

ENGROSSED HOUSE
BILL NO. 1752

By: Ross, Toure, Cox,
Sullivan (Leonard) and
Gilbert of the House

and

Horner of the Senate

An Act relating to property; amending 11 O.S. 1991, Section 22-112, which relates to dilapidated buildings; modifying definition; providing that municipality may designate area for certain purposes; establishing procedures for abating illegal activity under certain circumstances; stating legislative intent; providing procedures for termination of rental agreements under certain circumstances; amending 63 O.S. 1991, Section 2-503, as last amended by Section 2, Chapter 347, O.S.L. 1996 (63 O.S. Supp. 1996, Section 2-503), which relates to property subject to forfeiture; adding exception to circumstances regarding real property forfeiture; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 1991, Section 22-112, is amended to read as follows:

Section 22-112. A municipal governing body may cause dilapidated buildings within the municipal limits to be torn down and removed in accordance with the provisions of this section.

1. At least ten (10) days' notice that a building is to be torn down or removed shall be given to the owner of the property before the governing body holds a hearing. A copy of the notice shall be posted on the property to be affected. In addition, a copy of said notice shall be sent by mail to the property owner at the address shown by the current year's tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last-known address of the mortgagee. At the time of mailing of notice to any property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. However, if neither the property owner nor mortgage holder can be located, notice may be given by posting a copy of the notice on the property, or by publication as defined in Section 1-102 of this title. Such notice may be published once not less than ten (10) days prior to any hearing or action by the municipality pursuant to the provisions of this section.

2. A hearing shall be held by the governing body to determine if the property is dilapidated and has become detrimental to the health, safety, or welfare of the general public and the community, or if said property creates a fire hazard which is dangerous to other property.

3. Pursuant to a finding that the condition of the property constitutes a detriment or a hazard and that the property would be benefited by the removal of such conditions, the governing body may cause the dilapidated building to be torn down and removed. The governing body shall fix reasonable dates for the commencement and completion of the work. The municipal clerk shall immediately file

a notice of dilapidation and lien with the county clerk describing the property, the findings of the municipality at the hearing, and stating that the municipality claims a lien on said property for the destruction and removal costs and that such costs are the personal obligation of the property owner from and after the date of filing of said notice. The agents of the municipality are granted the right of entry on the property for the performance of the necessary duties as a governmental function of the municipality if the work is not performed by the property owner within dates fixed by the governing body.

4. The governing body shall determine the actual cost of the dismantling and removal of dilapidated buildings and any other expenses that may be necessary in conjunction with the dismantling and removal of the buildings, including the cost of notice and mailing. The municipal clerk shall forward a statement of the actual cost attributable to the dismantling and removal of the buildings and a demand for payment of such costs, by mail to the property owner. In addition, a copy of said statement shall be mailed to any mortgage holder at the address provided for in paragraph 1 of this section. At the time of mailing of the statement of costs to any property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. If a municipality dismantles or removes any dilapidated buildings, the cost to the property owner shall not exceed the actual cost of the labor, maintenance, and equipment required for the dismantling and removal of the dilapidated buildings. If dismantling and removal of the dilapidated buildings is done on a private contract basis, the contract shall be awarded to the lowest and best bidder.

5. When payment is made to the municipality for costs incurred, the municipal clerk shall file a release of lien, but if payment

attributable to the actual cost of the dismantling and removal of the buildings is not made within six (6) months from the date of the mailing of the statement to the owner of such property, the municipal clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located. Said costs shall be levied on the property and collected by the county treasurer as are other taxes authorized by law. Until finally paid, the costs and the interest thereon shall be the personal obligation of the property owner from and after the date of the notice of dilapidation and lien is filed with the county clerk. In addition the cost and the interest thereon shall be a lien against the property from the date the notice of the lien is filed with the county clerk. Said lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property. The lien shall continue until the cost is fully paid. At the time of collection, the county treasurer shall collect a fee of Five Dollars (\$5.00) for each parcel of property. Said fee shall be deposited to the credit of the general fund of the county. At any time prior to collection as provided for in this paragraph, the municipality may pursue any civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section. Upon receiving payment, the municipal clerk shall forward to the county treasurer a notice of such payment and shall direct discharge of the lien.

6. The municipality may designate, by ordinance, an administrative officer or administrative body to carry out the duties of the governing body specified in this section. The

property owner shall have the right of appeal to the municipal governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the municipal clerk within ten (10) days after the administrative order is rendered.

7. For the purposes of this section, "dilapidated building" means a structure which through neglect or injury ~~lacks necessary repairs or otherwise~~ is in a state of decay or partial ruin ~~to such an extent that said structure is~~ or a structure that due to the lack of necessary repairs is considered uninhabitable. A dilapidated building shall be considered a hazard to the health, safety, or welfare of the general public. "Owner" means the owner of record as shown by the most current tax rolls of the county treasurer.

8. Nothing in the provisions of this section shall prevent the municipality from abating a dilapidated building as a nuisance or otherwise exercising its police power to protect the health, safety, or welfare of the general public.

