

ENROLLED SENATE
BILL NO. 698

By: Anderson of the Senate

and

Armes, McMullen, Fields,
Luttrell and Roan of the
House

An Act relating to agriculture; authorizing seizure by the Oklahoma Department of Agriculture, Food, and Forestry of certain property; authorizing certain entities to bring forfeiture actions; requiring certain notice; establishing procedures for certain notice; establishing time period for certain answer; establishing procedures for certain hearing; allowing order to release property to certain persons under specified circumstances; authorizing certain forfeiture and sale; limiting certain civil liability; prohibiting assessment of attorney fees under certain circumstances; directing distribution of proceeds of certain sale; establishing limitation on certain distribution; authorizing release of 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:

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

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

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

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

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

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

5. Any items having a counterfeit mark;

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

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

C. The property may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought in district court by the Office of General Counsel of the Oklahoma Department of Agriculture, Food, and Forestry as petitioner. At the request of the Commissioner of Agriculture, the district attorney in the county of venue shall bring a forfeiture action under this section. Provided, in the

event the Department or the district attorney elects not to file an action, or fails to file an action within ninety (90) days of the date of the seizure of the equipment, the property shall be returned to the owner.

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

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

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

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

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

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

G. If a verified answer is filed, the forfeiture proceeding shall be set for hearing. At the hearing, the petitioner shall prove by a preponderance of the evidence that property was used in the attempt or commission of an act specified in subsection A of

this section or is property described in subsection B of this section with knowledge by the owner of the property.

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

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

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

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

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

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

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

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

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

3. The balance shall be distributed as follows:

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

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

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

P. If the district court finds that the property was not used in the attempt or commission of an act specified in subsection A of this section and was not property subject to forfeiture pursuant to

subsection B of this section and is not property bearing a counterfeit mark, the Board or the court shall order the property released to the owner as the right, title or interest appears on record in the Oklahoma Tax Commission as of the seizure.

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

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

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

Passed the Senate the 4th day of May, 2009.

Presiding Officer of the Senate

Passed the House of Representatives the 6th day of April, 2009.

Presiding Officer of the House
of Representatives