

1 STATE OF OKLAHOMA

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

3 SENATE BILL 2107

By: Lamb

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6 AS INTRODUCED

7 An Act relating to public safety; amending 63 O.S.
8 2001, Sections 2-503, as last amended by Section 5,
Chapter 223, O.S.L. 2007 and 2-506, as last amended
9 by Section 4, Chapter 248, O.S.L. 2007 (63 O.S. Supp.
2007, Sections 2-503 and 2-506), which relate to
10 property subject to forfeiture and seizure of
property; providing rebuttable presumption of
11 forfeiture for certain conveyances; placing certain
burden of proof upon certain claimants; providing for
12 forfeiture of certain property upon establishment of
certain probable cause; requiring certain
preponderance of evidence to rebut certain
13 forfeiture; directing certain judgment; Providing for
forfeiture of certain property upon establishment of
14 certain probable cause; providing for satisfaction of
certain requirements upon establishment of certain
15 probable cause; and providing an effective date.

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

19 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-503, as
20 last amended by Section 5, Chapter 223, O.S.L. 2007 (63 O.S. Supp.
21 2007, Section 2-503), is amended to read as follows:

22 Section 2-503. A. The following shall be subject to
23 forfeiture:
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1 1. All controlled dangerous substances which have been
2 manufactured, distributed, dispensed, acquired, concealed or
3 possessed in violation of the Uniform Controlled Dangerous
4 Substances Act;

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

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

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

1 a. no conveyance used by a person as a common carrier in
2 the transaction of business as a common carrier shall
3 be forfeited under the provisions of the Uniform
4 Controlled Dangerous Substances Act unless it shall
5 appear that the owner or other person in charge of
6 such conveyance was a consenting party or privy to a
7 violation of the Uniform Controlled Dangerous
8 Substances Act, and

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

19 provided, any conveyance described in this paragraph that is
20 discovered to contain an after-market, hidden, or secret compartment
21 where, in addition thereto, probable cause exists to believe such
22 compartment has been used or is intended for use to conceal
23 contraband is rebuttably presumed to be forfeitable under the
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1 Uniform Controlled Dangerous Substances Act. The burden of proof is
2 upon the claimant of the property to rebut this presumption;

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

6 6. All things of value furnished, or intended to be furnished,
7 in exchange for a controlled dangerous substance in violation of the
8 Uniform Controlled Dangerous Substances Act, all proceeds traceable
9 to such an exchange, and all monies, negotiable instruments, and
10 securities used, or intended to be used, to facilitate any violation
11 of the Uniform Controlled Dangerous Substances Act;

12 7. All monies, coin and currency found in close proximity to
13 any amount of forfeitable substances, to forfeitable drug
14 manufacturing or distribution paraphernalia or to forfeitable
15 records of the importation, manufacture or distribution of
16 substances, which are rebuttably presumed to be forfeitable under
17 the Uniform Controlled Dangerous Substances Act. The burden of
18 proof is upon claimants of the property to rebut this presumption;

19 8. All real property, including any right, title, and interest
20 in the whole of any lot or tract of land and any appurtenance or
21 improvement thereto, which is used, or intended to be used, in any
22 manner or part, to commit, or to facilitate the commission of, a
23 violation of the Uniform Controlled Dangerous Substances Act which
24 is punishable by imprisonment for more than one (1) year, except

1 that no property right, title or interest shall be forfeited
2 pursuant to this paragraph, by reason of any act or omission
3 established by the owner thereof to have been committed or omitted
4 without the knowledge or consent of that owner; and

5 9. All weapons possessed, used or available for use in any
6 manner to facilitate a violation of the Uniform Controlled Dangerous
7 Substances Act.

8 B. Any property or thing of value of a person is subject to
9 forfeiture if it is established ~~by a preponderance of the evidence~~
10 that probable cause exists that such property or thing of value was
11 acquired by such person during the period of the violation of the
12 Uniform Controlled Dangerous Substances Act or within a reasonable
13 time after such period and there was no likely source for such
14 property or thing of value other than the violation of the Uniform
15 Controlled Dangerous Substances Act. Once the state establishes its
16 initial burden of probable cause, the burden shall shift to the
17 claimant to demonstrate by a preponderance of the evidence that the
18 subject property is not forfeitable or that a defense to the
19 forfeiture exists. If the claimant cannot rebut the initial showing
20 of probable cause, the court shall enter a judgment of forfeiture.

21 C. Any property or thing of value of a person is subject to
22 forfeiture if it is established ~~by a preponderance of the evidence~~
23 that probable cause exists that the person has not paid all or part
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1 of a fine imposed pursuant to the provisions of Section 2-415 of
2 this title.

