

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1504

By: Weaver

AS INTRODUCED

An Act relating to public health and safety;

establishing Vessel and Motor Chop Shop, Stolen and Altered Property Act; defining terms; establishing crimes and penalties under certain circumstances involving vessels and motors; providing exceptions; providing certain punishment for second and subsequent offenses; providing for payment of restitution under certain conditions; providing for seizure of items under certain circumstances; establishing procedures for identifying certain items; establishing procedures for forfeiture of items; providing for deposit of proceeds from forfeiture action; providing for institution of civil proceedings by certain individuals for violations of act; providing for institution of criminal prosecution for violation of act by certain individuals; providing for codification; and providing for 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 4251 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Vessel and Motor Chop Shop, Stolen and Altered Property Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4252 of Title 63, unless there is created a duplication in numbering, reads as follows:

In addition to the terms defined by the Oklahoma Vessel and Motor Registration Act, Section 4002 et seq. of Title 63 of the Oklahoma Statutes, and the terms defined by the Oklahoma Boating Safety Regulation Act, Section 4201 et seq. of Title 63 of the Oklahoma Statutes, for the purposes of the Vessel and Motor Chop Shop, Stolen and Altered Property Act:

1. "Chop shop" means any building, lot or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any vessel or motor, or vessel or motor part known to be illegally obtained by theft, fraud or conspiracy to defraud, in order to either:

- a. alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the hull identification number, manufacturer's serial number or other identification number of such vessel or motor or vessel or motor part, in order to misrepresent the identity of such vessel or motor or vessel or motor part, or to prevent the identification of such vessel or motor or vessel or motor part, or
- b. sell or dispose of such vessel or motor or vessel or motor part; and

2. "Unidentifiable" means that the uniqueness of a vessel or motor or vessel or motor part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in vessel or motor theft investigative procedures and vessel or motor identification examination techniques, or by expert employees of not-for-profit vessel or motor theft prevention agencies specially trained and experienced in vessel or motor theft investigation procedures and vessel or motor identification examination techniques.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4253 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person who knowingly and with intent that a violation of this section be committed:

1. Owns, operates, or conducts a chop shop;
 2. Transports any vessel or motor or vessel or motor part to or from a location knowing it to be a chop shop; or
 3. Sells, transfers, purchases, or receives any vessel or motor or vessel or motor part either to or from a location knowing it to be a chop shop,
- upon conviction, is guilty of a felony, punishable by imprisonment for not more than ten (10) years, or by a fine of not more than One Hundred Thousand Dollars (\$100,000.00), or both such imprisonment and fine.

B. Any person who knowingly alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or knowingly removes a hull identification number, manufacturer's serial number or other identification number with the intent to misrepresent the identity or prevent the identification of a vessel or motor or vessel or motor part, upon conviction, is guilty of a felony, punishable by imprisonment for not more than ten (10) years, or by a

fine of not more than One Hundred Thousand Dollars (\$100,000.00), or both such imprisonment and fine.

C. 1. Any person who buys, disposes, sells, transfers, or possesses a vessel or motor or vessel or motor part, with knowledge that the hull identification number, manufacturer's serial number or other identification number of the vessel or motor or vessel or motor part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed, upon conviction, is guilty of a felony, punishable by imprisonment for not more than five (5) years, or by a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both such imprisonment and fine.

2. The provisions of paragraph 1 of this subsection shall not apply to a vessel or motor scrap processor who, in the normal legal course of business and in good faith, processes a vessel or motor or vessel or motor part by crushing, compacting, or other similar methods, provided that any hull identification number, manufacturer's serial number or other identification number is not removed from the vessel or motor or vessel or motor part prior to or during any such processing.

3. The provisions of paragraph 1 of this subsection shall not apply to any owner or authorized possessor of a vessel or motor or vessel or motor part which has been recovered by law enforcement authorities after having been stolen or where the condition of the hull identification number, manufacturer's serial number or other identification number of the vessel or motor or vessel or motor part is known to or has been reported to law enforcement authorities. It shall be presumed that law enforcement authorities have knowledge of all hull identification numbers, manufacturer's serial numbers or other identification numbers on a vessel or motor or vessel or motor part which are altered, counterfeited, defaced, disguised, falsified, forged, obliterated, or removed, when law enforcement authorities deliver or return the vessel or motor or vessel or motor

part to its owner or authorized possessor after it has been recovered by law enforcement authorities after having been reported stolen.

