

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1924

By: Hutchison

AS INTRODUCED

An Act relating to game and fish; amending 29 O.S.

1991, Section 7-206, which relates to forfeiture of certain hunting and fishing items; clarifying statutory cites; and providing an effective date.

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

SECTION 1. AMENDATORY 29 O.S. 1991, Section 7-206, is amended to read as follows:

Section 7-206. A. Any game warden, sheriff, deputy sheriff or other peace officer of this state is authorized to seize any item, equipment, vehicle or other property, which is used or operated in violation of any provision of Sections 5-411, 5-412, ~~and~~ 6-301, ~~Section 42 and 6-301a~~ of this act title, subsection A of Section 6-302, paragraph 2 of subsection A of Section 6-303, subsection A, B, C, D, G, H or K of Section 4-129 of this title, Section ~~32~~ 5-203.1 of this ~~act~~ title, or as otherwise specified by the Oklahoma Wildlife Conservation Code. Such items, equipment, vehicles or other such property shall be held as evidence until:

1. A forfeiture or release has been ordered by the court pursuant to the provisions of this ~~act~~ section; or

2. The district attorney of the county in which the item, equipment, vehicle or other property was seized determines that such item, equipment, vehicle or other property is not needed for prosecution of the violation.

Upon such forfeiture by order of the court, or upon such determination by the district attorney, the court or the district attorney as the case may be, shall provide for the release of such item, equipment, vehicle or other property so seized.

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 any such item, equipment, vehicle or 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, 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, by mailing a copy of the notice by registered mail to the last-known address; or

3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in such item, equipment, vehicle or other 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 any such item, equipment, vehicle or other property, and any other party in interest or claimant may file a verified answer and claim to such item, equipment, vehicle or 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 or intended unlawful use and shall order the item, equipment, vehicle or 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.

G. At the hearing the state shall prove beyond a reasonable doubt by competent evidence that the item, equipment, vehicle or property was used or operated in a violation of any provision specified by subsection A of this section. Such items, equipment, vehicles or other such property shall be held as evidence until a forfeiture has been declared or release ordered.

H. The claimant of any right, title or interest in the item, equipment, vehicle or other property may prove the lien, mortgage or conditional sales contract of the claimant to be bona fide and that the right, title or interest of the claimant was created without any knowledge or reason to believe that the item, equipment, vehicle or property was being operated for the purpose charged.

I. In the event of such proof, the court shall order the item, equipment, vehicle or property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due such person is equal to, or in excess of, the value of the item, equipment, vehicle or property as of the date of the seizure. It is 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 item, equipment, vehicle or property or if no bona fide claim is established, the item, equipment, vehicle or property shall be forfeited to the state and the item, equipment, vehicle or property shall be sold under judgment of the court, as on sale upon

execution, except as otherwise provided for in subsection M of this section.

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, subject only to the orders and decrees of the court or the official having jurisdiction thereof.

L. The proceeds of the sale of any such item, equipment, vehicle or property pursuant to the provisions of this section shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the item, equipment, vehicle or property, if any, up to the amount of the interest of such person in the item, equipment, vehicle or 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

3. The balance to be apportioned, one-fourth (1/4) to the Department of Wildlife Conservation and three-fourths (3/4) to the district court in which such proceedings were brought.

M. Whenever any item, equipment, vehicle or property is forfeited under this section and there is no innocent claimant thereof, the district court of jurisdiction may order that the item, equipment, vehicle or property seized may be retained by the Department of Wildlife Conservation for its official use.

N. If the court finds that the item, equipment, vehicle or property was not used in a violation of any provision specified by subsection A of this section, the court shall order the item, equipment, vehicle or property released to the owner as the right, title or interest of the owner appears on record in the Tax Commission as of the seizure.

SECTION 2. This act shall become effective November 1, 1997.

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