

ENROLLED SENATE
BILL NO. 842

By: Herbert of the Senate

and

Nance and Paulk of the
House

An Act relating to law enforcement; prohibiting parking in certain areas; authorizing sheriff to provide enforcement; establishing fine amounts for violations; providing for deposit and use of fine monies; making certain acts unlawful; stating nonapplication of provisions of subsection of law; stating exception to nonapplication of law; stating when certain acts shall be lawful; stating when certain security interest or lien shall not be subject to forfeiture action; providing penalty; authorizing certain peace officers to seize specified property used in violation of provisions of statute; allowing seized item to be held as evidence for specified period of time; allowing forfeiture actions to be brought by district attorney; stating venue; requiring seized item to be returned to owner under certain circumstances; providing for notice of seizure and intended forfeiture proceeding and stating methods of notice; stating time frame within which answer and claim to seized item may be filed; requiring forfeiture proceeding be set for hearing if answer is filed; requiring petitioner to offer specified proof at hearing; allowing claimant to provide specified proof; allowing court to order release of seized item under certain circumstances; allowing seized item to be forfeited and sold under certain circumstances; prohibiting replevin of seized item; requiring release of seized item by petitioner under certain circumstances; allowing petitioner to determine value of seized item under certain circumstances; allowing release of seized item to lienholder under certain circumstances; requiring certain seized items be subject to orders and decrees of the court; prohibiting assessment of attorney fees against certain entities; providing for distribution of proceeds of sale of property; requiring the court to order seized item released to owner under specified conditions; prohibiting the forfeiture of specified vehicles, airplanes or vessels and stating exception; prohibiting forfeiture of seized item under certain circumstances; allowing district court having jurisdiction to order forfeited item be retained for official use by law enforcement entity which seized the item; authorizing law enforcement vehicles to park without paying parking meter;

amending 68 O.S. 2001, Section 1370, which relates to county sales tax; modifying procedures regarding initiative petition for special elections; 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 944 of Title 19, unless there is created a duplication in numbering, reads as follows:

A. No person shall place, stop, park, or stand any vehicle, including trailers or implements of husbandry, contrary to any official sign reserving, restricting, or regulating the placing, stopping, standing, or parking of a vehicle within the boundaries of the following:

1. County-owned property; and
2. Public property within unincorporated areas of a county.

B. In counties with a population over five hundred thousand (500,000) according to the last decennial census, the county sheriff shall be responsible for the enforcement of subsection A of this section.

C. Any person violating the provisions of subsection A of this section shall be subject to a civil fine. A violation shall be indicated by the placing of a notice of such violation on the windshield of the vehicle improperly placed, stopped, parked, or standing.

The fine for such violation shall be Thirty Dollars (\$30.00) for a standard parking violation and Sixty Dollars (\$60.00) for parking in a designated handicapped parking space.

D. Of the monies generated from such fines the court clerk shall retain Five Dollars (\$5.00) with the balance of the monies being deposited in the Sheriff's Service Fee Account to be expended exclusively for the purpose of providing courthouse security.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2001 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person knowingly or intentionally to receive or acquire proceeds and to conceal such proceeds, or engage in transactions involving such proceeds, known to be derived from any violation of the Oklahoma Statutes. This subsection does not apply to any transaction between an individual and the counsel of the individual necessary to preserve the right to representation of the individual, as guaranteed by the Oklahoma Constitution and by the Sixth Amendment of the United States Constitution. However, this exception does not create any presumption against or

prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of the Oklahoma Statutes.

B. It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any violation of the Oklahoma Statutes.

C. It is unlawful for any person knowingly or intentionally to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of the Oklahoma Statutes.

D. It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving proceeds derived from a violation of the Oklahoma Statutes, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds known to be derived from a violation of the Oklahoma Statutes, or to avoid a transaction reporting requirement under state or federal law.

E. Notwithstanding any other provision of this section, it shall be lawful for an organization engaged in the business of banking to receive deposits and payments, to pay checks and other withdrawals, and to process any other financial transaction for its customers in the ordinary course of business if it has no actual knowledge of any violation of the Oklahoma Statutes by that customer. If an organization engaged in the business of banking, acting in good faith and without actual knowledge of any violation of the Oklahoma Statutes by its customer, acquires a security interest or statutory lien with respect to a customer's funds, that customer's funds which are subject to said security interest or lien shall not be subject to forfeiture action, to the extent of the amount of that customer's indebtedness to the banking organization.

F. Any person convicted of violating any of the provisions of this section is guilty of a felony and may be punished by imprisonment for not less than two (2) years nor more than ten (10) years or by a fine of not more than Fifty Thousand Dollars (\$50,000.00) or by both said imprisonment and fine.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2002 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any commissioned peace officer of this state is authorized to seize any currency, negotiable instrument, monetary instrument, equipment or property used in the violation of Section 1 of this act. The seized item may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of the item, the item shall be returned to the owner.

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 the item 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, lienholder, or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

2. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the 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 the property and any other party in interest or claimant may file a verified answer and claim to the item 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 and may order the item forfeited to the state, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At the hearing the petitioner shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection A of this section with knowledge by the owner of the item.

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

I. In the event of such proof, the court may order the item released to the bona fide or innocent owner, lienholder, mortgagee, or vendor if the amount due such person is equal to, or in excess of, the value of the item as of the date of the seizure, it being 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, or if no bona fide claim is established, the item may be forfeited to the state and may be sold pursuant to judgment of the court, as on sale upon execution, and as provided in Section 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise provided for by law.

