

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2440

By: Hamilton

AS INTRODUCED

An Act relating to crimes and punishments; defining terms; prohibiting certain unlawful acts; providing penalties; providing affirmative defense; authorizing assessment of additional penalties for corporations and business enterprises when appropriate; establishing guidelines for treatment of human trafficking victims; allowing victims to file a civil action in state court; authorizing court to award damages, fees and costs; amending 21 O.S. 2001, Section 1738, as amended by Section 13, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, Section 1738), which relates to seizure and forfeiture proceedings; authorizing forfeiture of property for violation of certain crime; providing for codification; and providing an effective date.

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 748 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Human trafficking for forced labor" includes, but is not limited to, forced labor in households, agricultural fields, sweatshops, and any other workplace; and

2. "Human trafficking for forced sexual exploitation" includes, but is not limited to, all forms of forced commercial sexual activity such as forced sexually explicit performances, forced prostitution, forced participation in the production of pornography, forced performance in strip clubs and forced exotic dancing or display.

B. A person commits the crime of human trafficking for forced labor or forced sexual exploitation if the person recruits, harbors,

transports or obtains a person through the use of force, fraud or coercion by:

1. Threats of serious harm or physical restraint against that person or another person;
2. Destroying, concealing, removing, confiscating, or possessing any passport, immigration documents, or other government identification document;
3. Abuse or threatened abuse of the law or legal process; or
4. Means of any scheme, plan or pattern intended to cause the person to believe that the person or another person would suffer serious harm or physical restraint or if the person benefits, financially or by receiving anything of value, from participation in a venture that has engaged in an act of human trafficking.

C. Any person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable by incarceration in the custody of the Department of Corrections for not more than five (5) years, or by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. The court shall also order the defendant to pay restitution to the victim as provided in Section 991f of Title 22 of the Oklahoma Statutes.

D. It is an affirmative defense to prosecution for a criminal offense that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 748.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

If a corporation or other business enterprise is convicted of a human trafficking offense, in addition to the criminal penalties provided for in Section 1 of this act and other remedies provided elsewhere in law, the court may, when appropriate:

1. Order the dissolution or reorganization of the corporation or business enterprise;

2. Order the suspension or revocation of any license or permit of the corporation or business enterprise;

3. Order the surrender of the charter of the corporation or business enterprise, if organized under state law; or

4. Order the revocation of the certificate to conduct business in this state, if the corporation or business enterprise is not organized under state law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 748.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Human trafficking victims shall:

1. Be housed in an appropriate shelter as soon as practicable;

2. Not be detained in facilities inappropriate to their status as crime victims;

3. Not be jailed, fined, or otherwise penalized due to having been trafficked;

4. Receive prompt medical care, mental health care, food, and other assistance, as necessary;

5. Have access to legal assistance, information about their rights, and translation services, as necessary; and

6. Be provided protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a trafficker, including:

a. taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals, and

b. ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

B. Any person who is a victim of human trafficking may file a civil action against the alleged perpetrator or perpetrators in state court. The court may award actual damages, punitive damages,

reasonable attorney fees, and other costs reasonably incurred. Any civil action filed pursuant to this subsection shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 1738, as amended by Section 13, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, 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 defendant used in violation of the Trademark Anti-Counterfeiting Act, or any equipment owned by or registered to the defendant which is used in the attempt or commission of any act of burglary in the first or second degree, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma Statutes, or any equipment owned by or registered to the defendant used in violation of the Trademark Anti-Counterfeiting Act, or any vehicle, airplane, vessel or equipment owned by or registered to the defendant used in the commission of any arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property

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 such equipment, the property shall be returned to the owner.

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

1. Property used in the commission of theft of livestock or in any manner to facilitate the theft of livestock;

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

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

4. All conveyances, including aircraft, vehicles or vessels, and horses or dogs which are used to transport or in any manner to facilitate the transportation for the purpose of the commission of theft of livestock;

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

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

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

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

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

9. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used in any manner or part, to commit any violation of the provisions set forth in Section 1 of this act.

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

D. 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 Oklahoma Tax Commission or with the county clerk for filings under the Uniform Commercial Code, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes;

2. Upon each owner 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

3. 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.

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

F. 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 property forfeited to the state, if such fact is proven.

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

H. 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 or is property described in subsection B of this section with knowledge by the owner of the property.

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

J. In the event of such proof, the court may order the 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 property 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, except for items bearing a counterfeit mark or used exclusively to manufacture a counterfeit mark.

K. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property 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 and for property bearing a counterfeit mark which shall be destroyed.

L. Property 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 as provided in the Trademark Anti-Counterfeiting Act. Except for property required to be destroyed pursuant to the Trademark Anti-Counterfeiting Act, the petitioner shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property 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.

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

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

O. 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 property, if any, up to the amount of such person's interest 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 property;

3. To the victim of the crime to compensate said victim for any loss incurred as a result of the act for which such property 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-third (1/3) to the investigating law enforcement agency; one-third (1/3) of said fund to be used and maintained as a revolving fund by the district attorney for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. If the petitioner is not the district attorney, then the one-third (1/3) which would have been designated to that office shall be distributed to the petitioner. Monies distributed to the jail maintenance fund shall be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

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

Q. If the court finds that the property was not used in the attempt or commission of an act specified in subsection A of this section and was not property subject to forfeiture pursuant to subsection B of this section and is not property bearing a counterfeit mark, the court shall order the property released to the

owner as the right, title, or interest appears on record in the Tax Commission as of the seizure.

R. 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 property 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 such property 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.

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

SECTION 5. This act shall become effective November 1, 2006.

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