

ENROLLED SENATE
BILL NO. 423

By: Easley, Crutchfield and
Henry of the Senate

and

Easley, Boyd and Adkins of
the House

An Act relating to intoxicating beverages and alcohol-related offenses; authorizing forfeiture of motor vehicles under certain circumstances; providing procedure; providing for notice; providing for objections; providing for a hearing and lien; prohibiting sale, transfer or certain security interest after certain notice; allowing certain action to be stayed; providing that forfeiture proceedings do not extinguish security interests of lienholders of record; authorizing the sale of vehicles subject to security interest of lienholders of record, subject to certain conditions; requiring certain affidavit from lienholder; providing for proof of secured and unsecured interest; providing burden of proof for certain interests; authorizing the court to order forfeiture; providing for surrender of the vehicle, certificate of title and registration; providing for payment of certain expenses; providing for distribution of proceeds; providing that certain leased vehicles shall not be subject to forfeiture; providing for release of certain lien; amending 47 O.S. 1991, Section 11-902, as last amended by Section 1 of Enrolled House Bill No. 1088 of the 1st Session of the 47th Oklahoma Legislature, which relates to driving under the influence of alcohol or other intoxicating substances; requiring certain offenses to be filed in district court; prohibiting locating places licensed to sell or serve low-point beer or alcoholic beverages within certain distance of school or church property; providing method for determining distance; exempting places which had permit or license prior to effective date of this act; repealing 37 O.S. 1991, Sections 163.24, as last amended by Section 34, Chapter 274, O.S.L. 1995, and 518.2, as last amended by Section 1, Chapter 183, O.S.L. 1997 (37 O.S. Supp. 1998, Sections 163.24 and 518.2), which relate to distances between places licensed to sell or serve low-point beer or alcoholic beverages and school or church property; providing for codification; providing an effective date; and declaring an emergency.

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 11-902b of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The district attorney may file a motion requesting forfeiture of the motor vehicle involved in the commission of an eligible offense as provided in this section. The provisions of this section shall apply to any person who has been previously convicted of an offense under Section 11-902, 11-903, or 11-904 of Title 47 of the Oklahoma Statutes and who on or after the effective date of this act is convicted of an offense under Section 11-902, 11-903 or 11-904 of Title 47 of the Oklahoma Statutes within ten (10) years of any prior conviction under Section 11-902, 11-903, or 11-904 of Title 47 of the Oklahoma Statutes and where at least one of the offenses, current or prior, involved the death or serious bodily injury to another person.

B. A motion for forfeiture may be filed at the time of charging but not later than thirty (30) days after the verdict or plea of guilty or nolo contendere. If a motion of intent to forfeit is filed prior to the verdict or plea of guilty or nolo contendere, the proceedings shall be stayed until the disposition of the criminal case. Notice shall be required even though the proceedings are stayed. If the motion is filed prior to the disposition on the criminal case, the district attorney shall notify the Oklahoma Tax Commission and the Tax Commission shall place a lien upon the vehicle title. No person shall sell, damage, destroy, transfer or perfect a security interest on any vehicle subject to forfeiture. Prior to filing a motion for forfeiture, the district attorney shall verify whether the vehicle was sold during any period of impoundment as provided by law. Any vehicle sold in an impound sale to pay towing, wrecker services or storage expenses shall not be subject to forfeiture as provided in this act.

C. Upon filing a motion for forfeiture, except when the proceedings are stayed pursuant to subsection B of this section, the court shall schedule a hearing on the matter. The hearing shall be not less than twenty (20) days nor more than forty-five (45) days from the date the motion is filed. The district attorney within three (3) days of filing a motion of intent to forfeit shall notify the convicted person, lienholders of record, and any person appearing to have an ownership or security interest in the vehicle. The notice shall contain the date, time and place of the hearing. When a motion for forfeiture has been stayed pending disposition of the criminal case and a verdict or plea of guilty or nolo contendere has been entered, the district attorney shall give notice of the forfeiture hearing not less than ten (10) days prior to the hearing. The notice of persons specified in this subsection shall be by certified mail to the address shown upon the records of the Oklahoma Tax Commission. For owners or interested parties, other than lienholders of record, whose addresses are unknown, but who are believed to have an interest in the vehicle, notice shall be by one publication in a newspaper of general circulation in the county where the motion is filed. The written notice shall include:

1. A full description of the motor vehicle;
2. The date, time and place of the forfeiture hearing;
3. The legal authority under which the motor vehicle may be forfeited; and
4. Notice of the right to intervene to protect an interest in the motor vehicle.

