

1 ENGROSSED HOUSE
2 BILL NO. 1604

By: Stiles and Sullivan of the
House

3 and

4 David of the Senate
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8 An Act relating to crimes and punishments; amending
9 21 O.S. 2001, Section 1738, as last amended by
10 Section 3, Chapter 325, O.S.L. 2010 (21 O.S. Supp.
11 2010, Section 1738), which relates to seizure and
12 forfeiture of property; clarifying guidelines for
13 seizing property; providing exception for conveyances
14 used by common carriers or nonconsenting owners;
15 adding circumstance in which certain property may be
16 subject to forfeiture; providing procedures for
17 holding forfeited property as evidence; deleting
18 monetary limitations for revolving funds; amending
19 Section 3, Chapter 381, O.S.L. 2002 (21 O.S. Supp.
20 2010, Section 2002), which relates to seizure and
21 forfeiture actions; updating statutory reference;
22 directing funds from revolving fund be used for
23 certain purpose; and providing an effective date.
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1738, as
last amended by Section 3, Chapter 325, O.S.L. 2010 (21 O.S. Supp.
2010, Section 1738), is amended to read as follows:

Section 1738. A. 1. Any commissioned peace officer of this
state is authorized to seize any equipment, vehicle ~~owned by or~~

1 ~~registered to the defendant, airplane, vessel or any other~~
2 ~~conveyance that is used in the commission of any armed robbery~~
3 ~~offense defined in Section 801 of this title, or any vehicle owned~~
4 ~~by or registered to the defendant when such vehicle is used to~~
5 ~~facilitate the intentional discharge of any kind of firearm in~~
6 ~~violation of Section 652 of this title, or any vehicle, airplane,~~
7 ~~vessel, vehicles or parts of vehicles whose numbers have been~~
8 ~~removed, altered or obliterated so as to prevent determination of~~
9 ~~the true identity or ownership of said property and parts of~~
10 ~~vehicles which probable cause indicates are stolen but whose true~~
11 ~~ownership cannot be determined, or any vehicle owned by or~~
12 ~~registered to the defendant used in violation of the Trademark Anti-~~
13 ~~Counterfeiting Act, or any equipment owned by or registered to the~~
14 ~~defendant which is used in the attempt or commission of any act of~~
15 ~~burglary in the first or second degree, motor vehicle theft,~~
16 ~~unauthorized use of a vehicle, obliteration of distinguishing~~
17 ~~numbers on vehicles or criminal possession of vehicles with altered,~~
18 ~~removed or obliterated numbers as defined by Sections 1431, 1435,~~
19 ~~1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of~~
20 ~~Title 47 of the Oklahoma Statutes, or any equipment owned by or~~
21 ~~registered to the defendant used in violation of the Trademark Anti-~~
22 ~~Counterfeiting Act, or any vehicle, airplane, vessel or equipment~~
23 ~~owned by or registered to the defendant used in the commission of~~
24 ~~any arson offense defined in Section 1401, 1402, 1403, 1404 or 1405~~

1 of this title, ~~or any vehicle or conveyance~~ used in any manner to
2 facilitate or participate in the commission of any human trafficking
3 offense in violation of Section 748 of this title, ~~or any vehicle or~~
4 ~~other conveyance owned, registered or used~~ by any defendant when
5 such vehicle or other conveyance is used in any manner by a
6 prostitute, pimp or panderer to facilitate or participate in the
7 commission of any prostitution offense in violation of Sections
8 1028, 1029 or 1030 of this title; provided, however, that the
9 vehicle or conveyance of a customer or anyone merely procuring the
10 services of a prostitute shall not be included. ~~Said property may~~
11 ~~be held as evidence until a forfeiture has been declared or a~~
12 ~~release ordered. Forfeiture actions under this section may be~~
13 ~~brought by the district attorney in the proper county of venue as~~
14 ~~petitioner; provided, in the event the district attorney elects not~~
15 ~~to file such action, or fails to file such action within ninety (90)~~
16 ~~days of the date of the seizure of such equipment, the property~~
17 ~~shall be returned to the owner.~~

18 2. No conveyance used by a person as a common carrier in the
19 transaction of business as a common carrier shall be forfeited under
20 the provisions of this section unless it shall appear that the owner
21 or other person in charge of such conveyance was a consenting party
22 or privy to the unlawful use of the conveyance in violation of this
23 section.