9. The officers, employees or agents of the municipality shall not be liable for any damages or loss of property due to the removal of dilapidated buildings performed pursuant to the provisions of this section or as otherwise prescribed by law.

10. The provisions of this act shall not apply to any property zoned and used for agricultural purposes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-135 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. A municipal governing body of any city may designate one or more areas within the municipal limits to be a Neighborhood Enhancement Area. For purposes of this section, a "Neighborhood Enhancement Area" shall be a location within municipal limits in which illegal activity occurs at a higher rate than average for that municipality as determined by local law enforcement records. For

purposes of this section, "illegal activity" means any activity that would constitute a crime under the Oklahoma Statutes including, but not limited to, malicious injury to or destruction of property by graffiti or other means. Upon a request submitted by a citizen, a municipal governing body may abate illegal activity at property located in a Neighborhood Enhancement Area in accordance with the following procedure:

1. At least ten (10) days' notice shall be given to the owner of the property by certified mail return receipt requested at the address shown by the current year's tax rolls in the county treasurer's office before the governing body holds a hearing or takes action. The notice shall order the property owner to cease all illegal activity at the property or, if the illegal activity is being conducted by someone other than the owner of the property, to abate the illegal activity at the property by eviction or any other lawful means. The notice shall further state that unless the illegal activity is discontinued within ten (10) days of the date of the notice the municipality shall be authorized to act to abate the illegal activity at the property, to assess the costs of abating the illegal activity and to file a notice of lien with the county clerk against the property for the costs due and owing the municipality. At the time of mailing of notice to the property owner, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. However, if the property owner cannot be located within ten (10) days from the date of mailing by the municipal governing body, notice may be given by posting a copy of the notice on the property or by publication, as defined in Section 1-102 of Title 11 of the Oklahoma Statutes, one time not less than ten (10) days prior to any hearing or action by the municipality;

2. The owner of the property may give written consent to the municipality abating the illegal activity. By giving written consent, the owner waives the right to a hearing by the municipality;

3. A hearing may be held by the municipal governing body to determine whether the property has been used for illegal activity;

4. Upon a finding that the property has been used for illegal activity, the agents of the municipality are granted the right of entry on the property for the purpose of abating the illegal activity. The municipal clerk shall file a notice of lien with the county clerk describing the property and the work performed by the municipality, and stating that the municipality claims a lien on the property for the costs of abating the illegal activity on the property;

5. The governing body shall determine the actual cost of abating the illegal activity at the property and any other expenses as may be necessary, including the cost of notice and mailing. The municipal clerk shall forward by mail to the property owner specified in paragraph 1 of this subsection a statement of the actual cost and demanding payment;

6. If payment is not made within twenty (20) days from the date of the mailing of the statement, the municipal clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located and the same shall be levied on the property and collected by the county treasurer as other taxes authorized by law. Until fully paid, the cost and the interest thereon shall be the personal obligation of the property owner from and after the date the cost is certified to the county treasurer. In addition, the cost and the interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer, coequal with the lien of ad valorem taxes and all other taxes and special assessments and prior

and superior to all other titles and liens against the property, and the lien shall continue until the cost shall be fully paid. At the time of collection, the county treasurer shall collect a fee of Five Dollars (\$5.00) for each parcel of property. The fee shall be deposited to the credit of the general fund of the county. At any time prior to the collection as provided in this paragraph, the municipality may pursue any civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section. Upon receiving payment, if any, the municipal clerk shall forward to the county treasurer a notice of such payment and directing discharge of the lien; and

7. The municipality may designate by ordinance an administrative officer or administrative body to carry out the duties of the governing body in this subsection. The property owner shall have a right of appeal to the municipal governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the municipal clerk within five (5) days after the administrative order is rendered.

B. If a notice is given by a municipal governing body to a property owner ordering the property within the Neighborhood Enhancement Area of the municipality to abate the illegal activity in accordance with the procedures provided for in subsection A of this section, any subsequent illegal activity which occurs at the property within a six-month period may be declared to be a nuisance and may be summarily abated by the municipality without further prior notice to the property owner. At the time of each such summary abatement, the municipality shall notify the property owner

of the abatement and the costs thereof. The notice shall state that the property owner may request a hearing within five (5) days after the date of mailing the notice. The notice and hearing shall be as provided for in subsection A of this section. Unless otherwise determined at the hearing, the cost of the abatement shall be determined and collected as provided for in paragraphs 5 and 6 of subsection A of this section. This subsection shall not apply if the records of the county clerk show that the property was transferred after notice was given pursuant to subsection A of this section.

C. The municipal governing body may enact ordinances to prohibit owners of property or persons otherwise in possession or control of property located within the municipal limits from permitting illegal activity on the premises and may impose penalties for violation of said ordinances.

