

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2851

By: Fisher

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5  
6 AS INTRODUCED

7 An Act relating to the Oklahoma Antiterrorism Act;  
8 making certain property subject to forfeiture;  
9 providing limitations on forfeiture; providing for  
10 allocation of proceeds; providing procedure for  
11 forfeiture; providing statute of limitations;  
12 providing for private action for damages; providing  
13 amount of recovery; providing statute of limitations;  
14 providing for incorporation of act into the Oklahoma  
15 Antiterrorism Act; providing for codification;  
16 providing for noncodification; and providing an  
17 effective date.

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 1268.9 of Title 21, unless there  
is created a duplication in numbering, reads as follows:

A. All property, including but not limited to money, used in  
the course of, intended for use in the course of, derived from, or  
realized through conduct in violation of the Oklahoma Antiterrorism  
Act is subject to civil forfeiture to the state.

B. A person injured as a result of a criminal offense under the  
Oklahoma Antiterrorism Act and a law enforcement agency or other

1 governmental agency that participated in the investigation,  
2 mitigation, seizure, or forfeiture process for a criminal offense  
3 under the Oklahoma Antiterrorism Act may file a claim for costs or  
4 damages, and the property described in subsection A of this section  
5 shall be used to satisfy any costs or damages awarded for the claim.

6 C. 1. Forfeiture or disposition under this section shall not  
7 affect the rights of a factually innocent person.

8 2. A mortgage, lien, privilege, other security interest, or  
9 joint ownership interest shall not be affected by a forfeiture under  
10 this section if the owner of the mortgage, lien, privilege, other  
11 security interest or joint owner establishes that he or she is a  
12 factually innocent person.

13 D. The allocation of proceeds from a forfeiture and disposition  
14 under this section shall be paid to claimants under subsection B of  
15 this section in the following order:

16 1. First, the costs of investigation shall be paid to the law  
17 enforcement agency or governmental agency that conducted the  
18 investigation.

19 a. If more than one law enforcement agency or  
20 governmental agency equally conducted the  
21 investigation, the costs of investigation shall be  
22 paid equally to the law enforcement agencies and  
23 governmental agencies conducting the investigation.

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1           b.    If one law enforcement agency or governmental agency  
2                   primarily conducted the investigation, the costs of  
3                   investigation first shall be paid to that law  
4                   enforcement agency or governmental agency, with actual  
5                   vouchered costs reimbursed on a pro rata basis to the  
6                   other law enforcement agencies or governmental  
7                   agencies participating in the investigation, not to  
8                   exceed ten percent (10%) of the costs of investigation  
9                   allocated to the primary law enforcement agency or  
10                  governmental agency;

11           2.    Second, twenty-five percent (25%) of the proceeds plus the  
12                  costs of prosecution or all of the remaining proceeds, whichever is  
13                  less, shall be paid to the office of the prosecuting district  
14                  attorney;

15           3.    Third, the costs of investigation shall be paid on a pro  
16                  rata basis to a law enforcement agency or governmental agency that  
17                  was not fully reimbursed under paragraph 1 of this subsection;

18           4.    Fourth, the costs of mitigation, seizure, or forfeiture  
19                  shall be paid on a pro rata basis to a law enforcement agency or  
20                  governmental agency that participated in the mitigation, seizure, or  
21                  forfeiture process; and

22           5.    Fifth, any remaining proceeds shall be paid on a pro rata  
23                  basis to satisfy any judgments under Section 2 of this act for  
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1 persons injured as a result of a criminal offense under the Oklahoma  
2 Antiterrorism Act.

3 E. 1. Property subject to forfeiture under this section may be  
4 seized by a law enforcement officer upon the issuance of a court  
5 order.

6 2. Seizure without a court order may be made if:

7 a. the seizure is incident to a lawful arrest or search,  
8 or

9 b. the property subject to seizure has been the subject  
10 of a prior judgment in favor of the state in a  
11 forfeiture proceeding based on this section.

12 3. a. A forfeiture action resulting from a seizure under  
13 this subsection shall be instituted promptly.

14 b. Property taken or detained under this section is not  
15 subject to sequestration or attachment but is deemed  
16 to be in the custody of the law enforcement officer  
17 making the seizure, subject only to the order of the  
18 court.

19 c. When property is seized under this section, pending  
20 forfeiture and final disposition, the law enforcement  
21 officer making the seizure may:

22 (1) place the property under seal,

23 (2) remove the property to a place designated by the  
24 court, or

1 (3) request another agency authorized by law to take  
2 custody of the property and remove it to an  
3 appropriate location.

4 F. The limitations period for a claim brought under this  
5 section is five (5) years from the date of the discovery of the  
6 violation of the Oklahoma Antiterrorism Act.

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1268.10 of Title 21, unless  
9 there is created a duplication in numbering, reads as follows:

10 A. A person injured as a result of a criminal offense under the  
11 Oklahoma Antiterrorism Act may file an action for damages against  
12 the person who violated the Oklahoma Antiterrorism Act.

13 B. A person who files an action under this section is entitled  
14 to recover three times the actual damages sustained or Ten Thousand  
15 Dollars (\$10,000.00), whichever is greater, as well as attorney fees  
16 in the trial and appellate courts if the person prevails in the  
17 claim.

18 C. The limitations period for an action under this section is  
19 five (5) years from the date of discovery of the violation of the  
20 Oklahoma Antiterrorism Act.

21 D. A person who receives a judgment under this section may seek  
22 satisfaction of the judgment under Section 1 of this act.

23 SECTION 3. NEW LAW A new section of law not to be  
24 codified in the Oklahoma Statutes reads as follows:

1 Sections 1 and 2 of this act are hereby incorporated into and  
2 deemed to be included in the Oklahoma Antiterrorism Act.

3 SECTION 4. This act shall become effective November 1, 2014.  
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