D. A person commits an attempt when, with intent to commit a violation proscribed by subsection A, B or C of this section, the person does any act which constitutes a substantial step toward the commission of the violation proscribed by subsection A, B or C of this section, and upon conviction is guilty of a felony, punishable by imprisonment for not more than five (5) years, or by a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both such imprisonment and fine.

E. A person commits conspiracy when, with an intent that a violation proscribed by subsection A, B or C of this section be committed, the person agrees with another to the commission of the violation proscribed by subsection A, B or C of this section, and upon conviction is guilty of a felony, punishable by imprisonment for not more than two (2) years, or by a fine of not more than Twenty-five Thousand Dollars (\$25,000.00), or both such imprisonment and fine. No person may be convicted of conspiracy under this section unless an act in furtherance of such agreement is alleged and proved to have been committed by that person or a coconspirator.

F. A person commits solicitation when, with intent that a violation proscribed by subsection A, B or C of this section be committed, the person commands, encourages, or requests another to commit the violation proscribed by subsection A, B or C of this section, and upon conviction is guilty of a felony, punishable by imprisonment for not more than two (2) years, or by a fine of not more than Ten Thousand Dollars (\$10,000.00), or both such imprisonment and fine.

G. A person commits aiding and abetting when, either before or during the commission of a violation proscribed by subsection A, B or C of this section, with the intent to promote or facilitate such

commission, the person aids, abets, agrees or attempts to aid another in the planning or commission of the violation proscribed by subsection A, B or C of this section, and upon conviction is guilty of a felony, punishable by imprisonment for not more than one (1) year, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both such imprisonment and fine.

H. A person is an accessory after the fact who maintains, assists, or gives any other aid to an offender while knowing or having reasonable grounds to believe the offender to have committed a violation under subsection A, B, C, D, E, F or G of this section, and upon conviction is guilty of a felony, punishable by imprisonment for not more than one (1) year, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both such imprisonment and fine.

I. No prosecution shall be brought and no person shall be convicted of any violation under this section, where acts of the person, otherwise constituting a violation, were done in good faith in order to comply with the laws or regulations of any state or territory of the United States, or of the federal government of the United States.

J. The sentence imposed upon a person convicted of any violation of this section shall not be reduced to less than one (1) year imprisonment for a second conviction of any violation, or less than five (5) years for a third or subsequent conviction of any violation of this section, and no sentence imposed upon a person for a second or subsequent conviction of any violation of this section shall be suspended or reduced, until such person shall have served the minimum period of imprisonment provided for herein. A person convicted of a second or subsequent violation of this section shall not be eligible for probation, parole, furlough or work release.

K. 1. In addition to any other punishment, a person who violates this section shall be ordered to make restitution to the

lawful owner or owners of the stolen vessel or motor or the stolen vessel or motor part or parts, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

Financial loss shall include, but not be limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs and claims payments. "Lawful owner" shall include an innocent bona fide purchaser for value of a stolen vessel or motor or stolen vessel or motor part who does not know that the vessel or motor or part is stolen; or an insurer to the extent that such insurer has compensated a bona fide purchaser for value.

2. The court shall determine the extent and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In any such case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4254 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any tool, implement, or instrumentality, including, but not limited to, a vessel or motor or vessel or motor part, used or possessed in connection with any violation of Section 3 of this act may be seized by a member of a state or local law enforcement agency when:

1. The seizure is incident to inspection under an administrative inspection warrant;

2. The seizure is incident to a search made under a search warrant;

3. The seizure is incident to a lawful arrest;

4. The seizure is made pursuant to a valid consent to search;

5. The property seized has been the subject of a prior judgment in favor of the state in a criminal proceeding, or in an injunction or forfeiture proceeding under Section 6 of this act; or

6. There are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety.

B. When property is seized under this section, the seizing agency may:

1. Place the property under seal; or

2. Remove the property to a place selected and designated by the seizing agency.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4255 of Title 63, unless there is created a duplication in numbering, reads as follows:

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, any vessel or motor or vessel or motor 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 3 of this act or to promote or facilitate a violation of Section 3 of this act.

