had been issued for such test or tests. The sample shall be taken in a medically acceptable manner at a hospital or other suitable health care facility.

B. Any refusal by a conscious person to submit to testing shall be reported to the Federal Aviation Administration Flight Standards District Office having jurisdiction over the county in which the alleged violation of Section 1 of this act occurred.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 305 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while operating or in actual physical control of an aircraft while the person was under the influence of an intoxicant, or while the person was a crew member of an aircraft and allegedly under the influence of an intoxicant, evidence of the alcohol concentration in the blood or breath of the person as shown by analysis of the blood or breath of the person performed in accordance with the provisions of Sections 2 and 4 of this act or evidence of the presence and concentration of any other intoxicant as shown by analysis of such person's blood, breath, saliva, or urine specimens in accordance with the provisions of Sections 2 and 4 of this act is admissible. Evidence that the person has refused to submit to either of said analyses is also admissible.

B. For the purpose of Sections 1 through 8 of this act:

1. Evidence that there was an alcohol concentration of less than four-hundredths (0.04) is prima facie evidence that the person was not under the influence of alcohol;

2. Evidence that there was an alcohol concentration of four-hundredths (0.04) or more shall be admitted as prima facie evidence that the person was under the influence of alcohol.

C. As used in Sections 1 through 8 of this act, alcohol concentration shall mean grams of alcohol per one hundred (100) milliliters of blood if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

D. To be admissible in a criminal action or proceeding, evidence of alcohol concentration shall first be qualified by establishing that such test was administered to the person within two (2) hours after the arrest of the person.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 306 of Title 3, unless there is created a duplication in numbering, reads as follows:

If a person is convicted of a violation of Section 1 of this act or of a local ordinance substantially corresponding to Section 1 of this act, a report of the conviction shall be forwarded by the court in which the conviction occurred to the Federal Aviation Administration Flight Standards District Office having jurisdiction over the county in which the violation occurred.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 307 of Title 3, unless there is created a duplication in numbering, reads as follows:

The owner or operator of an aircraft or the person in charge or in control of an aircraft shall not knowingly permit the aircraft to be operated within this state by a person who is under the influence of any intoxicant or who has consumed an intoxicant within eight (8) hours before operating the aircraft. A person who is convicted of violating this section shall be guilty of a misdemeanor, punishable by imprisonment for not more than six (6) months, or a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or both such fine and incarceration.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 308 of Title 3, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 1 through 7 of this act do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of an intoxicant.

SECTION 9. AMENDATORY 47 O.S. 1981, Section 759, as last amended by Section 6, Chapter 225, O.S.L. 1988 (47 O.S. Supp. 1990, Section 759), is amended to read as follows:

Section 759. A. There is hereby re-created, to continue until July 1, 1994, in accordance with the provisions of the Oklahoma Sunset Law, the Board of Tests for Alcohol and Drug Influence to be composed of the Dean of the University of Oklahoma College of Medicine, or the Dean's designee who shall receive an appointment in writing, as Chairman, and the Commissioner of Public Safety or a designee, the Director of the Oklahoma State Bureau of Investigation or a designee, the State Commissioner of Health or a designee, the Director of the Council on Law Enforcement Education and Training or a designee, one certified peace officer who is a member of a local law enforcement agency selected by the Oklahoma Sheriffs and Peace Officers Association and one person selected by the Oklahoma Association of Chiefs of Police, as members, to serve without pay other than reimbursement of necessary and actual expenses as provided in the State Travel Reimbursement Act. Each such designee shall receive an appointment in writing which shall become a permanent part of the records of the Board. The Board is authorized to appoint a State Director of Tests for Alcohol and Drug Influence and an Administrative Assistant to the Board, as necessary for the performance of its functions. The Board may expend appropriated funds for purposes consistent with Sections 751 through 761 of this title and Sections 1 through 8 of this act.