3 D. All items forfeited in this section shall be forfeited under
4 the procedures established in Section 2-506 of this title. Whenever
5 any item is forfeited pursuant to this section except for items
6 confiscated by the Oklahoma State Bureau of Narcotics and Dangerous
7 Drugs Control, the Department of Public Safety, the Oklahoma State
8 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
9 Commission, the Department of Corrections, or the Office of the
10 Attorney General, the district court of the district shall order
11 that such item, money, or monies derived from the sale of such item
12 be deposited by the state, county or city law enforcement agency
13 which seized the item in the revolving fund provided for in Section
14 2-506 of this title; provided, such item, money or monies derived
15 from the sale of such item forfeited due to nonpayment of a fine
16 imposed pursuant to the provisions of Section 2-415 of this title
17 shall be apportioned as provided in Section 2-416 of this title.
18 Items, money or monies seized pursuant to subsections A and B of
19 this section shall not be applied or considered toward satisfaction
20 of the fine imposed by Section 2-415 of this title. All raw
21 materials used or intended to be used by persons to unlawfully
22 manufacture or attempt to manufacture any controlled dangerous
23 substance in violation of the Uniform Controlled Dangerous

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1 Substances Act shall be summarily forfeited pursuant to the
2 provisions of Section 2-505 of this title.

3 E. All property taken or detained under this section by the
4 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the
5 Department of Public Safety, the Oklahoma State Bureau of
6 Investigation, the Alcoholic Beverage Laws Enforcement Commission,
7 the Department of Corrections, or the Office of the Attorney
8 General, shall not be repleviable, but shall remain in the custody
9 of the Bureaus, Departments, Commission, or Office, respectively,
10 subject only to the orders and decrees of a court of competent
11 jurisdiction. The Director of the Oklahoma State Bureau of
12 Narcotics and Dangerous Drugs Control, the Commissioner of Public
13 Safety, the Director of the Oklahoma State Bureau of Investigation,
14 the Director of the Alcoholic Beverage Laws Enforcement Commission,
15 the Director of the Department of Corrections, and the Attorney
16 General shall follow the procedures outlined in Section 2-506 of
17 this title dealing with notification of seizure, intent of
18 forfeiture, final disposition procedures, and release to innocent
19 claimants with regard to all property included in this section
20 detained by the Department of Public Safety, the Oklahoma State
21 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
22 Commission, the Department of Corrections, or the Office of the
23 Attorney General. Property taken or detained by the Oklahoma State
24 Bureau of Narcotics and Dangerous Drugs Control, the Department of

1 Public Safety, the Oklahoma State Bureau of Investigation, the
2 Alcoholic Beverage Laws Enforcement Commission, the Department of
3 Corrections, or the Office of the Attorney General shall be disposed
4 of or sold pursuant to the provisions of Section 2-508 of this
5 title. Any money, coins, and currency, taken or detained pursuant
6 to this section may be deposited in an interest bearing account by
7 or at the direction of the State Treasurer if the seizing agency
8 determines the currency is not to be held as evidence. All interest
9 earned on such monies shall be returned to the claimant or forfeited
10 with the money, coins, and currency which was taken or detained as
11 provided by law.

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

15 1. To the bona fide or innocent purchaser, conditional sales
16 vendor or mortgagee of the property, if any, up to the amount of his
17 interest in the property, when the court declaring a forfeiture
18 orders a distribution to such person; and

19 2. The balance to the Oklahoma State Bureau of Narcotics'
20 revolving fund or the Bureau's agency special account established
21 pursuant to Section 7.2 of Title 62 of the Oklahoma Statutes,
22 provided the Bureau may enter into agreements with municipal,
23 county, state or federal law enforcement agencies, assisting in the
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1 forfeiture or underlying criminal investigation, to return to such
2 an agency a percentage of said proceeds.

3 The Bureau may expend up to Two Million Dollars (\$2,000,000.00)
4 of the forfeited funds within a fiscal year without prior approval
5 of the Legislature. Documentation of such expenditures shall be
6 forwarded to the Governor, Speaker of the House of Representatives
7 and the President Pro Tempore of the Senate on a quarterly basis.
8 Any additional expenditures of forfeited funds shall be pre-approved
9 by the annual appropriations process or the Contingency Review
10 Board.

11 G. Any agency that acquires seized or forfeited property or
12 money shall maintain a true and accurate inventory and record of all
13 such property seized pursuant to this section.

