

SB 1370

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THE STATE SENATE
Monday, February 16, 2004

Senate Bill No. 1370

As Amended

SENATE BILL NO. 1370 - By: LAUGHLIN of the Senate and NANCE of the House.

[crimes and punishments - seizure and forfeiture proceedings - emergency]

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1738, as amended by Section 13, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2003, Section 1738), is amended to read as follows:

Section 1738. A. Any commissioned peace officer of this state is authorized to seize any vehicle owned by or registered to the defendant used in the commission of any armed robbery offense defined in Section 801 of this title, or any vehicle owned by or registered to the defendant when such vehicle is used to facilitate the intentional discharge of any kind of firearm in violation of Section 652 of this title, or any vehicle, airplane, vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or any vehicle owned by or registered to the

1 defendant used in violation of the Trademark Anti-Counterfeiting
2 Act, or any equipment owned by or registered to the defendant which
3 is used in the attempt or commission of any act of burglary in the
4 first or second degree, motor vehicle theft, unauthorized use of a
5 vehicle, obliteration of distinguishing numbers on vehicles or
6 criminal possession of vehicles with altered, removed or obliterated
7 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of
8 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma
9 Statutes, or any equipment owned by or registered to the defendant
10 used in violation of the Trademark Anti-Counterfeiting Act, or any
11 vehicle, airplane, vessel or equipment owned by or registered to the
12 defendant used in the commission of any arson offense defined in
13 Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property
14 may be held as evidence until a forfeiture has been declared or a
15 release ordered. Forfeiture actions under this section may be
16 brought by the district attorney in the proper county of venue as
17 petitioner; provided, in the event the district attorney elects not
18 to file such action, or fails to file such action within ninety (90)
19 days of the date of the seizure of such equipment, the property
20 shall be returned to the owner.

21 B. In addition to the property described in subsection A of
22 this section, the following property is also subject to forfeiture
23 pursuant to this section:

1 1. Property used in the commission of theft of livestock or in
2 any manner to facilitate the theft of livestock, including horses or
3 dogs which are used in any manner to facilitate theft of livestock;

4 2. The proceeds gained from the commission of theft of
5 livestock;

6 3. Personal property acquired with proceeds gained from the
7 commission of theft of livestock;

8 4. All conveyances, including aircraft, vehicles ~~or~~,
9 motorcycles, three- or four-wheelers, trailers, and vessels, and
10 animals including, but not limited to, horses or dogs which are used
11 to transport or in any manner to facilitate the transportation for
12 the purpose of the commission of theft of livestock;

13 5. Any items having a counterfeit mark and all property that is
14 owned by or registered to the defendant that is employed or used in
15 connection with any violation of the Trademark Anti-Counterfeiting
16 Act;

17 6. Any weapon possessed, used or available for use in any
18 manner during the commission of a felony within the State of
19 Oklahoma, or any firearm that is possessed by a convicted felon;

20 7. Any police scanner used in violation of Section 1214 of this
21 title; and

22 8. Any computer and its components and peripherals, including
23 but not limited to the central processing unit, monitor, keyboard,

1 printers, scanners, software, and hardware, when it is used in the
2 commission of any crime in this state.

3 C. Notice of seizure and intended forfeiture proceeding shall
4 be filed in the office of the clerk of the district court for the
5 county wherein such property is seized and shall be given all owners
6 and parties in interest.

7 D. Notice shall be given according to one of the following
8 methods:

9 1. Upon each owner or party in interest whose right, title, or
10 interest is of record in the Oklahoma Tax Commission or with the
11 county clerk for filings under the Uniform Commercial Code, served
12 in the manner of service of process in civil cases prescribed by
13 Section 2004 of Title 12 of the Oklahoma Statutes;

14 2. Upon each owner or party in interest whose name and address
15 is known, served in the manner of service of process in civil cases
16 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

17 3. Upon all other owners, whose addresses are unknown, but who
18 are believed to have an interest in the property by one publication
19 in a newspaper of general circulation in the county where the
20 seizure was made.

21 E. Within sixty (60) days after the mailing or publication of
22 the notice, the owner of the property and any other party in
23 interest or claimant may file a verified answer and claim to the

1 property described in the notice of seizure and of the intended
2 forfeiture proceeding.

3 F. If at the end of sixty (60) days after the notice has been
4 mailed or published there is no verified answer on file, the court
5 shall hear evidence upon the fact of the unlawful use and may order
6 the property forfeited to the state, if such fact is proven.

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

9 H. At the hearing the petitioner shall prove by clear and
10 convincing evidence that property was used in the attempt or
11 commission of an act specified in subsection A of this section or is
12 property described in subsection B of this section with knowledge by
13 the owner of the property.

14 I. The claimant of any right, title, or interest in the
15 property may prove the lien, mortgage, or conditional sales contract
16 to be bona fide and that the right, title, or interest created by
17 the document was created without any knowledge or reason to believe
18 that the property was being, or was to be, used for the purpose
19 charged.

