STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1070

By: Wilkerson of the Senate

and

Wells of the House

COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending 47 O.S. 1991, Section 1505, as amended by Section 5, Chapter 201, O.S.L. 1997 (47 O.S. Supp. 1997, Section 1505), which relates to disposition of stolen vehicles; adding types of property that may be seized; authorizing Department of Public Safety attorney to bring action; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 1505, as amended by Section 5, Chapter 201, O.S.L. 1997 (47 O.S. Supp. 1997, Section 1505), is amended to read as follows:

Section 1505. A. The following are subject to forfeiture unless obtained by theft, fraud or conspiracy to defraud and the rightful owner is known or can be identified and located:

1. Any tool;

2. Any implement; or

3. Any instrumentality, including but not limited to, real estate, any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of Section 1503 of this title or to promote or facilitate a violation of Section 1503 of this title.

B. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section where the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of Section 1503 of this title.

C. Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or omission which the owner proves to have been committed or omitted without the owner's knowledge or consent.

D. 1. Seizing agencies will utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identity of any other person having a right or interest in a seized motor vehicle or motor vehicle part. In its reasonable identification and owner location attempts, the seizing agency will cause the stolen motor vehicle files of the state police to be searched for stolen or wanted information on motor vehicles similar to the seized motor vehicle or consistent with the seized motor vehicle part.

2. Where a motor vehicle or motor vehicle part has an apparent value in excess of One Thousand Dollars ($1,000.00),

a. the seizing agency shall consult with an expert of the type specified in paragraph 4 of Section 1502 of this title,

b. the seizing agency shall also request searches of the on-line and off-line files of the National Crime

Information Center (NCIC) and the National Automobile Theft Bureau (NATB) when the state police files have been searched with negative results.

E. A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party where the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.

F. Property, described in subsection A of this section, seized and held for forfeiture, shall not be subject to replevin and is subject only to the order and judgments of a court of competent jurisdiction hearing the forfeiture proceedings.

G. 1. The district attorney in the county where the seizure occurs, or the attorney for the Oklahoma State Bureau of Investigation (OSBI) in cases investigated by the OSBI, <u>or the attorney for the Department of Public Safety in cases investigated by the Department</u> shall bring an action for forfeiture in a court of competent jurisdiction. The forfeiture action shall be brought within sixty (60) days from the date of seizure except where the attorney prosecuting the forfeiture in the sound exercise of discretion determines that no forfeiture action should be brought because of the rights of property owners, lienholders, or secured creditors, or because of exculpatory, exonerating, or mitigating facts and circumstances.

2. The attorney prosecuting the forfeiture shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record in the Oklahoma Tax Commission, the Department of Public Safety, the Federal Aviation Agency, or any other department of the state, or any other state or territory of the United States, or of the federal government if such property is required to be registered in any such department.

3. Notice of the proceeding shall be given to any such other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.

4. The owner of the property, or any person having, or claiming, right, title, or interest in the property may within sixty (60) days after the mailing of such notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.

5. The attorney prosecuting the forfeiture shall show at a forfeiture hearing, by a preponderance of the evidence, that such property was used in the commission of a violation of Section 1503 of this title, or was used or possessed to facilitate such violation.

6. The owner of property may show by a preponderance of the evidence that the owner did not know, and did not have reason to know, that the property was to be used or possessed in the commission of any violation or that any of the exceptions to forfeiture are applicable.

7. Unless the attorney prosecuting the forfeiture shall make the showing required of it, the court shall order the property released to the owner. Where the attorney prosecuting the forfeiture has made such a showing, the court may order:

a. the property be destroyed by the agency which seized it or some other agency designated by the court,

b. the property be delivered and retained for use by the agency which seized it or some other agency designated by the court, or

c. the property be sold at public sale.

H. A copy of a forfeiture order shall be filed with the sheriff of the county in which the forfeiture occurs and with each federal or state department with which such property is required to be registered. Such order, when filed, constitutes authority for the

issuance to the agency to whom the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.

I. Proceeds from sale at public auction, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property, shall be paid to the general fund of the county of seizure, the special agency account of the Oklahoma State Bureau of Investigation, or treasury of the governmental unit employing the seizing agency.

J. No motor vehicle, either seized under Section 1504 of this title or forfeited under this section, shall be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either an assigned or replacement vehicle identification number plate as may be appropriate under laws or regulations of this state.

K. No motor vehicle part having any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number shall be disposed of upon forfeiture except by destruction thereof, except that this provision shall not apply to any such motor vehicle part which is assembled with and constitutes part of a motor vehicle.

L. No motor vehicle or motor vehicle part shall be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part which is unidentifiable shall be the subject of a written report sent by the seizing agency to the Department of Public Safety which report shall include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time and place of

its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where the same is held or stored.

M. When a seized unidentifiable motor vehicle or motor vehicle part has been held for sixty (60) days or more after the notice to the Department of Public Safety specified in subsection L of this section, has been given, the seizing agency, or its agent, shall cause the motor vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of the time and place of sale shall be posted in a conspicuous place for at least thirty (30) days prior to the sale on the premises where the motor vehicle or motor vehicle part has been stored.

N. When a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of One Thousand Dollars ($1,000.00) or less, the seizing agency shall authorize the disposal of the motor vehicle or motor vehicle part, provided that no such disposition shall be made less then sixty (60) days after the date of seizure.

O. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part shall be deposited in the special agency account of the Oklahoma State Bureau of Investigation, or treasury of the governmental unit employing the seizing agency after deduction of any reasonable and necessary towing and storage charges.

P. Seizing agencies will utilize their best efforts to arrange for the towing and storing of motor vehicles and motor vehicle parts in the most economical manner possible. In no event shall the owner of a motor vehicle or a motor vehicle part be required to pay more than the minimum reasonable costs of towing and storage.

Q. A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable shall be held subject to the order of the court in which the criminal action is pending or, if a request for its release from such custody is made until the district

attorney has notified the defendant or the defendant's attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination which in no event shall exceed fourteen (14) days from the date of service upon the defense of the notice of request for return of property as provided herein, the property shall be released to the person making such request after satisfactory proof of such person's entitlement to the possession thereof. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

R. When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least one (1) year from the date of the transaction.

S. When an applicant for a certificate of title or salvage certificate presents to the Oklahoma Tax Commission proof that the applicant purchased or acquired a motor vehicle at a public sale conducted pursuant to this section and such fact is attested to by the seizing agency, the Oklahoma Tax Commission shall issue a certificate of title, salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the affidavit of the seizing agency that a state-assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser.

SECTION 2. This act shall become effective July 1, 1998.

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.

46-2-11192 LAC