

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1541

By: Leftwich

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2001, Sections 1040.54 and 1081, as amended by Section 3, Chapter 120, O.S.L. 2002 (21 O.S. Supp. 2005, Section 1081), which relates to seizure and forfeiture proceedings and pandering; including real and personal property and vehicles for purpose of seizure and forfeiture for certain offenses; making certain property used to facilitate the crime of pandering subject to seizure and forfeiture provisions; clarifying language; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1040.54, is amended to read as follows:

Section 1040.54 A. Any peace officer of this state is authorized to seize any real or personal property, vehicle, or equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography, as defined in subsection A of Section 1024.1 of this title, or used to facilitate any offense pursuant to Section 1081 of this title. Said property, vehicle, or equipment 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 an action, or fails to file such action within ninety (90) days of the date of the seizure

of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and

2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

C. Within sixty (60) days after the mailing or publication of the notice, the owner of the equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

D. 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, vehicle, or equipment forfeited to the state, if such fact is proven.

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

F. At the hearing the party seeking the forfeiture shall prove by clear and convincing evidence that the property, vehicle, or equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography, as defined in paragraph 1 of subsection A of Section 1024.1 of this title, or used to

facilitate any offense pursuant to Section 1081 of this title, with knowledge by the owner of the property, vehicle, or equipment.

G. The owner or party in interest may prove that the right or interest in the property, vehicle, or equipment was created without any knowledge or reason to believe that the property, vehicle, or equipment was being, or was to be, used for the purpose charged.

H. In the event of such proof, the court may order the property, vehicle, or equipment released to the bona fide or innocent owner or party in interest if the amount due the person is equal to, or in excess of, the value of the property, vehicle, or equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the property, vehicle, or equipment, or if no bona fide claim is established, the property, vehicle, or equipment shall be forfeited to the state and shall be sold pursuant to the judgment of the court.

J. ~~Equipment~~ Any property, vehicle, or equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county where the equipment was seized or in the custody of the party seeking the forfeiture. The district attorney or the party seeking the property, vehicle, or equipment may release said property, vehicle, or equipment to the owner ~~of the equipment~~ if it is determined that the owner had no knowledge of the illegal use of the property, vehicle, or equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the property, vehicle, or equipment. ~~Equipment~~ Any property, vehicle, or equipment which has not been released by the district attorney or the party seizing the property, vehicle, or equipment shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

K. The district attorney or the party seizing such property, vehicle, or equipment shall not be held civilly liable for having custody of the seized property, vehicle, or equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any equipment not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

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

2. To the payment of the actual expenses of preserving the equipment; and

3. The balance to a revolving fund in the office of the county treasurer of the county where the property, vehicle, or equipment was seized, said fund to be used and maintained as a revolving fund for any purpose by the department that made the seizure with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such property, vehicle, or equipment if such property, vehicle, or equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in said fund.

M. The proceeds of the sale of any property, vehicle, or equipment seized, taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic

Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

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

2. To the payment of the actual expenses of preserving the property, vehicle, or equipment; and

3. The balance to a revolving fund of the agency seizing said property, vehicle, or equipment to be used and maintained as a revolving fund for law enforcement purposes by the agency seizing said property, vehicle, or equipment. Monies from said fund may be used to pay costs for the storage of such property, vehicle, or equipment if such property, vehicle, or equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor.

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

O. If the court finds that the property, vehicle, or equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography as defined in paragraph 1 of subsection A of Section 1024.1 of this title, or facilitation of any offense

pursuant to Section 1081 of this title, the court shall order the property, vehicle, or equipment released to the owner.

P. No property, vehicle, or equipment 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, or by any person other than such owner while such property, vehicle, or equipment 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.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 1081, as amended by Section 3, Chapter 120, O.S.L. 2002 (21 O.S. Supp. 2005, Section 1081), is amended to read as follows:

Section 1081. Any person who shall procure any other person for prostitution, or who, by promise, threats, violence or by any device or scheme shall cause, induce, persuade or encourage another person to become a prostitute; or shall procure a place as inmate in a house of prostitution for another person; or who shall, by promise, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or who shall, by fraud, or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority procure any other person to become a prostitute, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution, or who shall procure any other person, who has not previously practiced prostitution to become a prostitute within this state, or to come into this state or leave this state for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any other person to become an inmate of a house of prostitution within this state, or to come into

this state or leave this state for the purpose of prostitution, shall be guilty of pandering, and upon conviction for any offense under this article shall be guilty of a felony and shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a period of not less than two (2) years nor more than twenty (20) years and by fines as follows: a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Three Thousand Dollars (\$3,000.00) upon the first conviction for such offense, a fine of not less than Three Thousand Dollars (\$3,000.00) and not more than Six Thousand Dollars (\$6,000.00) upon the second conviction, and a fine of not less than Six Thousand Dollars (\$6,000.00) and not more than Nine Thousand Dollars (\$9,000.00) for the third or subsequent convictions for such offense.

In addition to any penalty imposed, any real or personal property, vehicle, or equipment used to facilitate any offense in violation of this section shall be subject to seizure and forfeiture as provided in Section 1040.54 of this title.

SECTION 3. This act shall become effective July 1, 2006.

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.

50-2-3056

NP

6/13/2015 8:30:30 AM