

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1843

By: Barrington

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5
6 AS INTRODUCED

7 An Act relating to public safety; amending 63 O.S.
8 2001, Section 2-503, as last amended by Section 5,
9 Chapter 223, O.S.L. 2007 (63 O.S. Supp. 2007, Section
10 2-503), which relates to property subject to
11 forfeiture; declaring weapons found in close
12 proximity to certain substances or paraphernalia to
13 be subject to forfeiture; requiring burden of proof
14 to rebut certain presumption to be upon claimants of
15 certain property; and providing an effective date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-503, as
18 last amended by Section 5, Chapter 223, O.S.L. 2007 (63 O.S. Supp.
19 2007, Section 2-503), is amended to read as follows:

20 Section 2-503. A. The following shall be subject to
21 forfeiture:

22 1. All controlled dangerous substances which have been
23 manufactured, distributed, dispensed, acquired, concealed or
24 possessed in violation of the Uniform Controlled Dangerous
Substances Act;

1 2. All raw materials, products and equipment of any kind and
2 all drug paraphernalia as defined by the Uniform Controlled
3 Dangerous Substances Act, which are used, or intended for use, in
4 manufacturing, compounding, processing, delivering, importing or
5 exporting, injecting, ingesting, inhaling, or otherwise introducing
6 into the human body any controlled dangerous substance in violation
7 of the provisions of the Uniform Controlled Dangerous Substances
8 Act;

9 3. All property which is used, or intended for use, as a
10 container for property described in paragraphs 1 and 2 of this
11 subsection;

12 4. All conveyances, including aircraft, vehicles, vessels, or
13 farm implements which are used to transport, conceal, or cultivate
14 for the purpose of distribution as defined in the Uniform Controlled
15 Dangerous Substances Act, or which are used in any manner to
16 facilitate the transportation or cultivation for the purpose of sale
17 or receipt of property described in paragraphs 1 or 2 of this
18 subsection or when the property described in paragraphs 1 or 2 of
19 this subsection is unlawfully possessed by an occupant thereof,
20 except that:

21 a. no conveyance used by a person as a common carrier in
22 the transaction of business as a common carrier shall
23 be forfeited under the provisions of the Uniform
24 Controlled Dangerous Substances Act unless it shall

1 appear that the owner or other person in charge of
2 such conveyance was a consenting party or privy to a
3 violation of the Uniform Controlled Dangerous
4 Substances Act, and

5 b. no conveyance shall be forfeited under the provisions
6 of this section by reason of any act or omission
7 established by the owner thereof to have been
8 committed or omitted without the knowledge or consent
9 of such owner, and if the act is committed by any
10 person other than such owner the owner shall establish
11 further that the conveyance was unlawfully in the
12 possession of a person other than the owner in
13 violation of the criminal laws of the United States,
14 or of any state;

15 5. All books, records and research, including formulas,
16 microfilm, tapes and data which are used in violation of the Uniform
17 Controlled Dangerous Substances Act;

18 6. All things of value furnished, or intended to be furnished,
19 in exchange for a controlled dangerous substance in violation of the
20 Uniform Controlled Dangerous Substances Act, all proceeds traceable
21 to such an exchange, and all monies, negotiable instruments, and
22 securities used, or intended to be used, to facilitate any violation
23 of the Uniform Controlled Dangerous Substances Act;

1 7. All monies, coin and currency found in close proximity to
2 any amount of forfeitable substances, to forfeitable drug
3 manufacturing or distribution paraphernalia or to forfeitable
4 records of the importation, manufacture or distribution of
5 substances, which are rebuttably presumed to be forfeitable under
6 the Uniform Controlled Dangerous Substances Act. The burden of
7 proof is upon claimants of the property to rebut this presumption;

8 8. All real property, including any right, title, and interest
9 in the whole of any lot or tract of land and any appurtenance or
10 improvement thereto, which is used, or intended to be used, in any
11 manner or part, to commit, or to facilitate the commission of, a
12 violation of the Uniform Controlled Dangerous Substances Act which
13 is punishable by imprisonment for more than one (1) year, except
14 that no property right, title or interest shall be forfeited
15 pursuant to this paragraph, by reason of any act or omission
16 established by the owner thereof to have been committed or omitted
17 without the knowledge or consent of that owner; and

18 9. All weapons:

19 a. possessed, used or available for use in any manner to
20 facilitate a violation of the Uniform Controlled
21 Dangerous Substances Act, or

22 b. found in close proximity to any amount of forfeitable
23 substances or to forfeitable drug manufacturing or
24 distribution paraphernalia which are rebuttably

1 presumed to be forfeitable under the Uniform
2 Controlled Dangerous Substances Act. The burden of
3 proof to rebut such presumption shall be upon
4 claimants of the property.

5 B. Any property or thing of value of a person is subject to
6 forfeiture if it is established by a preponderance of the evidence
7 that such property or thing of value was acquired by such person
8 during the period of the violation of the Uniform Controlled
9 Dangerous Substances Act or within a reasonable time after such
10 period and there was no likely source for such property or thing of
11 value other than the violation of the Uniform Controlled Dangerous
12 Substances Act.