D. A forfeiture proceeding shall not extinguish any security interest of a lienholder of record; provided, however, the court may order the sale of the motor vehicle and the satisfaction of that security interest from the proceeds of sale as provided in subsection K of this section.

For purposes of a forfeiture proceeding, an affidavit obtained from the lienholder of record, in the absence of evidence of bad faith, shall be prima facie evidence of the amount of secured indebtedness owed to that lienholder. It shall be the responsibility of the district attorney to obtain such affidavit prior to the forfeiture proceeding.

In the absence of evidence of bad faith, no lienholder of record shall be required to attend the forfeiture proceeding to protect its interest in the motor vehicle. However, each lienholder of record shall be given notice of the forfeiture hearing as provided in subsection C of this section. The district attorney shall notify each lienholder of record at least ten (10) days before the sale of the motor vehicle ordered forfeited pursuant to this section; provided, the lienholder was not represented at the forfeiture proceeding.

E. Any person having an ownership or security interest in a vehicle subject to forfeiture which is not perfected by a lien of record may file a written objection to the motion to forfeit within ten (10) days of the mailing of the notice of intent to forfeit.

F. At the hearing, any person who claims an ownership or security interest in the motor vehicle which is not perfected by a lien of record shall be required to establish by a preponderance of the evidence that:

1. The person has an interest in the motor vehicle and such interest was acquired in good faith;
2. The person is not the person convicted of the offense that resulted in the forfeiture proceeding; and
3. The person did not know or have reasonable cause to believe that the vehicle would be used in the commission of a felony offense.

G. If a person satisfies the requirements of subsection F of this section, or if there is a lienholder of record that has provided an affidavit pursuant to subsection D of this section, the court shall order either an amount equal to the value of the

interest of that person in the motor vehicle to be paid to that person upon sale of the motor vehicle after payment of costs and expenses or release the vehicle from the forfeiture proceedings if either the lienholder described in subsection D of this section or the person intervening in accordance with subsection F of this section has full right, title and interest in the vehicle.

H. At the hearing, the court may order the forfeiture of the motor vehicle if it is determined by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

1. Incapacitation of the convicted person from the commission of any future offense under Section 11-902, 11-903, or 11-904 of Title 47 of the Oklahoma Statutes;

2. Protection of the safety and welfare of the public;

3. Deterrence of other persons who are potential offenders under Section 11-902, 11-903, or 11-904 of Title 47 of the Oklahoma Statutes;

4. Expression of public condemnation of the serious or aggravated nature of the conduct of the convicted person; or

5. Satisfaction of monetary amounts for criminal penalties.

I. Upon forfeiture of a motor vehicle pursuant to this act, the court shall require the owner to surrender the motor vehicle, the certificate of title, and the registration of the motor vehicle. The vehicle, the certificate of title, and the registration shall be delivered to the Department of Public Safety within three (3) days of the forfeiture order. The expense of delivering the vehicle shall be paid by the district attorney. Costs of delivering the vehicle to the Department shall be reimbursable as costs of conducting the sale. A motor vehicle forfeited pursuant to this act, shall be sold by the Department of Public Safety as provided by law for the sale of other forfeited property, except as otherwise provided in this section.

J. If a vehicle was impounded at the time of delivery to the Department and a forfeiture order is subsequently issued, all towing, wrecker services, and storage expenses shall be satisfied from the sale of the vehicle. If a vehicle is released from forfeiture and the vehicle has been delivered to the Department with impound expenses still owing, all impound expenses, including towing, wrecker service and storage expenses, shall be paid by the person prevailing on the dismissal of the forfeiture proceeding and the release of the vehicle to such person. If a notice for sale of the vehicle was filed for satisfaction of impound expenses prior to the filing of a motion for forfeiture, the vehicle shall be sold as provided by law for unpaid towing, wrecker services, and storage expenses and shall not be subject to forfeiture. If the convicted person redeems his or her interest in the vehicle at a sale for impound expenses, a forfeiture proceeding may thereafter proceed as authorized by this act. Neither the notice of sale for towing, wrecker services, and storage expenses nor the sale of such vehicle

for impound expenses shall serve to extend the requirement for filing a motion to forfeit as provided in subsection B of this section.