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

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

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

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

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

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

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

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

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

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

12 9. All property used in the commission of, or in any manner to
13 facilitate, a violation of Section 1040.12a of this title;

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

22 11. All conveyances, including aircraft, vehicles or vessels,
23 monies, coins and currency, or other instrumentality used in any
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1 manner or part, to commit any violation of the provisions set forth
2 in Section 748 of this title; ~~and~~

3 12. Any and all property used in any manner or part to
4 facilitate, participate or further the commission of a human
5 trafficking offense in violation of Section 748 of this title, and
6 all property, including monies, real estate, or any other tangible
7 assets or property of or derived from or used by a prostitute, pimp
8 or panderer in any manner or part to facilitate, participate or
9 further the commission of any prostitution offense in violation of
10 Sections 1028, 1029 or 1030 of this title; provided, however, any
11 monies, real estate or any other tangible asset or property of a
12 customer or anyone merely procuring the services of a prostitute
13 shall not be included; and

14 13. Any vehicle, airplane, vessel, or parts of a vehicle whose
15 numbers have been removed, altered or obliterated so as to prevent
16 determination of the true identity or ownership of said property and
17 parts of vehicles which probable cause indicates are stolen but
18 whose true ownership cannot be determined.

19 C. Property described in subsection A or B of this section may
20 be held as evidence until a forfeiture has been declared or a
21 release ordered. Forfeiture actions under this section may be
22 brought by the district attorney in the proper county of venue as
23 petitioner; provided, in the event the district attorney elects not
24 to file such action, or fails to file such action within ninety (90)

1 days of the date of the seizure of such equipment, the property
2 shall be returned to the owner.

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

7 ~~D.~~ E. Notice shall be given according to one of the following
8 methods:

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

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

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

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

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

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

9 ~~H.~~ I. At the hearing the petitioner shall prove by clear and
10 convincing evidence that property was used in the attempt or
11 commission of an act specified in subsection A of this section or is
12 property described in subsection B of this section with knowledge by
13 the owner of the property.

14 ~~I.~~ J. The claimant of any right, title, or interest in the
15 property may prove the lien, mortgage, or conditional sales contract
16 to be bona fide and that the right, title, or interest created by
17 the document was created without any knowledge or reason to believe
18 that the property was being, or was to be, used for the purpose
19 charged.

20 ~~J.~~ K. In the event of such proof, the court may order the
21 property released to the bona fide or innocent owner, lien holder,
22 mortgagee, or vendor if the amount due such person is equal to, or
23 in excess of, the value of the property as of the date of the
24 seizure, it being the intention of this section to forfeit only the

1 right, title, or interest of the purchaser, except for items bearing
2 a counterfeit mark or used exclusively to manufacture a counterfeit
3 mark.

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

11 ~~L.~~ M. Property taken or detained pursuant to this section shall
12 not be repleviable, but shall be deemed to be in the custody of the
13 petitioner or in the custody of the law enforcement agency as
14 provided in the Trademark Anti-Counterfeiting Act. Except for
15 property required to be destroyed pursuant to the Trademark Anti-
16 Counterfeiting Act, the petitioner shall release said property to
17 the owner of the property if it is determined that the owner had no
18 knowledge of the illegal use of the property or if there is
19 insufficient evidence to sustain the burden of showing illegal use
20 of such property. If the owner of the property stipulates to the
21 forfeiture and waives the hearing, the petitioner may determine if
22 the value of the property is equal to or less than the outstanding
23 lien. If such lien exceeds the value of the property, the property
24 may be released to the lien holder. Property which has not been

1 released by the petitioner shall be subject to the orders and
2 decrees of the court or the official having jurisdiction thereof.

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

8 ~~N.~~ O. Attorney fees shall not be assessed against the state or
9 the petitioner for any actions or proceeding pursuant to Section
10 1701 et seq. of this title.

