

HOUSE OF REPRESENTATIVES

Monday, March 29, 1999

Committee Substitute for
ENGROSSED
Senate Bill No. 423

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 423 -- By EASLEY, CRUTCHFIELD and HENRY of the Senate and EASLEY and BOYD of the House.

An Act relating to crimes and punishments; authorizing forfeiture of motor vehicles under certain circumstances; providing procedure; providing for notice; providing for objections; providing for a hearing; 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; prohibiting location 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; 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 11-902a 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 act 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 prior offenses had as part of the sentence a requirement to have installed an ignition interlock device approved by the Department of Public Safety placed upon the vehicle owned or operated by the offender.

B. The motion for forfeiture must be filed within thirty (30) days of the verdict or plea of guilty or nolo contendere.

C. Upon filing a motion for forfeiture, the court shall schedule a hearing on the matter and the district attorney shall notify the Department of Public Safety and the convicted person of the time and place set for the hearing. The hearing shall be not less than twenty (20) days nor more than forty-five (45) days from the date the motion is filed. Upon receiving notice of the time and place set for a hearing under this section, the Department shall notify by certified mail to the address shown upon the records of the Oklahoma Tax Commission every person who has an ascertainable ownership or security interest in the motor vehicle. For all other owners or interested parties, 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 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. Any person having an ownership or security interest in the vehicle subject to forfeiture may file a written objection to the motion within ten (10) days of the notice of intent to forfeit from the Department of Public Safety.

E. At the hearing, any person who claims an ownership or security interest in the motor vehicle must 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 it would be used in the commission of a criminal offense.

F. If a person satisfies the requirements of subsection E 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 or the release of the vehicle from the forfeiture proceedings if the person intervening has full right, title and interest in the vehicle.

G. 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. Deterrence 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.

H. Upon forfeiture of a motor vehicle, the court shall require the surrender of 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 unless such vehicle is impounded. A motor vehicle forfeited pursuant to this section, 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.

I. When a vehicle is impounded and a forfeiture order is issued, all towing, wrecker services, and storage expenses shall be satisfied from the sale of the vehicle; provided, a notice for the sale of such vehicle to pay impound expenses has not been filed prior to the filing of a motion for forfeiture. If a notice for sale of such vehicle was filed 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. If the convicted person redeems his or her interest in the vehicle at such sale, 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 shall serve to extend the requirement for filing a motion to forfeit within thirty (30) days of the conviction or plea as provided in subsection B of this section.

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

1. To the Department of Public Safety for the cost of conducting the sale;

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

3. After payment of the cost of conducting the sale and payment of any amount to satisfy criminal penalties as ordered pursuant to paragraph 5 of subsection G of this section, twenty-five percent (25%) of the proceeds to the office of the district attorney who filed the forfeiture proceeding to be deposited in a special fund for such purpose as determined by the district attorney's office; and

4. The balance 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.

SECTION 2. 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:

In addition to any other restrictions set forth in Section 163.24 of Title 37 of the Oklahoma Statutes or any other provision of law, 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 property line 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.

SECTION 3. 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:

In addition to any other restrictions set forth in Section 518.2 of Title 37 of the Oklahoma Statutes or any other provision of law, 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 property line 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 3. This act shall become effective July 1, 1999.

SECTION 4. 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.