

THE HOUSE OF REPRESENTATIVES
Wednesday, February 25, 2009

House Bill No. 1702

HOUSE BILL NO. 1702 - By: MORRISSETTE of the House.

An Act relating to crimes and punishments; 21 O.S. 2001, Section 1738, as last amended by Section 4, Chapter 438, O.S.L. 2008 (21 O.S. Supp. 2008, Section 1738), which relates to seizure and forfeiture proceedings; authorizing forfeiture of property under certain circumstances; and providing an effective date.

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

1 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1738, as last amended by
2 Section 4, Chapter 438, O.S.L. 2008 (21 O.S. Supp. 2008, Section 1738), is amended to
3 read as follows:
4 Section 1738. A. Any commissioned peace officer of this state is authorized to seize
5 any vehicle owned by or registered to the defendant used in the commission of any armed
6 robbery offense defined in Section 801 of this title, or any vehicle owned by or registered
7 to the defendant when such vehicle is used to facilitate the intentional discharge of any
8 kind of firearm in violation of Section 652 of this title, or any vehicle, airplane, vessel,
9 vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so
10 as to prevent determination of the true identity or ownership of said property and parts
11 of vehicles which probable cause indicates are stolen but whose true ownership cannot be
12 determined, or any vehicle owned by or registered to the defendant used in violation of

1 the Trademark Anti-Counterfeiting Act, or any equipment owned by or registered to the
2 defendant which is used in the attempt or commission of any act of burglary in the first
3 or second degree, motor vehicle theft, unauthorized use of a vehicle, obliteration of
4 distinguishing numbers on vehicles or criminal possession of vehicles with altered,
5 removed or obliterated numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720
6 of this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma Statutes, or any
7 equipment owned by or registered to the defendant used in violation of the Trademark
8 Anti-Counterfeiting Act, or any vehicle, airplane, vessel or equipment owned by or
9 registered to the defendant used in the commission of any arson offense defined in
10 Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property may be held as
11 evidence until a forfeiture has been declared or a release ordered. Forfeiture actions
12 under this section may be brought by the district attorney in the proper county of venue
13 as petitioner; provided, in the event the district attorney elects not to file such action, or
14 fails to file such action within ninety (90) days of the date of the seizure of such
15 equipment, the property shall be returned to the owner.

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

- 18 1. Property used in the commission of theft of livestock or in any manner to
19 facilitate the theft of livestock;
- 20 2. The proceeds gained from the commission of theft of livestock;
- 21 3. Personal property acquired with proceeds gained from the commission of theft of
22 livestock;

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

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

7 6. Any weapon possessed, used or available for use in any manner during the
8 commission of a felony within the State of Oklahoma, or any firearm that is possessed by
9 a convicted felon;

10 7. Any police scanner used in violation of Section 1214 of this title;

11 8. Any computer and its components and peripherals, including but not limited to
12 the central processing unit, monitor, keyboard, printers, scanners, software, and
13 hardware, when it is used in the commission of any crime in this state;

14 9. All property used in the commission of, or in any manner to facilitate, a violation
15 of Section ~~2~~ 1040.12a of this ~~act~~ title; ~~and~~

16 10. All conveyances, including aircraft, vehicles or vessels, monies, coins and
17 currency, or other instrumentality used or intended to be used, in any manner or part, to
18 commit a violation of paragraph 1 of subsection A of Section 1021 of this title, where the
19 victim of the crime is a minor child, subsection B of Section 1021 of this title, Section
20 1021.2 of this title, paragraph 1 of subsection A of Section 1111 of this title, or
21 paragraphs 2 and 3 of subsection A of Section 1123 of this title; and

1 11. All conveyances, including vehicles or vessels, weapons, monies, coins and
2 currency, or other instrumentality used in or obtained through an offense that was
3 committed for the benefit of, at the direction of, or in association with any criminal street
4 gang, as defined in Section 856 of this title.

5 C. Notice of seizure and intended forfeiture proceeding shall be filed in the office of
6 the clerk of the district court for the county wherein such property is seized and shall be
7 given all owners and parties in interest.

8 D. 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 court shall hear evidence upon the fact of the
3 unlawful use and may order the property forfeited to the state, if such fact is proven.

4 G. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

5 H. At the hearing the petitioner shall prove by clear and convincing evidence that
6 property was used in the attempt or commission of an act specified in subsection A of this
7 section or is property described in subsection B of this section with knowledge by the
8 owner of the property.

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

19 K. If the amount due to such 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 L. 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 as provided in the Trademark Anti-Counterfeiting Act. Except for
6 property required to be destroyed pursuant to the Trademark Anti-Counterfeiting Act,
7 the petitioner shall release said property to the owner of the property if it is determined
8 that the owner had no knowledge of the illegal use of the property or if there is
9 insufficient evidence to sustain the burden of showing illegal use of such property. If the
10 owner of the property stipulates to the forfeiture and waives the hearing, the petitioner
11 may determine if the value of the property is equal to or less than the outstanding lien.
12 If such lien exceeds the value of the property, the property may be released to the lien
13 holder. Property which has not been released by the petitioner shall be subject to the
14 orders and decrees of the court or the official having jurisdiction thereof.

15 M. The petitioner, or the law enforcement agency holding property pursuant to the
16 Trademark Anti-Counterfeiting Act, shall not be held civilly liable for having custody of
17 the seized property or proceeding with a forfeiture action as provided for in this section.

18 N. Attorney fees shall not be assessed against the state or the petitioner for any
19 actions or proceeding pursuant to Section 1701 et seq. of this title.

20 O. 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 such person's interest in the property, when the
3 court declaring the forfeiture orders a distribution to such person;

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

5 3. To the victim of the crime to compensate said victim for any loss incurred as a
6 result of the act for which such property was forfeited; and

7 4. The balance to a revolving fund in the office of the county treasurer of the county
8 wherein the property was seized, to be distributed as follows: one-third (1/3) to the
9 investigating law enforcement agency; one-third (1/3) of said fund to be used and
10 maintained as a revolving fund by the district attorney for the victim-witness fund, a
11 reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund,
12 with a yearly accounting to the board of county commissioners in whose county the fund
13 is established. If the petitioner is not the district attorney, then the one-third (1/3) which
14 would have been designated to that office shall be distributed to the petitioner. Monies
15 distributed to the jail maintenance fund shall be used to pay costs for the storage of such
16 property if such property is ordered released to a bona fide or innocent owner, lien
17 holder, mortgagee, or vendor and if such funds are available in said fund.

18 P. Monies distributed into the revolving fund in the office of the county treasurer
19 from forfeitures initiated under this section by the district attorney shall be limited to
20 One Hundred Thousand Dollars (\$100,000.00) at any one time in counties with
21 population in excess of three hundred thousand (300,000) and Twenty-five Thousand
22 Dollars (\$25,000.00) at any one time in counties with population less than three hundred

1 thousand (300,000). Any amount in excess of these figures shall be placed in the general
2 fund of the county.

3 Q. If the court finds that the property was not used in the attempt or commission of
4 an act specified in subsection A of this section and was not property subject to forfeiture
5 pursuant to subsection B of this section and is not property bearing a counterfeit mark,
6 the court shall order the property released to the owner as the right, title, or interest
7 appears on record in the Tax Commission as of the seizure.

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

18 S. Whenever any property is forfeited pursuant to this section, the district court
19 having jurisdiction of the proceeding may order that the forfeited property may be
20 retained for its official use by the state, county, or municipal law enforcement agency
21 which seized the property.

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

2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-24-09 - DO PASS.