

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2729

6 By: Armes

7 COMMITTEE SUBSTITUTE

8 An Act relating to agriculture; authorizing the
9 Oklahoma Department of Agriculture, Food, and
10 Forestry to take possession of certain farm-related
11 property; providing for forfeiture proceedings;
12 providing for return of property if action is not
13 filed; specifying notice procedures; providing for
14 hearing if answer is filed; providing for rights of
15 certain claimants; providing for release upon certain
16 determination; providing for attorney fees; providing
17 for disposal; providing for proceeds of seized
18 possessions; providing for retention of property;
19 creating the Agriculture Evidence and Law Enforcement
20 Fund; providing for revenues; providing for use;
21 providing for expenditures; providing maximum amount
22 for balance on deposit; amending 4 O.S. 2001, Section
23 270.2, which relates to enforcement of laws
24 pertaining to livestock; authorizing agriculture law
enforcement agents to enforce laws; amending 47 O.S.
2001, Section 4-103, which relates to receiving or
disposing of a vehicle; adding violations relating to
implement of husbandry as felony; providing for
codification; and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 2-14.1 of Title 2, unless there
24 is created a duplication in numbering, reads as follows:

1 A. The Oklahoma Department of Agriculture, Food, and Forestry
2 may take into possession any vehicle, implement of husbandry,
3 farming equipment or farm implement and any and all livestock, or
4 any part thereof, killed, taken, shipped, or possessed in violation
5 of any provision of the Agricultural Code.

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

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

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

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

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

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

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1 6. Any weapon possessed, used or available for use in any
2 manner during the commission of a theft of livestock within the
3 State of Oklahoma; and

4 7. Any computer and its components and peripherals, including
5 but not limited to the central processing unit, monitor, keyboard,
6 printers, scanners, software, and hardware, when it is used in the
7 commission of theft of livestock in this state.

8 C. The property may be held as evidence until a forfeiture has
9 been declared or a release ordered. Forfeiture actions under this
10 section may be brought by the Department before the State Board of
11 Agriculture or the district attorney in the proper county of venue
12 as petitioner; provided, in the event the Department or the district
13 attorney elect not to file an action, or fail to file an action
14 within ninety (90) days of the date of the seizure of the equipment,
15 the property shall be returned to the owner.

16 D. Notice of seizure and intended forfeiture proceeding shall
17 be filed with the Secretary of the Board or in the office of the
18 clerk of the district court for the county where the property is
19 seized and shall be given to all owners and parties in interest.
20 Notice shall be given according to one of the following methods:

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

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

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

10 E. Within sixty (60) days after the mailing or publication of
11 the notice, the owner of the property and any other party in
12 interest or claimant may file a verified answer and claim to the
13 property described in the notice of seizure and of the intended
14 forfeiture proceeding.

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

19 G. If a verified answer is filed, the forfeiture proceeding
20 shall be set for hearing. At the hearing the petitioner shall prove
21 by a preponderance of the evidence that property was used in the
22 attempt or commission of an act specified in subsection A of this
23 section or is property described in subsection B of this section
24 with knowledge by the owner of the property.

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

7 I. In the event of such proof, the Board or the court may order
8 the property released to the bona fide or innocent owner,
9 lienholder, mortgagee, or vendor if the amount due the person is
10 equal to, or in excess of, the value of the property as of the date
11 of the seizure, it being the intention of this section to forfeit
12 only the right, title, or interest of the purchaser, except for
13 items bearing a counterfeit mark or used exclusively to manufacture
14 a counterfeit mark.

15 J. If the amount due to the person is less than the value of
16 the property, or if no bona fide claim is established, the property
17 may be forfeited to the state and may be sold pursuant to judgment
18 of the court, as on sale upon execution, and as provided in Section
19 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
20 provided for by law and for property bearing a counterfeit mark
21 which shall be destroyed.

22 K. Property taken or detained pursuant to this section shall
23 not be repleviable, but shall be deemed to be in the custody of the
24 petitioner or in the custody of the law enforcement agency. Except

1 for property required to be destroyed pursuant to the Trademark
2 Anti-Counterfeiting Act, the petitioner shall release the property
3 to the owner of the property if it is determined that the owner had
4 no knowledge of the illegal use of the property or if there is
5 insufficient evidence to sustain the burden of showing illegal use
6 of the property. If the owner of the property stipulates to the
7 forfeiture and waives the hearing, the petitioner may determine if
8 the value of the property is equal to or less than the outstanding
9 lien. If the lien exceeds the value of the property, the property
10 may be released to the lien holder. Property which has not been
11 released by the petitioner shall be subject to the orders and
12 decrees of the court or the official having jurisdiction thereof.

