

1 **SENATE FLOOR VERSION**

2 February 19, 2014

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1371

6 By: Standridge and Ivester of  
7 the Senate

8 and

9 Biggs of the House

10 [ unlawful proceeds - certain penalties - special  
11 proceedings - evidence -  
12 emergency ]

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

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

16 Section 2001. A. It is unlawful for any person knowingly or  
17 intentionally to receive or acquire proceeds and to conceal such  
18 proceeds, or engage in transactions involving such proceeds, known  
19 to be derived from ~~any violation of the Oklahoma Statutes a~~  
20 specified unlawful activity. This subsection does not apply to any  
21 transaction between an individual and the counsel of the individual,  
22 necessary to preserve the right to representation of the individual,  
23 as guaranteed by the Oklahoma Constitution and by the Sixth  
24 Amendment of the United States Constitution. However, this  
exception does not create any presumption against or prohibition of

1 the right of the state to seek and obtain forfeiture of any proceeds  
2 derived from a violation of the Oklahoma Statutes.

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

9 C. It is unlawful for any person knowingly or intentionally to  
10 direct, plan, organize, initiate, finance, manage, supervise, or  
11 facilitate the transportation or transfer of proceeds known to be  
12 derived from ~~any violation of the Oklahoma Statutes~~ a specified  
13 unlawful activity.

14 D. It is unlawful for any person knowingly or intentionally to  
15 conduct a financial transaction involving proceeds derived from a  
16 ~~violation of the Oklahoma Statutes~~ specified unlawful activity, when  
17 the transaction is designed in whole or in part to conceal or  
18 disguise the nature, location, source, ownership, or control of the  
19 proceeds known to be derived from a violation of the Oklahoma  
20 Statutes, or to avoid a transaction reporting requirement under  
21 state or federal law.

22 E. Notwithstanding any other provision of this section, it  
23 shall be lawful for an organization engaged in the business of  
24 banking to receive deposits and payments, to pay checks and other

1 withdrawals, and to process any other financial transaction for its  
2 customers in the ordinary course of business if it has no actual  
3 knowledge of any violation of the Oklahoma Statutes by that  
4 customer. If an organization engaged in the business of banking,  
5 acting in good faith and without actual knowledge of any violation  
6 of the Oklahoma Statutes by its customer, acquires a security  
7 interest or statutory lien with respect to a customer's funds, that  
8 customer's funds which are subject to ~~said~~ the security interest or  
9 lien shall not be subject to forfeiture action, to the extent of the  
10 amount of that customer's indebtedness to the banking organization.

11 F. For purposes of this section, "specified unlawful activity"  
12 means an act or omission, including any initiatory, preparatory, or  
13 completed offense or omission that is punishable as a felony under  
14 the laws of Oklahoma, or if the act occurred outside Oklahoma, would  
15 be punishable as a felony under the laws of the state in which it  
16 occurred and under the laws of Oklahoma.

17 G. Any person convicted of violating any of the provisions of  
18 this section is guilty of a ~~felony and may be punished by~~  
19 ~~imprisonment for not less than two (2) years nor more than ten (10)~~  
20 ~~years or by a fine of not more than Fifty Thousand Dollars~~  
21 ~~(\$50,000.00) or by both said imprisonment and fine:~~

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

24

1       2. A felony, punishable by imprisonment for not more than two  
2 (2) years if the violation involves more than Two Thousand Five  
3 Hundred Dollars (\$2,500.00), but not more than Ten Thousand Dollars  
4 (\$10,000.00);

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

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

12       H. In addition to any criminal penalty, a person who violates  
13 any provision of this section shall be subject to a civil penalty of  
14 three (3) times the value of the property involved in the  
15 transaction. The civil penalty provided in this subsection shall be  
16 split evenly between the prosecuting agency and the investigating  
17 law enforcement agency.

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

20       Section 2002. A. Any commissioned peace officer of this state  
21 is authorized to seize any currency, negotiable instrument, monetary  
22 instrument, equipment or property used in the violation of Section  
23 2001 of this title. The seized item may be held as evidence until a  
24 forfeiture has been declared or a release ordered. Forfeiture

1 actions under this section may be brought by the district attorney  
2 or Attorney General in the proper county of venue as petitioner;  
3 provided, in the event the district attorney or Attorney General  
4 elects not to file such action, or fails to file such action within  
5 ninety (90) days of the date of the seizure of the item, the item  
6 shall be returned to the owner.

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

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

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

17 2. 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 D. Within sixty (60) days after the mailing or publication of  
22 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  
24

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

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

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

9 G. Proceedings under this section shall be special proceedings.

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

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

19 ~~F.~~ J. In the event of such proof, the court may order the item  
20 released to the bona fide or innocent owner, lienholder, mortgagee,  
21 or vendor if the amount due such person is equal to, or in excess  
22 of, the value of the item as of the date of the seizure, it being  
23 the intention of this section to forfeit only the right, title, or  
24 interest of the purchaser.

1       ~~J.~~ K. If the amount due to such person is less than the value  
2 of the item, or if no bona fide claim is established, the item may  
3 be forfeited to the state and may be sold pursuant to judgment of  
4 the court, as on sale upon execution, and as provided in Section 2-  
5 508 of Title 63 of the Oklahoma Statutes, except as otherwise  
6 provided for by law.

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

21       ~~L.~~ M. Attorney fees shall not be assessed against the state or  
22 the petitioner for any actions or proceeding pursuant to this  
23 section.

24

1       ~~M.~~ N. The proceeds of the sale of any property shall be  
2 distributed as follows, in the order indicated:

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

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

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

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

20       ~~N.~~ O. If the court finds that the item was not used in the  
21 attempt or commission of an act specified in subsection A of this  
22 section and was not an item subject to forfeiture pursuant to  
23 subsection B of this section, the court shall order the item  
24

1 released to the owner as the right, title, or interest as determined  
2 by the court.

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

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

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

1 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
February 19, 2014 - DO PASS AS AMENDED

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