

SB 1118

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE STATE SENATE
Monday, February 23, 2009

Senate Bill No. 1118
As Amended

SENATE BILL NO. 1118 - By: Sykes of the Senate and Terrill of the House.

[public health and safety - property - forfeiture - effective date]

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-503, as last amended by Section 5, Chapter 223, O.S.L. 2007 (63 O.S. Supp. 2008, Section 2-503), is amended to read as follows:

Section 2-503. A. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act;

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

1 of the provisions of the Uniform Controlled Dangerous Substances
2 Act;

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

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

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

1 b. no conveyance shall be forfeited under the provisions
2 of this section by reason of any act or omission
3 established by the owner thereof to have been
4 committed or omitted without the knowledge or consent
5 of such owner, and if the act is committed by any
6 person other than such owner the owner shall establish
7 further that the conveyance was unlawfully in the
8 possession of a person other than the owner in
9 violation of the criminal laws of the United States,
10 or of any state;

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

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

20 7. All monies, coin and currency found in close proximity to
21 any amount of forfeitable substances, to forfeitable drug
22 manufacturing or distribution paraphernalia or to forfeitable
23 records of the importation, manufacture or distribution of

1 substances, which are rebuttably presumed to be forfeitable under
2 the Uniform Controlled Dangerous Substances Act. The burden of
3 proof is upon claimants of the property to rebut this presumption;

4 8. All real property, including any right, title, and interest
5 in the whole of any lot or tract of land and any appurtenance or
6 improvement thereto, which is used, or intended to be used, in any
7 manner or part, to commit, or to facilitate the commission of, a
8 violation of the Uniform Controlled Dangerous Substances Act which
9 is punishable by imprisonment for more than one (1) year, except
10 that no property right, title or interest shall be forfeited
11 pursuant to this paragraph, by reason of any act or omission
12 established by the owner thereof to have been committed or omitted
13 without the knowledge or consent of that owner; and

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

17 B. Any property or thing of value of a person is subject to
18 forfeiture if it is established by a preponderance of the evidence
19 that such property or thing of value was acquired by such person
20 during the period of the violation of the Uniform Controlled
21 Dangerous Substances Act or within a reasonable time after such
22 period and there was no likely source for such property or thing of

1 value other than the violation of the Uniform Controlled Dangerous
2 Substances Act.

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

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

1 of the fine imposed by Section 2-415 of this title. All raw
2 materials used or intended to be used by persons to unlawfully
3 manufacture or attempt to manufacture any controlled dangerous
4 substance in violation of the Uniform Controlled Dangerous
5 Substances Act shall be summarily forfeited pursuant to the
6 provisions of Section 2-505 of this title.

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

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

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

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

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

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

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

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

20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-18-09 - DO
21 PASS, As Amended and Coauthored.