20 J. In the event of such proof, the court may order the property
21 released to the bona fide or innocent owner, lien holder, mortgagee,
22 or vendor if the amount due such person is equal to, or in excess
23 of, the value of the property as of the date of the seizure, it

1 being the intention of this section to forfeit only the right,
2 title, or interest of the purchaser, except for items bearing a
3 counterfeit mark or used exclusively to manufacture a counterfeit
4 mark.

5 K. If the amount due to such person is less than the value of
6 the property, or if no bona fide claim is established, the property
7 may be forfeited to the state and may be sold pursuant to judgment
8 of the court, as on sale upon execution, and as provided in Section
9 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
10 provided for by law and for property bearing a counterfeit mark
11 which shall be destroyed.

12 L. Property taken or detained pursuant to this section shall
13 not be repleviable, but shall be deemed to be in the custody of the
14 petitioner or in the custody of the law enforcement agency as
15 provided in the Trademark Anti-Counterfeiting Act. Except for
16 property required to be destroyed pursuant to the Trademark Anti-
17 Counterfeiting Act, the petitioner shall release said property to
18 the owner of the property if it is determined that the owner had no
19 knowledge of the illegal use of the property or if there is
20 insufficient evidence to sustain the burden of showing illegal use
21 of such property. If the owner of the property stipulates to the
22 forfeiture and waives the hearing, the petitioner may determine if
23 the value of the property is equal to or less than the outstanding

1 lien. If such lien exceeds the value of the property, the property
2 may be released to the lien holder. Property which has not been
3 released by the petitioner shall be subject to the orders and
4 decrees of the court or the official having jurisdiction thereof.

5 M. The petitioner, or the law enforcement agency holding
6 property pursuant to the Trademark Anti-Counterfeiting Act, shall
7 not be held civilly liable for having custody of the seized property
8 or proceeding with a forfeiture action as provided for in this
9 section.

10 N. Attorney fees shall not be assessed against the state or the
11 petitioner for any actions or proceeding pursuant to Section 1701 et
12 seq. of this title.

13 O. The proceeds of the sale of any property shall be
14 distributed as follows, in the order indicated:

15 1. To the bona fide or innocent purchaser, conditional sales
16 vendor, or mortgagee of the property, if any, up to the amount of
17 such person's interest in the property, when the court declaring the
18 forfeiture orders a distribution to such person;

19 2. To the payment of the actual reasonable expenses of
20 preserving the property;

21 3. To the victim of the crime to compensate said victim for any
22 loss incurred as a result of the act for which such property was
23 forfeited; and

1 4. The balance to a revolving fund in the office of the county
2 treasurer of the county wherein the property was seized, to be
3 distributed as follows: one-third (1/3) to the investigating law
4 enforcement agency; one-third (1/3) of said fund to be used and
5 maintained as a revolving fund by the district attorney for the
6 victim-witness fund, a reward fund or the evidence fund; and one-
7 third (1/3) to go to the jail maintenance fund, with a yearly
8 accounting to the board of county commissioners in whose county the
9 fund is established. If the petitioner is not the district
10 attorney, then the one-third (1/3) which would have been designated
11 to that office shall be distributed to the petitioner. Monies
12 distributed to the jail maintenance fund shall be used to pay costs
13 for the storage of such property if such property is ordered
14 released to a bona fide or innocent owner, lien holder, mortgagee,
15 or vendor and if such funds are available in said fund.

16 P. Monies distributed into the revolving fund in the office of
17 the county treasurer from forfeitures initiated under this section
18 by the district attorney shall be limited to One Hundred Thousand
19 Dollars (\$100,000.00) at any one time in counties with population in
20 excess of three hundred thousand (300,000) and Twenty-five Thousand
21 Dollars (\$25,000.00) at any one time in counties with population
22 less than three hundred thousand (300,000). Any amount in excess of
23 these figures shall be placed in the general fund of the county.

1 Q. If the court finds that the property was not used in the
2 attempt or commission of an act specified in subsection A of this
3 section and was not property subject to forfeiture pursuant to
4 subsection B of this section and is not property bearing a
5 counterfeit mark, the court shall order the property released to the
6 owner as the right, title, or interest appears on record in the Tax
7 Commission as of the seizure.

8 R. No vehicle, airplane, or vessel used by a person as a common
9 carrier in the transaction of business as a common carrier shall be
10 forfeited pursuant to the provisions of this section unless it shall
11 be proven that the owner or other person in charge of such
12 conveyance was a consenting party or privy to the attempt or
13 commission of an act specified in subsection A or B of this section.
14 No property shall be forfeited pursuant to the provisions of this
15 section by reason of any act or omission established by the owner
16 thereof to have been committed or omitted without the knowledge or
17 consent of such owner, and by any person other than such owner while
18 such property was unlawfully in the possession of a person other
19 than the owner in violation of the criminal laws of the United
20 States or of any state.

21 S. Whenever any property is forfeited pursuant to this section,
22 the district court having jurisdiction of the proceeding may order
23 that the forfeited property may be retained for its official use by

1 the state, county, or municipal law enforcement agency which seized
2 the property.

3 SECTION 2. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-10-04 - DO
8 PASS, As Amended and Coauthored.