D. A municipal governing body may contract with nonprofit organizations to work with landlords in Neighborhood Enhancement Areas to find tenants to live in property that has been subject to the abatement process described in this section that will not engage in illegal activity.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 137 of Title 41, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature to ensure the swift eviction and removal of persons who engage in or permit certain criminal activity on or in the immediate vicinity of leased residential premises located in a Neighborhood Enhancement Area authorized by Section 2 of this act.

B. In every rental agreement for a dwelling unit, whether written or oral, the tenant shall agree that the premises will not be used for any activity that would constitute a crime under the Oklahoma Statutes. Any such use of the premises which results in a

criminal conviction shall be cause for termination of the rental agreement, if the tenant knew or had reason to know of the criminal activity that resulted in the conviction.

C. Upon violation of subsection B of this section, a landlord shall terminate the tenancy pursuant to Section 111 of Title 41 of the Oklahoma Statutes. If a landlord fails or refuses to terminate the tenancy within ninety (90) days, a forcible entry and detainer action may be filed by any person who resides within one thousand (1,000) feet of the site of the offense or any tenant association or neighborhood association representing persons residing within one thousand (1,000) feet of the site of the offense, or the district attorney or municipal attorney's office. Any costs associated with the forcible entry and detainer action, including attorney fees, shall be recoverable from the tenant or the landlord. Failure by a landlord to terminate a tenancy pursuant to this subsection may make the property subject to forfeiture proceedings pursuant to Section 2-503 of Title 63 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2-503, as last amended by Section 2, Chapter 347, O.S.L. 1996 (63 O.S. Supp. 1996, Section 2-503), is amended to read as follows:

Section 2-503. A. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title;

2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation

of the provisions of the Uniform Controlled Dangerous Substances Act;

3. All property which is used, or intended for use, as a container for property described in ~~paragraphs~~ paragraph 1 ~~and or~~ 2 of this subsection;

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in Section 2-101 of this title, or which are used in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in ~~paragraphs~~ paragraph 1 or 2 of this subsection or when the property described in ~~paragraphs~~ paragraph 1 or 2 of this subsection is unlawfully possessed by an occupant thereof, except that:

- a. no conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act, and
- b. no conveyance shall be forfeited under 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 if the act is committed by any person other than such owner the owner shall establish further that the conveyance 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;

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act;

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;

7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under Section 2-101 et seq. of this title. The burden of proof is upon claimants of the property to rebut this presumption;

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner, unless that owner has failed to terminate a tenancy pursuant to subsection C of Section 3 of this act; and

9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

B. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of Section 2-415 of this title.

D. All items forfeited in this section shall be forfeited under the procedures established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this section except for items confiscated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Oklahoma Department of Corrections, or the Office of the Attorney General, the district court of the district shall order that such item, money, or monies derived from the sale of such item be deposited by the state, county or city law enforcement agency which seized the item in the revolving fund provided for in Section 2-506 of this title; provided, such item, money or monies derived from the sale of such item 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. Items, money or monies seized pursuant to subsections A and B of this section shall not be applied or considered toward satisfaction of the fine imposed by Section 2-415 of this title. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any

controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of Section 2-505 of this title.

E. All property taken or detained under this section by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Oklahoma Department of Corrections, or the Office of the Attorney General, shall not be repleviable, but shall remain in the custody of the Bureaus, Departments, Commission, or Office, respectively, subject only to the orders and decrees of a court of competent jurisdiction. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Commissioner of Public Safety, the Director of the Oklahoma State Bureau of Investigation, the Director of the Alcoholic Beverage Laws Enforcement Commission, the Director of the Oklahoma Department of Corrections, and the Attorney General shall follow the procedures outlined in Section 2-506 of this title dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all property included in this section detained by the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Oklahoma Department of Corrections, or the Office of the Attorney General. 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, the Alcoholic Beverage Laws Enforcement Commission, the Oklahoma Department of Corrections, or the Office of the Attorney General shall be disposed of or sold pursuant to the provisions of Section 2-508 of this title.

F. The proceeds of any forfeiture of items seized by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be distributed as follows:

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 a forfeiture orders a distribution to such person; and

2. The balance to the Oklahoma State Bureau of Narcotics' revolving fund or the Bureau's agency special account established pursuant to Section 7.2 of Title 62 of the Oklahoma Statutes, provided the Bureau may enter into agreements with municipal, county, state or federal law enforcement agencies, assisting in the forfeiture or underlying criminal investigation, to return to such an agency a percentage of said proceeds.

The Bureau may expend up to Five Hundred Thousand Dollars (\$500,000.00) of the forfeited funds within a fiscal year without prior approval of the Legislature. Documentation of such expenditures shall be forwarded to the Governor, Speaker of the House of Representatives and the President Pro Tempore of the Senate on a quarterly basis. Any additional expenditures of forfeited funds shall be pre-approved by the annual appropriations process or the Contingency Review Board.

G. Any agency that acquires seized or forfeited property or money shall maintain a true and accurate inventory and record of all such property seized pursuant to this section.

SECTION 5. This act shall become effective November 1, 1997.

Passed the House of Representatives the 27th day of February, 1997.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1997.

President _____ of the Senate