

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1112

By: Roussetot

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5
6 AS INTRODUCED

7 An Act relating to motor vehicles; amending 47 O.S.
8 2011, Section 11-902b, which relates to forfeiture of
9 motor vehicles; authorizing forfeiture of a motor
10 vehicle under certain circumstances; and providing an
11 effective date.

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

14 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902b, is
15 amended to read as follows:

16 Section 11-902b. A. The district attorney may file a motion
17 requesting forfeiture of the motor vehicle involved in the
18 commission of an eligible offense as provided in this section. The
19 provisions of this section shall apply to any:

20 1. Any person who has been previously convicted of an offense
21 under Section 11-902, 11-903, or 11-904 of ~~Title 47 of the Oklahoma~~
22 ~~Statutes~~ this title and who on or after ~~the effective date of this~~
23 ~~act~~ July 1, 1999, is convicted of an offense under Section 11-902,
24 11-903, or 11-904 of ~~Title 47 of the Oklahoma Statutes~~ this title

1 within ten (10) years of any prior conviction under Section 11-902,
2 11-903, or 11-904 of ~~Title 47 of the Oklahoma Statutes~~ this title
3 and where at least one of the offenses, current or prior, involved
4 the death of or serious bodily injury to another person; or

5 2. Any person who has been convicted of a third or subsequent
6 felony offense under Section 11-902 of this title.

7 B. A motion for forfeiture may be filed at the time of charging
8 but not later than thirty (30) days after the verdict or plea of
9 guilty or nolo contendere. If a motion of intent to forfeit is
10 filed prior to the verdict or plea of guilty or nolo contendere, the
11 proceedings shall be stayed until the disposition of the criminal
12 case. Notice shall be required even though the proceedings are
13 stayed. If the motion is filed prior to the disposition on the
14 criminal case, the district attorney shall notify the Oklahoma Tax
15 Commission and the Tax Commission shall place a lien upon the
16 vehicle title. No person shall sell, damage, destroy, transfer or
17 perfect a security interest on any vehicle subject to forfeiture.
18 Prior to filing a motion for forfeiture, the district attorney shall
19 verify whether the vehicle was sold during any period of impoundment
20 as provided by law. Any vehicle sold in an impound sale to pay
21 towing, wrecker services or storage expenses shall not be subject to
22 forfeiture as provided in this ~~act~~ section.

23 C. Upon filing a motion for forfeiture, except when the
24 proceedings are stayed pursuant to subsection B of this section, the

1 court shall schedule a hearing on the matter. The hearing shall be
2 not less than twenty (20) days nor more than forty-five (45) days
3 from the date the motion is filed. The district attorney within
4 three (3) days of filing a motion of intent to forfeit shall notify
5 the convicted person, lienholders of record, and any person
6 appearing to have an ownership or security interest in the vehicle.
7 The notice shall contain the date, time and place of the hearing.
8 When a motion for forfeiture has been stayed pending disposition of
9 the criminal case and a verdict or plea of guilty or nolo contendere
10 has been entered, the district attorney shall give notice of the
11 forfeiture hearing not less than ten (10) days prior to the hearing.
12 The notice of persons specified in this subsection shall be by
13 certified mail to the address shown upon the records of the Oklahoma
14 Tax Commission. For owners or interested parties, other than
15 lienholders of record, whose addresses are unknown, but who are
16 believed to have an interest in the vehicle, notice shall be by one
17 publication in a newspaper of general circulation in the county
18 where the motion is filed. The written notice shall include:

- 19 1. A full description of the motor vehicle;
- 20 2. The date, time and place of the forfeiture hearing;
- 21 3. The legal authority under which the motor vehicle may be
22 forfeited; and
- 23 4. Notice of the right to intervene to protect an interest in
24 the motor vehicle.

1 D. A forfeiture proceeding shall not extinguish any security
2 interest of a lienholder of record; provided, however, the court may
3 order the sale of the motor vehicle and the satisfaction of that
4 security interest from the proceeds of sale as provided in
5 subsection K of this section.

6 For purposes of a forfeiture proceeding, an affidavit obtained
7 from the lienholder of record, in the absence of evidence of bad
8 faith, shall be prima facie evidence of the amount of secured
9 indebtedness owed to that lienholder. It shall be the
10 responsibility of the district attorney to obtain such affidavit
11 prior to the forfeiture proceeding.

12 In the absence of evidence of bad faith, no lienholder of record
13 shall be required to attend the forfeiture proceeding to protect its
14 interest in the motor vehicle. However, each lienholder of record
15 shall be given notice of the forfeiture hearing as provided in
16 subsection C of this section. The district attorney shall notify
17 each lienholder of record at least ten (10) days before the sale of
18 the motor vehicle ordered forfeited pursuant to this section;
19 provided, the lienholder was not represented at the forfeiture
20 proceeding.

21 E. Any person having an ownership or security interest in a
22 vehicle subject to forfeiture which is not perfected by a lien of
23 record may file a written objection to the motion to forfeit within
24 ten (10) days of the mailing of the notice of intent to forfeit.

