

SHORT TITLE: Controlled dangerous substances; modifying statutory reference; requiring notice; providing remedy for failure to give notice; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 942

By: Robinson

AS INTRODUCED

An Act relating to controlled dangerous substances; amending 63 O.S. 1991, Section 2-506, as last amended by Section 2, Chapter 57, O.S.L. 1993 (63 O.S. Supp. 1993, Section 2-506), which relates to seizure of property; modifying statutory reference; requiring certain notice; specifying time for hearing and to file answer; providing remedy for failure to give notice; requiring property to be released under certain conditions; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-506, as last amended by Section 2, Chapter 57, O.S.L. 1993 (63 O.S. Supp. 1993, 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~~ Within ten (10) days from the time the property is seized, 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~~ and

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 forty-five (45) days after the mailing ~~or~~ and 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 forty-five (45) 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 not less than ten (10) days nor more than sixty (60) days after the filing of the answer.

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, and as provided for in Section 2-508 of this title, 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; said official shall maintain a true and accurate inventory and record of all such property seized under the provisions of this section. 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 subsections E and F 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 legitimate costs related to the civil forfeiture proceedings; and

3. The balance 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, and maintained by the district attorney in his discretion for those purposes with a yearly accounting to the board of county commissioners in whose county the fund is established and to the District Attorneys Council; provided, one hundred percent (100%) of 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 may enter into agreements with municipal, county or state agencies to return to such an agency a percentage of proceeds of the sale of any property seized by the agency and forfeited under the provisions of this section. The District Attorneys Council shall adopt guidelines which ensure that such agencies receive a reasonable percentage of such proceeds, considering the relative contribution of each agency to the drug enforcement and prosecution operations relating to the seizure. In formulating said guidelines, the District Attorneys Council shall examine federal guidelines on asset distribution and use said guidelines as a basis for establishing guidelines for this state. The Attorney General is hereby authorized to mediate disputes between district attorneys and such agencies concerning the application of said guidelines in particular instances. Any agency that receives proceeds from an asset distribution shall maintain a true and accurate record of all such assets.

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, provided that, except as otherwise specifically provided by law, all vehicles, airplanes, vessels or other assets forfeited pursuant to the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, shall be used for law enforcement purposes and not for purposes unrelated to the investigation and prosecution of drug cases or the seizure and forfeiture of drug assets.

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.

O. Upon failure to give the notice of seizure and intended forfeiture as provided in subsections B and C of this section, any owner or party in interest may petition the court for return of the property. The court shall schedule a hearing within ten (10) days of the filing of the petition for return of the property. The petitioner shall be required to prove ownership interest or other claim to the property and the court shall return the property if the claim is proved by a preponderance of the evidence and the property is not otherwise required as evidence in a criminal prosecution. Failure to give the notice of seizure and intended forfeiture shall not be construed to prohibit, deny, void or dismiss any criminal prosecution or serve as grounds for any motion to suppress evidence.

P. In addition to other provisions of this section, seized property shall be released upon the following conditions:

1. Dismissal of a forfeiture proceeding;

2. Failure to file a criminal charge within ninety (90) days from the date of seizure, provided the property is held as evidence and not forfeited to the state or returned to an owner or party in interest as provided in subsection O of this section. Provided however, the district attorney may request the court to grant an extension beyond the ninety-day limitation for filing charges if a criminal investigation may result in charges being filed after that time. If an extension to file criminal charges is granted, the seized property may be held until the court orders the property released; or

3. Dismissal or acquittal of criminal charges, provided the property is held as evidence and not forfeited to the state or returned to an owner or party in interest as provided in subsection O of this section.

SECTION 2. 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.

44-2-2093

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