14 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-506, as
15 last amended by Section 4, Chapter 248, O.S.L. 2007 (63 O.S. Supp.
16 2007, Section 2-506), is amended to read as follows:

17 Section 2-506. A. Any peace officer of this state shall seize
18 the following property:

19 1. Any property described in subsection A of Section 2-503 of
20 this title. Such property shall be held as evidence until a
21 forfeiture has been declared or release ordered, except for property
22 described in paragraphs 1, 2 and 3 of subsection A of Section 2-503
23 of this title, or in the case of money, coins, and currency,
24 deposited as provided in subsection E of Section 2-503 of this

1 title; provided, any money, coins and currency taken or detained
2 pursuant to this section may be deposited in an interest-bearing
3 account by or at the direction of the district attorney in the
4 office of the county treasurer if the district attorney determines
5 the currency is not to be held as evidence. All interest earned on
6 such monies shall be returned to the claimant or forfeited with the
7 money, coins and currency which was taken or detained as provided by
8 law;

9 2. Any property described in subsection B of Section 2-503 of
10 this title; or

11 3. Any property described in subsection C of Section 2-503 of
12 this title.

13 B. Notice of seizure and intended forfeiture proceeding shall
14 be filed in the office of the clerk of the district court for the
15 county wherein such property is seized and shall be given all owners
16 and parties in interest. Notwithstanding any other provision of
17 law, no filing fees shall be assessed by the court clerk for the
18 filing of any forfeiture action.

19 C. Notice shall be given by the agency seeking forfeiture
20 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 Tax Commission, by mailing a copy of
23 the notice by certified mail to the address as given upon the
24 records of the Tax Commission;

1 2. Upon each owner or party in interest whose name and address
2 is known to the attorney in the office of the agency prosecuting the
3 action to recover unpaid fines, by mailing a copy of the notice by
4 registered mail to the last-known address; or

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

9 D. Within forty-five (45) days after the mailing or publication
10 of the notice, the owner of the property and any other party in
11 interest or claimant may file a verified answer and claim to the
12 property described in the notice of seizure and of the intended
13 forfeiture proceeding.

14 E. If at the end of forty-five (45) days after the notice has
15 been mailed or published there is no verified answer on file, the
16 court shall hear evidence upon the fact of the unlawful use and
17 shall order the property forfeited to the state, if such fact is
18 proved.

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

21 G. At a hearing in a proceeding against property described in
22 paragraphs 3 through 9 of subsection A or subsections B and C of
23 Section 2-503 of this title, the requirements set forth in said
24 paragraph or subsection, respectively, shall be satisfied by the

1 state by a ~~preponderance of the evidence~~ establishing that probable
2 cause exists to support the forfeiture.

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

9 I. In the event of such proof, the court shall order the
10 property released to the bona fide or innocent owner, lien holder,
11 mortgagee or vendor if the amount due him is equal to, or in excess
12 of, the value of the property as of the date of the seizure, it
13 being the intention of this section to forfeit only the right, title
14 or interest of the purchaser.

15 J. If the amount due to such person is less than the value of
16 the property, or if no bona fide claim is established, the property
17 shall be forfeited to the state and sold under judgment of the
18 court, as on sale upon execution, and as provided for in Section 2-
19 508 of this title, except as otherwise provided for in Section 2-503
20 of this title.

21 K. Property taken or detained under this section shall not be
22 repleviable, but shall be deemed to be in the custody of the office
23 of the district attorney of the county wherein the property was
24 seized, subject only to the orders and decrees of the court or the

1 official having jurisdiction thereof; said official shall maintain a
2 true and accurate inventory and record of all such property seized
3 under the provisions of this section. The provisions of this
4 subsection shall not apply to property taken or detained by the
5 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the
6 Department of Public Safety, the Oklahoma State Bureau of
7 Investigation, the Alcoholic Beverage Laws Enforcement Commission,
8 the Department of Corrections or the Office of the Attorney General.
9 Property taken or detained by the Oklahoma State Bureau of Narcotics
10 and Dangerous Drugs Control, the Department of Public Safety, the
11 Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws
12 Enforcement Commission, the Department of Corrections or the Office
13 of the Attorney General shall be subject to the provisions of
14 subsections E and F of Section 2-503 of this title.

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

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

3 2. To the payment of the actual expenses of preserving the
4 property and legitimate costs related to the civil forfeiture
5 proceedings. For purposes of this paragraph, the term "legitimate
6 costs" shall not include court costs associated with any civil
7 forfeiture proceeding; and