11 ~~O.~~ P. The proceeds of the sale of any property shall be
12 distributed as follows, in the order indicated:

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

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

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

22 4. The balance to a revolving fund in the office of the county
23 treasurer of the county wherein the property was seized, to be
24 distributed as follows: one-third (1/3) to the investigating law

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

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

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

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

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

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

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1 SECTION 2. AMENDATORY Section 3, Chapter 381, O.S.L.
2 2002 (21 O.S. Supp. 2010, Section 2002), is amended to read as
3 follows:

4 Section 2002. A. Any commissioned peace officer of this state
5 is authorized to seize any currency, negotiable instrument, monetary
6 instrument, equipment or property used in the violation of Section ~~±~~
7 2001 of this ~~act~~ title. The seized item may be held as evidence
8 until a forfeiture has been declared or a release ordered.

9 Forfeiture actions under this section may be brought by the district
10 attorney in the proper county of venue as petitioner; provided, in
11 the event the district attorney elects not to file such action, or
12 fails to file such action within ninety (90) days of the date of the
13 seizure of the item, the item shall be returned to the owner.

14 B. Notice of seizure and intended forfeiture proceeding shall be
15 filed in the office of the clerk of the district court for the
16 county wherein the item is seized and shall be given all owners and
17 parties in interest.

18 C. Notice shall be given according to one of the following
19 methods:

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

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

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

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

14 F. If a verified answer is filed, the forfeiture proceeding
15 shall be set for hearing.

16 G. At the hearing the petitioner shall prove by clear and
17 convincing evidence that property was used in the attempt or
18 commission of an act specified in subsection A of this section with
19 knowledge by the owner of the item.

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

1 I. In the event of such proof, the court may order the item
2 released to the bona fide or innocent owner, lienholder, mortgagee,
3 or vendor if the amount due such person is equal to, or in excess
4 of, the value of the item as of the date of the seizure, it being
5 the intention of this section to forfeit only the right, title, or
6 interest of the purchaser.

7 J. If the amount due to such person is less than the value of
8 the item, or if no bona fide claim is established, the item may be
9 forfeited to the state and may be sold pursuant to judgment of the
10 court, as on sale upon execution, and as provided in Section 2-508
11 of Title 63 of the Oklahoma Statutes, except as otherwise provided
12 for by law.

13 K. A seized item taken or detained pursuant to this section
14 shall not be repleviable, but shall be deemed to be in the custody
15 of the petitioner or in the custody of the law enforcement agency.
16 The petitioner shall release the seized item to the owner of the
17 item if it is determined that the owner had no knowledge of the
18 illegal use of the item or if there is insufficient evidence to
19 sustain the burden of showing illegal use of the item. If the owner
20 of the property stipulates to the forfeiture and waives the hearing,
21 the petitioner may determine if the value of the item is equal to or
22 less than the outstanding lien. If such lien exceeds the value of
23 the item, the item may be released to the lienholder. A seized item
24 which has not been released by the petitioner shall be subject to

1 the orders and decrees of the court or the official having
2 jurisdiction thereof.

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

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

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

11 2. To the payment of the actual reasonable expenses of
12 preserving the item;

13 3. To the victim of the crime to compensate said victim for any
14 loss incurred as a result of the act for which the item was
15 forfeited; and

16 4. The balance to a revolving fund in the office of the county
17 treasurer of the county wherein the property was seized, to be
18 distributed as follows: one-half (1/2) to the investigating law
19 enforcement agency and one-half (1/2) to the district attorney ~~for~~
20 ~~the evidence fund~~ to be used to defray any lawful expenses of the
21 office of the district attorney. If the petitioner is not the
22 district attorney, then the one-half (1/2) which would have been
23 designated to that office shall be distributed to the petitioner.

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1 N. If the court finds that the item was not used in the attempt
2 or commission of an act specified in subsection A of this section
3 and was not an item subject to forfeiture pursuant to subsection B
4 of this section, the court shall order the item released to the
5 owner as the right, title, or interest as determined by the court.

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

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

24 SECTION 3. This act shall become effective November 1, 2011.

1 Passed the House of Representatives the 16th day of March, 2011.

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4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2011.

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9 Presiding Officer of the Senate