HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1371

By: Standridge and Ivester of the Senate

and

Biggs of the House

COMMITTEE SUBSTITUTE

An Act relating to unlawful proceeds; amending 21 O.S. 2011, Sections 2001 and 2002, which relate to unlawful proceeds and forfeitures; modifying what certain unlawful acts are derived from; defining term; modifying and adding certain penalties; modifying who may bring certain actions; making certain proceedings special proceedings; modifying the type of evidence necessary to prove certain acts; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 2001, is amended to read as follows:

Section 2001. A. It is unlawful for any person knowingly or intentionally to receive or acquire proceeds and to conceal such proceeds, or engage in transactions involving such proceeds, known

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~~Strike thru~~ language denotes deletion from present Statutes.

to be derived from ~~any violation of the Oklahoma Statutes~~ a specified unlawful activity, as defined in subsection F of this section. This subsection does not apply to any transaction between an individual and the counsel of the individual necessary to preserve the right to representation of the individual, as guaranteed by the Oklahoma Constitution and by the Sixth Amendment of the United States Constitution. However, this exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of the Oklahoma Statutes.

B. It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of ~~any violation of the Oklahoma Statutes~~ a specified unlawful activity, as defined in subsection F of this section.

C. It is unlawful for any person knowingly or intentionally to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from ~~any violation of the Oklahoma Statutes~~ a specified unlawful activity, as defined in subsection F of this section.

D. It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving proceeds derived from a

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~~violation of the Oklahoma Statutes~~ specified unlawful activity, as defined in subsection F of this section, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds known to be derived from a violation of the Oklahoma Statutes, or to avoid a transaction reporting requirement under state or federal law.

E. Notwithstanding any other provision of this section, it shall be lawful for an organization engaged in the business of banking to receive deposits and payments, to pay checks and other withdrawals, and to process any other financial transaction for its customers in the ordinary course of business if it has no actual knowledge of any violation of the Oklahoma Statutes by that customer. If an organization engaged in the business of banking, acting in good faith and without actual knowledge of any violation of the Oklahoma Statutes by its customer, acquires a security interest or statutory lien with respect to a customer's funds, that customer's funds which are subject to ~~said~~ the security interest or lien shall not be subject to forfeiture action, to the extent of the amount of that customer's indebtedness to the banking organization.

F. For purposes of this section, "specified unlawful activity" means an act or omission, including any initiatory, preparatory, or completed offense or omission that is punishable as a felony under the laws of Oklahoma, or if the act occurred outside Oklahoma would

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be punishable as a felony under the laws of the state in which it occurred and under the laws of Oklahoma.

G. Any person convicted of violating any of the provisions of this section is guilty of ~~a felony and may be punished by imprisonment for not less than two (2) years nor more than ten (10) years or by a fine of not more than Fifty Thousand Dollars ($50,000.00) or by both said imprisonment and fine~~:

1. A misdemeanor, if the violation involves Two Thousand Five Hundred Dollars ($2,500.00) or less;

2. A felony, punishable by imprisonment for not more than two (2) years if the violation involves more than Two Thousand Five Hundred Dollars ($2,500.00), but not more than Ten Thousand Dollars ($10,000.00);

3. A felony, punishable by imprisonment for not less than two (2) years and not more than ten (10) years if the violation involves more than Ten Thousand Dollars ($10,000.00), but not more than Fifty Thousand Dollars ($50,000.00); or

4. A felony, punishable by imprisonment for not less than five (5) years and not more than twenty (20) years if the violation involves more than Fifty Thousand Dollars ($50,000.00).

H. In addition to any criminal penalty, a person who violates any provision of this section shall be subject to a civil penalty of three (3) times the value of the property involved in the transaction. The civil penalty provided in this subsection shall be

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split evenly between the prosecuting agency and the investigating law enforcement agency.

SECTION 2. AMENDATORY 21 O.S. 2011, Section 2002, is amended to read as follows:

Section 2002. A. Any commissioned peace officer of this state is authorized to seize any currency, negotiable instrument, monetary instrument, equipment or property used in the violation of Section 2001 of this title. The seized item may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney or Attorney General in the proper county of venue as petitioner; provided, in the event the district attorney or Attorney General elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of the item, the item shall be returned to the owner.

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

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

1. Upon each owner, lienholder, or party in interest whose name and address is known, served in the manner of service of process in

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civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

2. 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.

D. 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 item described in the notice of seizure and of the intended forfeiture proceeding.

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

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

G. Proceedings under this section shall be special proceedings.

H. At the hearing the petitioner shall prove by ~~clear and convincing~~ a preponderance of the evidence that property was used in the attempt or commission of an act specified in subsection A of this section with knowledge by the owner of the item.

~~H.~~ I. The claimant of any right, title, or interest in the item may prove the lien, mortgage, or conditional sales contract to be

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bona fide and that the right, title, or interest created by the item was created without any knowledge or reason to believe that the item was being, or was to be, used for the purpose charged.

~~I.~~ J. In the event of such proof, the court may order the item released to the bona fide or innocent owner, lienholder, mortgagee, or vendor if the amount due such person is equal to, or in excess of, the value of the item 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.

~~J.~~ K. If the amount due to such person is less than the value of the item, or if no bona fide claim is established, the item 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.

~~K.~~ L. A seized item 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. The petitioner shall release the seized item to the owner of the item if it is determined that the owner had no knowledge of the illegal use of the item or if there is insufficient evidence to sustain the burden of showing illegal use of the item. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the item is equal to or

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less than the outstanding lien. If such lien exceeds the value of the item, the item may be released to the lienholder. A seized item 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.~~ M. Attorney fees shall not be assessed against the state or the petitioner for any actions or proceeding pursuant to this section.

~~M.~~ 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 item, if any, up to the amount of the interest of that person in the property, when the court declaring the forfeiture orders a distribution to such person;

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

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

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-half (1/2) to the investigating law enforcement agency and one-half (1/2) to the district attorney to be used to defray any lawful expenses of the office of the district

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attorney. If the petitioner is not the district attorney, then the one-half (1/2) which would have been designated to that office shall be distributed to the petitioner.

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

~~O.~~ P. 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 shall be proven that the owner or other person in charge of such 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 item 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 such owner, and by any person other than such owner while the item 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.

~~P.~~ Q. Whenever any item is forfeited pursuant to this section, the district court having jurisdiction of the proceeding may order

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that the forfeited item may be retained for its official use by the state, county, or municipal law enforcement agency which seized the item.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/09/2014 - DO PASS, As Amended.

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