K. Except as provided in subsection J of this section, proceeds from the sale of any vehicle forfeited pursuant to this act shall be paid in the following order:

1. To the Department of Public Safety for the cost of conducting the sale, including expense of delivery, court filing fees, and publication expense;

2. To satisfy impound expenses, including any towing, wrecker service and storage expenses incurred prior to delivery to the Department of Public Safety;

3. To satisfy the interest of any lienholder of record;

4. To satisfy the interest of any person making proof as provided in subsection F of this section;

5. To satisfy criminal penalties, costs and assessments pursuant to paragraph 5 of subsection H of this section if so ordered by the court;

6. To the office of the district attorney who filed the forfeiture proceeding not exceeding twenty-five percent (25%) of any remaining proceeds. Such payment shall be deposited in a special fund for such purpose as determined by the district attorney's office; and

7. The balance of the proceeds to be deposited in the Drug Abuse Education and Treatment Revolving Fund established pursuant to Section 2-503.2 of Title 63 of the Oklahoma Statutes for the benefit of drug court treatment as provided by law.

L. If a motor vehicle subject to forfeiture as provided by this act is a vehicle leased pursuant to a commercial rental agreement for a period of ninety (90) days or less, then the vehicle shall not be subject to the forfeiture proceedings provided by this act.

M. Upon the court dismissing a forfeiture proceeding, any lien placed upon the vehicle title by the Oklahoma Tax Commission pursuant to subsection B of this section shall be released.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 1 of Enrolled House Bill No. 1088 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ten-hundredths (0.10) or more at the

time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance which may render such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars (\$1,000.00). Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of any law of another state prohibiting the offense provided in subsection A of this section, is convicted of a second offense pursuant to the provisions of this section or has a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section and within ten (10) years of such municipal conviction is convicted pursuant to the provision of this section shall be deemed guilty of a felony and shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00). Any person who is convicted of a second felony offense pursuant to the provisions of this section shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed seven (7) years and a fine of not more than Five Thousand Dollars (\$5,000.00). Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this section shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed ten (10) years and a fine of not more than Five Thousand Dollars (\$5,000.00).

Provided, however, a conviction from another state shall not be used to enhance punishment pursuant to the provisions of this subsection if that conviction is based on a blood or breath alcohol concentration of less than ten-hundredths (0.10).

Any defendant arrested for a second or subsequent municipal offense of driving under the influence of alcohol or other intoxicating substance that is eligible to be filed in a municipal court other than a court of record, shall be presented to the

county's district attorney to be charged and prosecuted in the district court of the county in which the municipality is located.

D. When a person is sentenced to the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center or at a place determined by the Director of the Department of Corrections. The Department of Corrections shall classify and assign the person to one or more of the following:

1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section 612 of Title 57 of the Oklahoma Statutes; or

2. A correctional facility operated by the Department of Corrections.

E. In the event a felony conviction does not result in the person being sentenced to the custody of the Department of Corrections, the person shall be required to serve not less than ten (10) days of community service, or to undergo inpatient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight (48) consecutive hours, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.

F. The Department of Mental Health and Substance Abuse Services and the Department of Corrections may certify to the Department of Public Safety that a person has successfully completed a treatment program and is successfully complying with any follow-up treatment required by the Department of Corrections. In such case, the person shall be given credit therefor as fulfillment of all provisions of Section 3-453 of Title 43A of the Oklahoma Statutes and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing a privilege to drive.

G. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked license when the applicant meets the statutory requirements which affect the existing driving privilege.