1 F. At the hearing, any person who claims an ownership or
2 security interest in the motor vehicle which is not perfected by a
3 lien of record shall be required to establish by a preponderance of
4 the evidence that:

5 1. The person has an interest in the motor vehicle and such
6 interest was acquired in good faith;

7 2. The person is not the person convicted of the offense that
8 resulted in the forfeiture proceeding; and

9 3. The person did not know or have reasonable cause to believe
10 that the vehicle would be used in the commission of a felony
11 offense.

12 G. If a person satisfies the requirements of subsection F of
13 this section, or if there is a lienholder of record that has
14 provided an affidavit pursuant to subsection D of this section, the
15 court shall order either an amount equal to the value of the
16 interest of that person in the motor vehicle to be paid to that
17 person upon sale of the motor vehicle after payment of costs and
18 expenses or release the vehicle from the forfeiture proceedings if
19 either the lienholder described in subsection D of this section or
20 the person intervening in accordance with subsection F of this
21 section has full right, title and interest in the vehicle.

22 H. At the hearing, the court may order the forfeiture of the
23 motor vehicle if it is determined by a preponderance of the evidence
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1 that the forfeiture of the motor vehicle will serve one or more of
2 the following purposes:

3 1. Incapacitation of the convicted person from the commission
4 of any future offense under Section 11-902, 11-903, or 11-904 of
5 ~~Title 47 of the Oklahoma Statutes~~ this title;

6 2. Protection of the safety and welfare of the public;

7 3. Deterrence of other persons who are potential offenders
8 under Section 11-902, 11-903, or 11-904 of ~~Title 47 of the Oklahoma~~
9 ~~Statutes~~ this title;

10 4. Expression of public condemnation of the serious or
11 aggravated nature of the conduct of the convicted person; or

12 5. Satisfaction of monetary amounts for criminal penalties.

13 I. Upon forfeiture of a motor vehicle pursuant to this act, the
14 court shall require the owner to surrender the motor vehicle, the
15 certificate of title, and the registration of the motor vehicle.
16 The vehicle, the certificate of title, and the registration shall be
17 delivered to the Department of Public Safety within three (3) days
18 of the forfeiture order. The expense of delivering the vehicle
19 shall be paid by the district attorney. Costs of delivering the
20 vehicle to the Department shall be reimbursable as costs of
21 conducting the sale. A motor vehicle forfeited pursuant to this
22 act, shall be sold by the Department of Public Safety as provided by
23 law for the sale of other forfeited property, except as otherwise
24 provided in this section.

1 J. If a vehicle was impounded at the time of delivery to the
2 Department and a forfeiture order is subsequently issued, all
3 towing, wrecker services, and storage expenses shall be satisfied
4 from the sale of the vehicle. If a vehicle is released from
5 forfeiture and the vehicle has been delivered to the Department with
6 impound expenses still owing, all impound expenses, including
7 towing, wrecker service and storage expenses, shall be paid by the
8 person prevailing on the dismissal of the forfeiture proceeding and
9 the release of the vehicle to such person. If a notice for sale of
10 the vehicle was filed for satisfaction of impound expenses prior to
11 the filing of a motion for forfeiture, the vehicle shall be sold as
12 provided by law for unpaid towing, wrecker services, and storage
13 expenses and shall not be subject to forfeiture. If the convicted
14 person redeems his or her interest in the vehicle at a sale for
15 impound expenses, a forfeiture proceeding may thereafter proceed as
16 authorized by this act. Neither the notice of sale for towing,
17 wrecker services, and storage expenses nor the sale of such vehicle
18 for impound expenses shall serve to extend the requirement for
19 filing a motion to forfeit as provided in subsection B of this
20 section.

21 K. Except as provided in subsection J of this section, proceeds
22 from the sale of any vehicle forfeited pursuant to this act shall be
23 paid in the following order:

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1 1. To the Department of Public Safety for the cost of
2 conducting the sale, including expense of delivery, court filing
3 fees, and publication expense;

4 2. To satisfy impound expenses, including any towing, wrecker
5 service and storage expenses incurred prior to delivery to the
6 Department of Public Safety;

7 3. To satisfy the interest of any lienholder of record;

8 4. To satisfy the interest of any person making proof as
9 provided in subsection F of this section;

10 5. To satisfy criminal penalties, costs and assessments
11 pursuant to paragraph 5 of subsection H of this section if so
12 ordered by the court;

13 6. To the office of the district attorney who filed the
14 forfeiture proceeding not exceeding twenty-five percent (25%) of any
15 remaining proceeds. Such payment shall be deposited in a special
16 fund for such purpose as determined by the district attorney's
17 office; and

18 7. The balance of the proceeds to be deposited in the Drug
19 Abuse Education and Treatment Revolving Fund established pursuant to
20 Section 2-503.2 of Title 63 of the Oklahoma Statutes for the benefit
21 of drug court treatment as provided by law.

22 L. If a motor vehicle subject to forfeiture as provided by this
23 act is a vehicle leased pursuant to a commercial rental agreement
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1 for a period of ninety (90) days or less, then the vehicle shall not
2 be subject to the forfeiture proceedings provided by this act.

3 M. Upon the court dismissing a forfeiture proceeding, any lien
4 placed upon the vehicle title by the Oklahoma Tax Commission
5 pursuant to subsection B of this section shall be released.

6 SECTION 2. This act shall become effective November 1, 2013.

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8 54-1-5023 GRS 12/19/12

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