SHORT TITLE: Crimes and punishments; authorizing seizure of certain vehicle in certain felony offense; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 253 By: Herbert

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1991, Section 1738, as last amended by Section 2, Chapter 382, O.S.L. 1992 (21 O.S. Supp. 1992, Section 1738), which relates to seizure and forfeiture proceedings; modifying references; authorizing seizure and forfeiture of certain vehicle in certain DUI felony offense; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1738, as last amended by Section 2, Chapter 382, O.S.L. 1992 (21 O.S. Supp. 1992, Section 1738), is amended to read as follows:

Section 1738. A. Any commissioned peace officer of this state is authorized to seize ~~any~~ the following:

1. 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~~;

2. Any vehicle owned by or registered to the defendant when such vehicle is used to facilitate the intentional discharge of any kind of firearm in violation of Section 652 of this title~~, or any~~;

3. 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~~;

4. 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; or

5. Any vehicle owned by or registered to the defendant which is used in the commission of a felony act of driving, operating, or being in actual physical control of a motor vehicle under the influence of alcohol or any other intoxicating substance, or any combination thereof, after a previous felony conviction in violation of Section 11-902 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, and as provided in Section 2-508 of Title 63 of the Oklahoma Statutes, 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 2. This act shall become effective September 1, 1993.

44-1-0429 NP