

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL NO. 698

By: Anderson of the Senate

and

6 Armes of the House

7  
8 COMMITTEE SUBSTITUTE

9  
10 An Act relating to agriculture; authorizing seizure  
11 by the Oklahoma Department of Agriculture, Food, and  
12 Forestry of certain property; authorizing certain  
13 entities to bring forfeiture actions; requiring  
14 certain notice; establishing procedures for certain  
15 notice; establishing time period for certain answer;  
16 establishing procedures for certain hearing; allowing  
17 order to release property to certain persons under  
18 specified circumstances; authorizing certain  
19 forfeiture and sale; limiting certain civil  
20 liability; prohibiting assessment of attorney fees  
21 under certain circumstances; directing distribution  
22 of proceeds of certain sale; establishing limitation  
23 on certain distribution; authorizing release of  
24 property under certain circumstances; establishing  
knowledge or consent requirement for certain offense;  
authorizing retention of certain property; providing  
for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 2-14.1 of Title 2, unless there  
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 Oklahoma 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;

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

23           7. Any computer and its components and peripherals, including  
24 but not limited to the central processing unit, monitor, keyboard,

1 printers, scanners, software, and hardware, when it is used in the  
2 commission of theft of livestock in this state.

3 C. The property may be held as evidence until a forfeiture has  
4 been declared or a release ordered. Forfeiture actions under this  
5 section may be brought in district court by the Office of General  
6 Counsel of the Oklahoma Department of Agriculture, Food, and  
7 Forestry as petitioner. At the request of the Commissioner of  
8 Agriculture, the district attorney in the county of venue shall  
9 bring a forfeiture action under this section. Provided, in the  
10 event the Department or the district attorney elects not to file an  
11 action, or fails to file an action within ninety (90) days of the  
12 date of the seizure of the equipment, the property shall be returned  
13 to the owner.

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

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

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

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

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

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

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

23           H. The claimant of any right, title, or interest in the  
24 property may prove the lien, mortgage, or conditional sales contract

1 to be bona fide and that the right, title, or interest created by  
2 the document was created without any knowledge or reason to believe  
3 that the property was being, or was to be, used for the purpose  
4 charged.

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

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

20 K. Property taken or detained pursuant to this section shall  
21 not be repleviable, but shall be deemed to be in the custody of the  
22 petitioner or in the custody of the law enforcement agency. Except  
23 for property required to be destroyed pursuant to the Trademark  
24 Anti-Counterfeiting Act, the petitioner shall release the property

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

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

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

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

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

23 2. To the payment of the actual reasonable expenses of  
24 preserving the property; and

1       3. The balance shall be distributed as follows:

2           a. two-thirds (2/3) of the amount to the Agriculture  
3           Evidence and Law Enforcement Fund, and

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

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

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

23          Q. No vehicle, airplane, or vessel used by a person as a common  
24          carrier in the transaction of business as a common carrier shall be

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

11 R. Whenever any property is forfeited pursuant to this section,  
12 the district court having jurisdiction of the proceeding may order  
13 that the forfeited property may be retained for its official use by  
14 the Oklahoma Department of Agriculture, Food, and Forestry or by the  
15 district attorney.

16 SECTION 2. This act shall become effective November 1, 2009.

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