8 3. The balance to a revolving fund in the office of the county
9 treasurer of the county wherein the property was seized, said fund
10 to be used as a revolving fund solely for enforcement of controlled
11 dangerous substances laws, drug abuse prevention and drug abuse
12 education, and maintained by the district attorney in his or her
13 discretion for those purposes with a yearly accounting to the board
14 of county commissioners in whose county the fund is established and
15 to the District Attorneys Council; provided, one hundred percent
16 (100%) of the balance of the proceeds of such sale of property
17 forfeited due to nonpayment of a fine imposed pursuant to the
18 provisions of Section 2-415 of this title shall be apportioned as
19 provided in Section 2-416 of this title. The revolving fund shall
20 be audited by the State Auditor and Inspector at least every two (2)
21 years in the manner provided in Section 171 of Title 19 of the
22 Oklahoma Statutes. Said audit shall include, but not be limited to,
23 a compliance audit. A district attorney may enter into agreements
24 with municipal, county or state agencies to return to such an agency

1 a percentage of proceeds of the sale of any property seized by the
2 agency and forfeited under the provisions of this section. The
3 District Attorneys Council shall adopt guidelines which ensure that
4 such agencies receive a reasonable percentage of such proceeds,
5 considering the relative contribution of each agency to the drug
6 enforcement and prosecution operations relating to the seizure. In
7 formulating said guidelines, the District Attorneys Council shall
8 examine federal guidelines on asset distribution and use said
9 guidelines as a basis for establishing guidelines for this state.
10 The Attorney General is hereby authorized to mediate disputes
11 between district attorneys and such agencies concerning the
12 application of said guidelines in particular instances. Any agency
13 that receives proceeds from an asset distribution shall maintain a
14 true and accurate record of all such assets.

15 M. Whenever any vehicle, airplane or vessel is forfeited under
16 the Uniform Controlled Dangerous Substances Act, the district court
17 of jurisdiction may order that the vehicle, airplane or vessel
18 seized may be retained by the state, county or city law enforcement
19 agency which seized the vehicle, airplane or vessel for its official
20 use.

21 N. If the court finds that the state failed to satisfy the
22 required showing provided for in subsection G of this section, the
23 court shall order the property released to the owner or owners.

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1 O. Except as provided for in subsection Q of this section, a
2 bona fide or innocent owner, lien holder, mortgagee or vendor that
3 recovers property pursuant to this section shall not be liable for
4 storage fees.

5 P. Except as provided for in subsection Q of this section,
6 storage fees shall be paid by the agency which is processing the
7 seizure and forfeiture from funds generated by seizure and
8 forfeiture actions.

9 Q. The bona fide or innocent owner, lien holder, mortgagee or
10 vendor shall reclaim subject seized property within thirty (30) days
11 of written notice from the seizing agency. If such person fails to
12 reclaim the property within the thirty-day time period, then storage
13 fees may be assessed against their secured interest.

14 R. 1. At any hearing held relevant to this section, a report
15 of the findings of the laboratory of the Oklahoma State Bureau of
16 Investigation, the medical examiner's report of investigation or
17 autopsy report, or a laboratory report from a forensic laboratory
18 operated by the State of Oklahoma or any political subdivision
19 thereof, which has been made available to the accused by the office
20 of the district attorney or other party to the forfeiture at least
21 five (5) days prior to the hearing, with reference to all or part of
22 the evidence submitted, when certified as correct by the persons
23 making the report shall be received as evidence of the facts and
24 findings stated, if relevant and otherwise admissible in evidence.

1 If such report is deemed relevant by the forfeiture applicant or the
2 respondent, the court shall admit such report without the testimony
3 of the person making the report, unless the court, pursuant to this
4 subsection, orders such person to appear.

5 2. When any alleged controlled dangerous substance has been
6 submitted to the laboratory of the OSBI for analysis, and such
7 analysis shows that the submitted material is a controlled dangerous
8 substance, the distribution of which constitutes a felony under the
9 laws of this state, no portion of such substance shall be released
10 to any other person or laboratory except to the criminal justice
11 agency originally submitting the substance to the OSBI for analysis,
12 absent an order of a district court. The defendant shall
13 additionally be required to submit to the court a procedure for
14 transfer and analysis of the subject material to ensure the
15 integrity of the sample and to prevent the material from being used
16 in any illegal manner.

17 3. The court, upon motion of either party, shall order the
18 attendance of any person preparing a report submitted as evidence in
19 the hearing when it appears there is a substantial likelihood that
20 material evidence not contained in said report may be produced by
21 the testimony of any person having prepared a report. The hearing
22 shall be held and, if sustained, an order issued not less than five
23 (5) days prior to the time when the testimony shall be required.

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1 4. If within five (5) days prior to the hearing or during a
2 hearing, a motion is made pursuant to this section requiring a
3 person having prepared a report to testify, the court may hear a
4 report or other evidence but shall continue the hearing until such
5 time notice of the motion and hearing is given to the person making
6 the report, the motion is heard, and, if sustained, the testimony
7 ordered can be given.

8 SECTION 3. This act shall become effective November 1, 2008.

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