13 L. The petitioner, or the law enforcement agency holding
14 property, shall not be held civilly liable for having custody of the
15 seized property or proceeding with a forfeiture action as provided
16 for in this section.

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

19 N. The proceeds of the sale of any property shall be
20 distributed as follows, in the order indicated:

21 1. To the bona fide or innocent purchaser, conditional sales
22 vendor, or mortgagee of the property, if any, up to the amount of
23 that person's interest in the property, when the court declaring the
24 forfeiture orders a distribution to the person;

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

3 3. The balance shall be distributed as follows:

4 a. two-thirds (2/3) of the amount to the Agriculture
5 Evidence and Law Enforcement Fund established in
6 Section 2 of this act, and

7 b. one-third (1/3) to the district attorney of the county
8 wherein the property was seized for the victim-witness
9 fund, a reward fund, or the evidence fund. If the
10 petitioner is not the district attorney, then the one-
11 third (1/3) which would have been designated to that
12 office shall be distributed to the petitioner.

13 O. Monies distributed into the fund from forfeitures initiated
14 under this section by the district attorney shall be limited to One
15 Hundred Thousand Dollars (\$100,000.00) at any one time. Any amount
16 in excess of these figures shall be placed in Agriculture Revolving
17 Fund.

18 P. If the Board or the court finds that the property was not
19 used in the attempt or commission of an act specified in subsection
20 A of this section and was not property subject to forfeiture
21 pursuant to subsection B of this section and is not property bearing
22 a counterfeit mark, the Board or the court shall order the property
23 released to the owner as the right, title or interest appears on
24 record in the Tax Commission as of the seizure.

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

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

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2-27.1 of Title 2, unless there
20 is created a duplication in numbering, reads as follows:

21 A. There is created in the State Treasury a revolving fund for
22 the Oklahoma Department of Agriculture, Food, and Forestry to be
23 designated the "Agriculture Evidence and Law Enforcement Fund". The
24 fund shall be a continuing fund, not subject to fiscal year

1 limitations, and shall consist of monies received from the sale of
2 confiscated property, the seizure and forfeiture of confiscated
3 monies, property, gifts, bequests, devises, or contributions, public
4 or private, including federal and state funds unless otherwise
5 provided by federal law or regulation.

6 B. All monies accruing to the credit of the fund are
7 appropriated and may be budgeted and expended by the Oklahoma
8 Department of Agriculture, Food, and Forestry, for purposes
9 including but not limited to investigation, enforcement, and
10 prosecution of cases involving administrative, civil, or criminal
11 violations of the Agricultural Code.

12 C. The balance on deposit in the Agriculture Evidence and Law
13 Enforcement Fund shall never exceed the sum of One Hundred Thousand
14 Dollars (\$100,000.00). Amounts exceeding One Hundred Thousand
15 Dollars (\$100,000.00) shall be deposited in the Agriculture
16 Revolving Fund.

17 SECTION 3. AMENDATORY 4 O.S. 2001, Section 270.2, is
18 amended to read as follows:

19 Section 270.2 The laws of this state relating to violations and
20 investigations of livestock brands shall be enforced and carried out
21 by the Oklahoma State Bureau of Investigation and any agriculture
22 law enforcement agent of the state.

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1 All responsibilities and duties relating to brand registry,
2 keeping of records and maintenance of files are hereby delegated to
3 the ~~Oklahoma~~ State Board of Agriculture.

4 The Board is authorized to enter into contracts with state
5 livestock associations to register and record marks and brands and
6 to make compensation for ~~said~~ services. The Board may also appoint
7 agents to receive fees and monies and perform ~~such~~ other duties as
8 it may direct, i provided, that ~~such~~ the agent shall file with and in
9 favor of the Board, a fidelity bond executed by a surety company
10 authorized to do business in this state, conditioned on the faithful
11 performance of their duties, a strict accounting of all funds to the
12 Board and on ~~such~~ other terms and conditions as the Board may deem
13 necessary, in ~~such~~ a penal sum as the Board may require. All ~~such~~
14 fees and monies shall be deposited in the State Department of
15 Agriculture Trust Fund.

16 SECTION 4. AMENDATORY 47 O.S. 2001, Section 4-103, is
17 amended to read as follows:

18 Section 4-103. A person not entitled to the possession of a
19 vehicle or implement of husbandry who receives, possesses, conceals,
20 sells or disposes of it, knowing the vehicle or implement of
21 husbandry to be stolen or converted under circumstances constituting
22 a crime, shall be guilty of a felony.

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SECTION 5. This act shall become effective November 1, 2008.

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