13 C. Any property or thing of value of a person is subject to
14 forfeiture if it is established by a preponderance of the evidence
15 that the person has not paid all or part of a fine imposed pursuant
16 to the provisions of Section 2-415 of this title.

17 D. All items forfeited in this section shall be forfeited under
18 the procedures established in Section 2-506 of this title. Whenever
19 any item is forfeited pursuant to this section except for items
20 confiscated by the Oklahoma State Bureau of Narcotics and Dangerous
21 Drugs Control, the Department of Public Safety, the Oklahoma State
22 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
23 Commission, the Department of Corrections, or the Office of the
24 Attorney General, the district court of the district shall order

1 that such item, money, or monies derived from the sale of such item
2 be deposited by the state, county or city law enforcement agency
3 which seized the item in the revolving fund provided for in Section
4 2-506 of this title; provided, such item, money or monies derived
5 from the sale of such item forfeited due to nonpayment of a fine
6 imposed pursuant to the provisions of Section 2-415 of this title
7 shall be apportioned as provided in Section 2-416 of this title.
8 Items, money or monies seized pursuant to subsections A and B of
9 this section shall not be applied or considered toward satisfaction
10 of the fine imposed by Section 2-415 of this title. All raw
11 materials used or intended to be used by persons to unlawfully
12 manufacture or attempt to manufacture any controlled dangerous
13 substance in violation of the Uniform Controlled Dangerous
14 Substances Act shall be summarily forfeited pursuant to the
15 provisions of Section 2-505 of this title.

16 E. All property taken or detained under this section by the
17 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the
18 Department of Public Safety, the Oklahoma State Bureau of
19 Investigation, the Alcoholic Beverage Laws Enforcement Commission,
20 the Department of Corrections, or the Office of the Attorney
21 General, shall not be repleviable, but shall remain in the custody
22 of the Bureaus, Departments, Commission, or Office, respectively,
23 subject only to the orders and decrees of a court of competent
24 jurisdiction. The Director of the Oklahoma State Bureau of

1 Narcotics and Dangerous Drugs Control, the Commissioner of Public
2 Safety, the Director of the Oklahoma State Bureau of Investigation,
3 the Director of the Alcoholic Beverage Laws Enforcement Commission,
4 the Director of the Department of Corrections, and the Attorney
5 General shall follow the procedures outlined in Section 2-506 of
6 this title dealing with notification of seizure, intent of
7 forfeiture, final disposition procedures, and release to innocent
8 claimants with regard to all property included in this section
9 detained by the Department of Public Safety, the Oklahoma State
10 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
11 Commission, the Department of Corrections, or the Office of the
12 Attorney General. Property taken or detained by the Oklahoma State
13 Bureau of Narcotics and Dangerous Drugs Control, the Department of
14 Public Safety, the Oklahoma State Bureau of Investigation, the
15 Alcoholic Beverage Laws Enforcement Commission, the Department of
16 Corrections, or the Office of the Attorney General shall be disposed
17 of or sold pursuant to the provisions of Section 2-508 of this
18 title. Any money, coins, and currency, taken or detained pursuant
19 to this section may be deposited in an interest bearing account by
20 or at the direction of the State Treasurer if the seizing agency
21 determines the currency is not to be held as evidence. All interest
22 earned on such monies shall be returned to the claimant or forfeited
23 with the money, coins, and currency which was taken or detained as
24 provided by law.

1 F. The proceeds of any forfeiture of items seized by the
2 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall
3 be distributed as follows:

4 1. To the bona fide or innocent purchaser, conditional sales
5 vendor or mortgagee of the property, if any, up to the amount of his
6 or her interest in the property, when the court declaring a
7 forfeiture orders a distribution to such person; and

8 2. The balance to the Oklahoma State Bureau of ~~Narcotics~~
9 Narcotics and Dangerous Drugs Control revolving fund or the Bureau's
10 agency special account established pursuant to Section 7.2 of Title
11 62 of the Oklahoma Statutes, provided the Bureau may enter into
12 agreements with municipal, county, state or federal law enforcement
13 agencies, assisting in the forfeiture or underlying criminal
14 investigation, to return to such an agency a percentage of said
15 proceeds.

16 The Bureau may expend up to Two Million Dollars (\$2,000,000.00)
17 of the forfeited funds within a fiscal year without prior approval
18 of the Legislature. Documentation of such expenditures shall be
19 forwarded to the Governor, Speaker of the House of Representatives
20 and the President Pro Tempore of the Senate on a quarterly basis.
21 Any additional expenditures of forfeited funds shall be ~~pre-approved~~
22 preapproved by the annual appropriations process or the Contingency
23 Review Board.
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G. Any agency that acquires seized or forfeited property or money shall maintain a true and accurate inventory and record of all such property seized pursuant to this section.

SECTION 2. This act shall become effective November 1, 2008.

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