

THE HOUSE OF REPRESENTATIVES
Monday, March 3, 2008

Committee Substitute for
House Bill No. 2729

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2729 - By: ARMES of the House and WYRICK of the Senate.

An Act relating to agriculture; authorizing the Oklahoma Department of Agriculture, Food, and Forestry to take possession of certain farm-related property; providing for forfeiture proceedings; providing for return of property if action is not filed; specifying notice procedures; providing for hearing if answer is filed; providing for rights of certain claimants; providing for release upon certain determination; providing for attorney fees; providing for disposal; providing for proceeds of seized possessions; providing for retention of property; creating the Agriculture Evidence and Law Enforcement Fund; providing for revenues; providing for use; providing for expenditures; providing maximum amount for balance on deposit; amending 4 O.S. 2001, Section 270.2, which relates to enforcement of laws 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.

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

- 1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
- 2 Statutes as Section 2-14.1 of Title 2, unless there is created a duplication in numbering,
- 3 reads as follows:
- 4 A. The Oklahoma Department of Agriculture, Food, and Forestry may take into
- 5 possession any vehicle, implement of husbandry, farming equipment or farm implement

1 and any and all livestock, or any part thereof, killed, taken, shipped, or possessed in
2 violation of any provision of the Agricultural Code.

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

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

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

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

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

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

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

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

21 C. The property may be held as evidence until a forfeiture has been declared or a
22 release ordered. Forfeiture actions under this section may be brought by the Department

1 before the State Board of Agriculture or the district attorney in the proper county of
2 venue as petitioner; provided, in the event the Department or the district attorney elect
3 not to file an action, or fail to file an action within ninety (90) days of the date of the
4 seizure of the equipment, the property shall be returned to the owner.

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

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

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

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

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

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

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

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

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

19 J. If the amount due to the person is less than the value of the property, or if no
20 bona fide claim is established, the property may be forfeited to the state and may be sold
21 pursuant to judgment of the court, as on sale upon execution, and as provided in Section

1 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise provided for by law and
2 for property bearing a counterfeit mark which shall be destroyed.

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

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

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

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

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

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

5 3. The balance shall be distributed as follows:

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

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

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

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

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

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

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

18 A. There is created in the State Treasury a revolving fund for the Oklahoma
19 Department of Agriculture, Food, and Forestry to be designated the "Agriculture
20 Evidence and Law Enforcement Fund". The fund shall be a continuing fund, not subject
21 to fiscal year limitations, and shall consist of monies received from the sale of confiscated
22 property, the seizure and forfeiture of confiscated monies, property, gifts, bequests,

1 devises, or contributions, public or private, including federal and state funds unless
2 otherwise provided by federal law or regulation.

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

7 C. The balance on deposit in the Agriculture Evidence and Law Enforcement Fund
8 shall never exceed the sum of One Hundred Thousand Dollars (\$100,000.00). Amounts
9 exceeding One Hundred Thousand Dollars (\$100,000.00) shall be deposited in the
10 Agriculture Revolving Fund.

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

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

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

18 The Board is authorized to enter into contracts with state livestock associations to
19 register and record marks and brands and to make compensation for ~~said~~ services. The
20 Board may also appoint agents to receive fees and monies and perform ~~such~~ other duties
21 as it may direct; ~~provided, that such~~ the agent shall file with and in favor of the Board, a
22 fidelity bond executed by a surety company authorized to do business in this state,

1 conditioned on the faithful performance of their duties, a strict accounting of all funds to
2 the Board and on ~~such~~ other terms and conditions as the Board may deem necessary, in
3 ~~such~~ a penal sum as the Board may require. All ~~such~~ fees and monies shall be deposited
4 in the State Department of Agriculture Trust Fund.

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

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

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

12 COMMITTEE REPORT BY: COMMITTEE ON NATURAL RESOURCES, dated 02-28-
13 08 - DO PASS, As Amended and Coauthored.