H. Any person who is found guilty of a violation of the provisions of this section shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars (\$75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the

purpose of assisting the court in its final sentencing determination. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this section for any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. If a person is sentenced to the custody of the Department of Corrections and the court has received a written evaluation report pursuant to the provisions of this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation report submitted to the court pursuant to the provisions of this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection. As used in this subsection, "qualified practitioner" means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field and at least two (2) years' experience in providing alcohol treatment, other drug abuse treatment, or both alcohol and other drug abuse treatment who is certified each year by the Department of Mental Health and Substance Abuse Services to provide these assessments. However, any person who does not meet the requirements for a qualified practitioner as defined herein, but who has been previously certified by the Department of Mental Health and Substance Abuse Services to provide alcohol or drug treatment or assessments, shall be considered a qualified practitioner provided all education, experience and certification requirements stated herein are met within two (2) years from June 7, 1994. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence and any other sanction authorized by law for failure or refusal to comply with an order of the court.

I. Any person who is found guilty of a violation of the provisions of this section may be required by the court to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars (\$25.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

J. Any person who is found guilty of a felony violation of the provisions of this section, who receives a suspended sentence and who does not already have an ignition interlock device installed pursuant to Section 754.1 of this title, shall as a condition of that suspended sentence be required to have installed an ignition interlock device approved by the Department of Public Safety at the person's own expense for a period of not less than six (6) months

nor more than three (3) years. The ignition interlock device shall be placed on the motor vehicle owned by the defendant or on the vehicle most regularly operated by the defendant. The person shall pay the monthly maintenance fee for the ignition interlock device as a condition of the suspended sentence. The installation of an ignition interlock device, as required by this subsection, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.27 of Title 37, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any place which has received a permit or which has been licensed to sell low-point beer and which has as its main purpose the selling or serving of low-point beer for consumption on the premises to be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities. The distance indicated in this section shall be measured from the nearest property line of such public or private school or church to the nearest perimeter wall of the premises of any such place which has received a permit or which has been licensed to sell low-point beer. The provisions of this section shall not apply to places which have received a permit or which have been licensed to sell low-point beer for on-premises consumption prior to the effective date of this act. If any school or church shall be established within three hundred (300) feet of any place subject to the provisions of this section after such place has received a permit or been licensed, the provisions of this section shall not be a deterrent to the renewal of such permit or license if there has not been a lapse of more than sixty (60) days. When any place subject to the provisions of this section which has a permit or license to sell low-point beer for on-premises consumption changes ownership or the operator thereof is changed, and such change results in the same type of business being conducted on the premises, the provisions of this section shall not be a deterrent to the issuance of a license or permit to the new owner or operator if he or she is otherwise qualified.

If an establishment selling low-point beer also is the holder of a mixed beverage or beer and wine license issued by the Alcoholic Beverage Laws Enforcement Commission, the establishment shall be subject to the zoning provisions of Section 3 of this act rather than the provisions of this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 518.3 of Title 37, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any mixed beverage establishment or bottle club which has been licensed by the Alcoholic Beverage Laws Enforcement Commission and which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises to be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities. The distance indicated in this

section shall be measured from the nearest property line of such public or private school or church to the nearest perimeter wall of the premises of any such mixed beverage establishment or bottle club which has been licensed to sell alcoholic beverages. The provisions of this section shall not apply to mixed beverage establishments or bottle clubs which have been licensed to sell alcoholic beverages for on-premises consumption prior to the effective date of this act. If any school or church shall be established within three hundred (300) feet of any mixed beverage establishment or bottle club subject to the provisions of this section after such mixed beverage establishment or bottle club has been licensed, the provisions of this section shall not be a deterrent to the renewal of such license if there has not been a lapse of more than sixty (60) days. When any mixed beverage establishment or bottle club subject to the provisions of this section which has a license to sell alcoholic beverages for on-premises consumption changes ownership or the operator thereof is changed and such change of ownership results in the same type of business being conducted on the premises, the provisions of this section shall not be a deterrent to the issuance of a license to the new owner or operator if he or she is otherwise qualified.

SECTION 5. REPEALER 37 O.S. 1991, Sections 163.24, as last amended by Section 34, Chapter 274, O.S.L. 1995, and 518.2 as last amended by Section 1, Chapter 183, O.S.L. 1997 (37 O.S. Supp. 1998, Sections 163.24 and 518.2), are hereby repealed.

SECTION 6. This act shall become effective July 1, 1999.

SECTION 7. 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.

Passed the Senate the 26th day of May, 1999.

President of the Senate

Passed the House of Representatives the 27th day of May, 1999.

Speaker of the House of
Representatives