B. Collection and analysis of a person's blood, breath, saliva or urine, to be considered valid and admissible in evidence, whether performed by or at the direction of a law enforcement officer or at the request of the tested person, shall have been performed in compliance with the rules and regulations adopted by the Board of Tests for Alcohol and Drug Influence and by an individual possessing a valid permit issued by the Board for this purpose.

C. The Board of Tests for Alcohol and Drug Influence is authorized to approve laboratories for the analysis, provided by the provisions of this title, of specimens of blood, breath, saliva and

urine, and to administer a program for regular monitoring of such laboratories. The Board is authorized to prescribe uniform standards and conditions for, and to approve satisfactory methods, procedures, techniques, devices, equipment and records for tests and analyses and to prescribe and approve the requisite education and training for the performance of such tests and analyses. The Board shall establish standards for and ascertain the qualifications and competence of individuals to administer and conduct such tests and analyses, and to issue permits to laboratories and to individuals which shall be subject to suspension or revocation at the discretion of the Board. The Board is authorized to prescribe uniform standards, conditions, methods, procedures, techniques, devices, equipment and records for the collection, handling, retention, storage, preservation and delivery of specimens of blood, breath, saliva and urine obtained for the purpose of determining the alcohol concentration thereof or the presence and concentration of any other intoxicating substance therein. The Board may take such other actions as may be reasonably necessary or appropriate to effectuate the purposes of Sections 751 through 761 of this title and Sections 1 through 8 of this act, and may adopt, amend and repeal such other rules and regulations consistent with this chapter as the Board shall determine proper.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 258 of Title 3, unless there is created a duplication in numbering, reads as follows:

No instrument, which affects the title to or interest in any civil aircraft of the United States, or any portion thereof, is valid in respect to such aircraft, or portion thereof, against any person, other than the person by whom the instrument is made or given, his heirs or deviser, and any person having actual notice thereof, until such instrument is recorded in the office of the Federal Aviation Administration Aircraft Registration Branch in

Oklahoma City, Oklahoma. Every such instrument so recorded in such office is valid as to all persons without further recordation in any office of this state. Any instrument recorded pursuant to the provisions of this section takes effect from the date of its filing and not from the date of its execution.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 259 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person in this state to operate an aircraft that is not registered in accordance with Title 49 of United States Code, Appendix 1401 and the regulations contained in Title 14, Chapter 1, parts 47-49 of the Code of Federal Regulations.

B. Any aircraft in or operated in this state that is found to be registered to a nonexistent person, firm, or corporation or to a firm, business, or corporation which is no longer a legal entity is in violation of this section. Any firm, business, or corporation that has no physical location or corporate officers or that has lapsed into an inactive state or been dissolved by order of the Secretary of State for a period of at least ninety (90) days with no documented attempt to reinstate the firm, business, or corporation or to register its aircraft in the name of a real person or legal entity in accordance with Federal Aviation Administration regulations is in violation of this section.

C. A person who knowingly supplies false information to a governmental entity in regard to the name, address, business name, or business address of the owner of an aircraft in or operated in the state is in violation of this section.

D. It is a violation of this section for any person or corporate entity to knowingly supply false information to any governmental entity in regard to ownership by the person or corporate entity or another firm, business, or corporation of an aircraft in or operated in this state.

E. This section does not apply to any aircraft registration or information supplied by a governmental entity in the course and scope of performing its lawful duties.

F. A violation of this section shall be deemed a felony.

G. Any violation of this section shall constitute the aircraft to which it relates as contraband, and said aircraft may be seized as contraband by a law enforcement agency and shall be subject to forfeiture.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 260 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person, firm, association, or corporation to knowingly buy, sell, offer for sale, receive, dispose of, conceal, or have in his possession, or to endeavor to buy, sell, offer for sale, receive, dispose of, conceal, or possess, any aircraft or part thereof on which the assigned identification numbers do not meet the requirements of the federal aviation regulations.