B. Any vessel or motor, other conveyance, or vessel or motor 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 vessel or motor, other conveyance, or vessel or motor part is a consenting party to a violation of Section 3 of this act.

C. No vessel or motor, vessel or motor part, other conveyance, tool, implement, or instrumentality is 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 shall utilize their best efforts to identify any seized vessel or motor or vessel or motor part to determine ownership or the identity of any other person having a right or interest in a seized vessel or motor or vessel or motor part. In its reasonable identification and owner location attempts, the seizing agency shall cause the National Crime Information Center (NCIC) to be searched for stolen or wanted information on vessels or motors similar to the seized vessel or motor or consistent with the seized vessel or motor part.

2. Where a vessel or motor or vessel or motor 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 Section 2 of this act, and
- b. the seizing agency shall also request searches of the on-line and off-line files of the National Crime Information Center (NCIC) when the state law enforcement files have been searched with negative results.

E. A forfeiture of a vessel or motor, vessel or motor 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 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 district attorney 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 district attorney 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 district attorney 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 3 of this act, 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 district attorney shall make the showing required of it, the court shall order the property released to the owner.

Where the prosecutor 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 action, 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 or treasury of the governmental unit employing the seizing agency.

J. No vessel or motor, either seized under Section 4 of this act 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 hull identification number, manufacturer's serial number or other identification number is corrected by the issuance and affixing of either an assigned or replacement hull identification number plate, manufacturer's serial number plate or other identification number plate as may be appropriate under laws or regulations of this state.

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

L. No vessel or motor or vessel or motor part shall be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized vessel or motor or vessel or motor 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 vessel or motor or vessel or motor 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 vessel or motor or vessel or motor 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 vessel or motor or vessel or motor 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 vessel or motor or vessel or motor part has been stored.

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

O. The proceeds of the public sale of an unidentifiable vessel or motor or vessel or motor part shall be deposited in the General Revenue Fund of the state, or treasury of the governmental unit employing the seizing agency after deduction of any reasonable and necessary towing and storage charges.

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

Q. A seized vessel or motor or vessel or motor 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 vessel or motor 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 vessel or motor 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 vessel or motor 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 vessel or motor prior to the time that the vessel or motor was released by the seizing agency to the purchaser.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4256 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General, any district attorney or any aggrieved person may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation of any provision of the Vessel and Motor Chop Shop, Stolen and Altered Property Act. If the plaintiff in such a proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, any court of competent jurisdiction, after due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including, but not limited to:

1. Ordering any defendant to be divested of any interest in any property;

2. Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant

from engaging in the same type of endeavor as the defendant was engaged in previously;

3. Ordering the suspension or revocation of a license, permit, or prior approval granted by any public agency or any other public authority; or

4. Ordering the surrender of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by the Vessel and Motor Chop Shop, Stolen and Altered Property Act and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked.

B. In a proceeding under this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury shall have to be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

C. Any person injured, directly or indirectly, by conduct constituting a violation by any person of Section 3 of this act shall, in addition to any other relief, have a cause of action for threefold the actual damages sustained by the person.

D. A final judgment or decree rendered against the defendant in any civil or criminal proceeding shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to the civil or criminal proceeding.

E. Notwithstanding any other provision of law providing a shorter period of limitations, a civil action under this section may be commenced at any time within five (5) years after the conduct made unlawful under Section 3 of this act terminates or the cause of action accrues or within any longer statutory period that may be applicable. If any action is brought by a prosecutor to punish, prevent or restrain any activity made unlawful under Section 3 of this act, the running of the period of limitations shall be suspended during the pendency of such action and for two (2) years following its termination.

F. Personal service of any process in an action under this section may be made upon any person outside the state if the person has engaged in any conduct constituting a violation of Section 3 of this act in this state. The person shall be deemed to have thereby submitted to the jurisdiction of the courts of this state for the purposes of this provision.

G. Obtaining any civil remedy under this section shall not preclude obtaining any other civil or criminal remedy under either this act or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4257 of Title 63, unless there is created a duplication in numbering, reads as follows:

In addition to the power of the Attorney General or any district attorney to institute civil proceedings under Section 6 of this act, the Attorney General or any district attorney is empowered to

institute criminal prosecutions for a violation of Section 3 of this act in any court of competent jurisdiction.

SECTION 8. This act shall become effective November 1, 1997.

46-1-5809

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