K. A seized item taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the petitioner or in the custody of the law enforcement agency. The petitioner shall release the seized item to the owner of the item if it is determined that the owner had no knowledge of the illegal use of the item or if there is insufficient evidence to sustain the burden of showing illegal use of the item. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the item is equal to or less than the outstanding lien. If such lien exceeds the value of the item, the item may be released to the lienholder. A seized item which has not been released by the petitioner shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

L. Attorney fees shall not be assessed against the state or the petitioner for any actions or proceeding pursuant to this section.

M. The proceeds of the sale of any property 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, if any, up to the amount of the interest of that person in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual reasonable expenses of preserving the item;

3. To the victim of the crime to compensate said victim for any loss incurred as a result of the act for which the item was forfeited; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-half (1/2) to the investigating law enforcement agency and one-half (1/2) to the district attorney for the evidence fund. If the petitioner is not the district attorney, then the one-half (1/2) which would have been designated to that office shall be distributed to the petitioner.

N. If the court finds that the item was not used in the attempt or commission of an act specified in subsection A of this section and was not an item subject to forfeiture pursuant to subsection B of this section, the court shall order the item released to the owner as the right, title, or interest as determined by the court.

O. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection A or B of this section. No item shall be forfeited pursuant to 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 by any person other than such owner while the item 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.

P. Whenever any item is forfeited pursuant to this section, the district court having jurisdiction of the proceeding may order that the forfeited item may be retained for its official use by the state, county, or municipal law enforcement agency which seized the item.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-1012 of Title 47, unless there is created a duplication in numbering, reads as follows:

In counties with a population over five hundred thousand (500,000) according to the last decennial census, marked and unmarked law enforcement vehicles or any vehicle which a law enforcement officer is using in an official capacity shall be exempt from paying a parking meter while parked on a city street.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 1370, is amended to read as follows:

Section 1370. A. Any county of this state may levy a sales tax of not to exceed two percent (2%) upon the gross proceeds or gross receipts derived from all sales or services in the county upon which a consumer's sales tax is levied by this state. Before a sales tax may be levied by the county, the imposition of the tax shall first be approved by a majority of the registered voters of the county voting thereon at a special election called by the board of county commissioners or by initiative petition signed by not less than five percent (5%) of the registered voters of the county who were registered at the time of the last general election. However, if a majority of the registered voters of a county voting fail to approve such a tax, the board of county commissioners shall not call another special election for such purpose for six (6) months. Any sales tax approved by the registered voters of a county shall be applicable only when the point of sale is within the territorial limits of such county. Any sales tax levied or any change in the rate of a sales tax levied pursuant to the provisions of this section shall become effective on the first day of the calendar quarter following approval by the voters of the county unless another effective date, which shall also be on the first day of a calendar quarter, is specified in the ordinance or resolution levying the sales tax or changing the rate of sales tax.

B. Initiative petitions calling for a special election concerning county sales tax proposals shall be in accordance with Sections 2, 3, 3.1, 6, 18 and 24 of Title 34 of the Oklahoma Statutes. Petitions shall be submitted to the office of county clerk for approval as to form prior to circulation. Following approval, the petitioner shall have ninety (90) days to secure the required signatures. After securing the requisite number of signatures, the petitioner shall submit the petition and signatures to the county clerk. Following the verification of signatures, the county clerk shall present the petition to the board of county

commissioners. The special election shall be held within sixty (60) days of receiving the petition. The ballot title presented to the voters at the special election shall be identical to the ballot as presented in the initiative petition.

C. All items that are exempt from the state sales tax shall be exempt from any sales tax levied by a county.

~~C.~~ D. Any sales tax which may be levied by a county shall be designated for a particular purpose. Such purposes may include, but are not limited to, economic development, general operations, capital improvements, county roads, weather modification or any other purpose deemed, by a majority vote of the county commissioners or as stated by initiative petition, to be necessary to promote safety, security and the general well being of the people. The county shall identify the purpose of the sales tax when it is presented to the voters pursuant to the provisions of subsection A of this section; ~~provided, if any portion of the revenue from a tax levied pursuant to the provisions of this section is to be used for fire departments or fire protection services in the county, the specific fire departments to which revenues from the tax will be allocated and the percentage or amount to be allocated to each fire department shall be specified in the instrument calling for the special election and in the ballot title.~~ The. Except as otherwise provided in this section, the proceeds of any sales tax levied by a county shall be deposited in the general revenue or sales tax revolving fund of the county and shall be used only for the purpose for which such sales tax was designated. If the proceeds of any sales tax levied by a county pursuant to this section are pledged for the purpose of retiring indebtedness incurred for the specific purpose for which the sales tax is imposed, the sales tax shall not be repealed until such time as the indebtedness is retired. However, in no event shall the life of the tax be extended beyond the duration approved by the voters of the county.

~~D.~~ E. Proceeds from any sales tax levied that is designated to be used solely by the sheriff for the operation of the office of sheriff shall be placed in the special revenue account of the sheriff.

F. The life of the tax could be limited or unlimited in duration. The county shall identify the duration of the tax when it is presented to the voters pursuant to the provisions of subsection A and B of this section.

~~E.~~ G. There are hereby created one or more county sales tax revolving funds in each county which levies a sales tax under this section if any or all of the proceeds of such tax are not to be deposited in the general revenue fund of the county or comply with the provisions of subsection E of this section. Each such revolving fund shall be designated for a particular purpose and shall consist of all monies generated by such sales tax which are designated for such purpose. Monies in such funds shall only be expended for the purposes specifically designated as required by this section. A county sales tax revolving fund shall be a continuing fund, not subject to fiscal year limitations.

SECTION 6. This act shall become effective July 1, 2002.

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 21st day of May, 2002.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2002.

Presiding Officer of the House
of Representatives