B. If any of the United States identification numbers required by this section have been knowingly omitted, altered, removed, destroyed, covered, or defaced, or the real identity of the aircraft cannot be determined due to an intentional act of the owner or possessor, the aircraft may be seized as contraband property by a law enforcement agency and shall be subject to forfeiture. In the case of United States registration numbers, such aircraft shall not be knowingly sold or operated from any airport, landing field, or other property or body of water where aircraft may land, or take off in this state until the United States registration number assigned by the Federal Aviation Administration has been placed on the aircraft.

C. It is unlawful for any person to knowingly possess, manufacture, sell or exchange, offer to sell or exchange, supply in

blank, or give away any altered or counterfeit manufacturer's aircraft identification number plate or decal used for the purpose of identification of any aircraft; to authorize, direct, aid in exchange, or give away such counterfeit manufacturer's aircraft identification number plate or decal; or to conspire to do any of the foregoing provided for in this subsection.

D. Any person who violates any provision of this section is guilty of a felony.

E. The failure to have aircraft identification numbers clearly displayed on the aircraft and in compliance with Part 43 of the Federal Aviation Regulations is probable cause for any peace officer in this state to make further inspection of the aircraft in question to ascertain its true identity. A peace officer is authorized to inspect an aircraft for identification numbers:

1. When the aircraft is located on public property; or
2. Upon consent of the owner of the private property on which the aircraft is located.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 401 of Title 3, unless there is created a duplication in numbering, reads as follows:

The required airman's certificate and medical certificate as applicable shall be kept in the personal possession of the certificate holder when he is operating aircraft within this state and shall be presented for inspection upon the demand of any peace officer of this state, any federal law enforcement officer, or any official, manager or person in charge of any airport, landing field, or landing area in this state upon which he shall operate.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 501 of Title 3, unless there is created a duplication in numbering, reads as follows:

In the interests of the public welfare, it is unlawful for any person, firm, corporation, or association to install on any

aircraft, maintain on any aircraft, or possess any aircraft which has been equipped with, or had installed in its wings or fuselage, fuel tanks, bladders, drums, or other containers which will hold fuel if such fuel tanks, bladders, drums, or other containers do not conform to federal aviation regulations or have not been approved by the Federal Aviation Administration by inspection or special permit. Pursuant to Part 43, Appendix B(d) of the Federal Aviation Regulations, a copy of the Federal Aviation Form 337 pertaining to such installations shall be submitted to the Federal Aviation Administration Aircraft Registration Branch in Oklahoma City, Oklahoma, to be incorporated in the official aircraft record. The provisions of this section shall apply to any pipes, hoses, or auxiliary pumps which when present in the aircraft could be used to introduce fuel into the primary fuel system of the aircraft from such tanks, bladders, drums, or containers. Any person who violates any provision of this section is guilty of a felony. Any aircraft in violation of this section shall be considered contraband, and said aircraft may be seized as contraband by a law enforcement agency and shall be subject to forfeiture.

SECTION 15. AMENDATORY Section 1, Chapter 55, O.S.L. 1987 (21 O.S. Supp. 1990, Section 1738), is amended to read as follows:

Section 1738. A. Any commissioned peace officer of this state is authorized to seize any vehicle, ~~airplane~~ aircraft, 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 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 Title 21 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. Any commissioned peace officer of this state is authorized to seize any aircraft or part thereof for any violation of Section 12 or 14 of this act.

C. 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.~~ D. 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.~~ E. 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.~~ F. 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.~~ G. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

~~G.~~ H. 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 or B of this section with knowledge by the owner of the property.

~~H.~~ I. 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.~~ J. 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.~~ K. 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.~~ L. 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.~~ M. 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.~~ N. Attorney fees shall not be assessed against the state or the district attorney for any actions or proceeding pursuant to this act section.

~~N.~~ O. 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.

~~Q.~~ P. 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.~~ Q. If the court finds that the property was not used in the attempt or commission of an act specified in subsection A or B 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.~~ R. No vehicle, ~~airplane~~ aircraft, 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 or B 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 16. This act shall become effective September 1, 1991.

Passed the House of Representatives the 12th day of March, 1991.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate