

ESB 1118

THE HOUSE OF REPRESENTATIVES  
Monday, April 13, 2009

ENGROSSED  
**Senate Bill No. 1118**  
**As Amended**

ENGROSSED SENATE BILL NO. 1118 - By: SYKES of the Senate and TERRILL of the House.

( public health and safety - property - forfeiture - effective date )

1 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-503, as last amended by  
2 Section 5, Chapter 223, O.S.L. 2007 (63 O.S. Supp. 2008, Section 2-503), is amended to  
3 read as follows:  
4 Section 2-503. A. The following shall be subject to forfeiture:  
5 1. All controlled dangerous substances which have been manufactured, distributed,  
6 dispensed, acquired, concealed or possessed in violation of the Uniform Controlled  
7 Dangerous Substances Act;  
8 2. All raw materials, products and equipment of any kind and all drug  
9 paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which  
10 are used, or intended for use, in manufacturing, compounding, processing, delivering,  
11 importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the

1 human body any controlled dangerous substance in violation of the provisions of the  
2 Uniform Controlled Dangerous Substances Act;

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

5 4. All conveyances, including aircraft, vehicles, vessels, or farm implements which  
6 are used to transport, conceal, or cultivate for the purpose of distribution as defined in  
7 the Uniform Controlled Dangerous Substances Act, or which are used in any manner to  
8 facilitate the transportation or cultivation for the purpose of sale or receipt of property  
9 described in paragraphs 1 or 2 of this subsection or when the property described in  
10 paragraphs 1 or 2 of this subsection is unlawfully possessed by an occupant thereof,  
11 except that:

12 a. no conveyance used by a person as a common carrier in the transaction  
13 of business as a common carrier shall be forfeited under the provisions  
14 of the Uniform Controlled Dangerous Substances Act unless it shall  
15 appear that the owner or other person in charge of such conveyance  
16 was a consenting party or privy to a violation of the Uniform  
17 Controlled Dangerous Substances Act, and

18 b. no conveyance shall be forfeited under the provisions of this section by  
19 reason of any act or omission established by the owner thereof to have  
20 been committed or omitted without the knowledge or consent of such  
21 owner, and if the act is committed by any person other than such  
22 owner the owner shall establish further that the conveyance was

1                   unlawfully in the possession of a person other than the owner in  
2                   violation of the criminal laws of the United States, or of any state;

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

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

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

16          8. All real property, including any right, title, and interest in the whole of any lot or  
17 tract of land and any appurtenance or improvement thereto, which is used, or intended to  
18 be used, in any manner or part, to commit, or to facilitate the commission of, a violation  
19 of the Uniform Controlled Dangerous Substances Act which is punishable by  
20 imprisonment for more than one (1) year, except that no property right, title or interest  
21 shall be forfeited pursuant to this paragraph, by reason of any act or omission

1 established by the owner thereof to have been committed or omitted without the  
2 knowledge or consent of that owner; and

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

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

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

14 D. All items forfeited in this section shall be forfeited under the procedures  
15 established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this  
16 section except for items confiscated by the Oklahoma State Bureau of Narcotics and  
17 Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau  
18 of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department  
19 of Corrections, or the Office of the Attorney General, the district court of the district shall  
20 order that such item, money, or monies derived from the sale of such item be deposited  
21 by the state, county or city law enforcement agency which seized the item in the  
22 revolving fund provided for in Section 2-506 of this title; provided, such item, money or

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 monies derived from the sale of such item forfeited due to nonpayment of a fine imposed  
2 pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided  
3 in Section 2-416 of this title. Items, money or monies seized pursuant to subsections A  
4 and B of this section shall not be applied or considered toward satisfaction of the fine  
5 imposed by Section 2-415 of this title. All raw materials used or intended to be used by  
6 persons to unlawfully manufacture or attempt to manufacture any controlled dangerous  
7 substance in violation of the Uniform Controlled Dangerous Substances Act shall be  
8 summarily forfeited pursuant to the provisions of Section 2-505 of this title.

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

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

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

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

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

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

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

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

11       COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,  
12 dated 04-09-09 - DO PASS, As Amended.