

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1191

By: Loveless

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5
6 AS INTRODUCED

7 An Act relating to asset forfeiture; amending 63 O.S.
8 2011, Section 2-508, as last amended by Section 2,
9 Chapter 284, O.S.L. 2014 (63 O.S. Supp. 2015, Section
10 2-508), which relates to disposition of seized
11 property; prohibiting certain transfer; and providing
12 an effective date.

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

14 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-508, as
15 last amended by Section 2, Chapter 284, O.S.L. 2014 (63 O.S. Supp.
16 2015, Section 2-508), is amended to read as follows:

17 Section 2-508. A. Except as otherwise provided, all property
18 described in paragraphs 1 and 2 of subsection A of Section 2-503 of
19 this title which is seized or surrendered pursuant to the provisions
20 of the Uniform Controlled Dangerous Substances Act shall be
21 destroyed. The destruction shall be done by or at the direction of
22 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
23 (OSBNDD), who shall have the discretion prior to destruction to
24 preserve samples of the substance for testing. In any county with a
population of four hundred thousand (400,000) or more according to

1 the latest Federal Decennial Census, there shall be a located site,
2 approved by the OSBNDD, for the destruction of the property. Any
3 such property submitted to the OSBNDD which it deems to be of use
4 for investigative training, educational, or analytical purposes may
5 be retained by the OSBNDD in lieu of destruction.

6 B. 1. With respect to controlled dangerous substances seized
7 or surrendered pursuant to the provisions of the Uniform Controlled
8 Dangerous Substances Act, municipal police departments, sheriffs,
9 the Oklahoma Bureau of Narcotics and Dangerous Drugs Control
10 Commission, the Oklahoma Highway Patrol, and the Oklahoma State
11 Bureau of Investigation shall have the authority to destroy seized
12 controlled dangerous substances when the amount seized in a single
13 incident exceeds ten (10) pounds. The destroying agency shall:

- 14 a. photograph the seized substance with identifying case
15 numbers or other means of identification,
- 16 b. prepare a report describing the seized substance prior
17 to the destruction,
- 18 c. retain at least one (1) pound of the substance
19 randomly selected from the seized substance for the
20 purpose of evidence, and
- 21 d. obtain and retain samples of the substance from enough
22 containers, bales, bricks, or other units of substance
23 seized to establish the presence of a weight of the
24 substance necessary to establish a violation of the

1 Trafficking in Illegal Drugs Act pursuant to
2 subsection C of Section 2-415 of this title, if such a
3 weight is present. If such weight is not present,
4 samples of the substance from each container, bale,
5 brick or other unit of substance seized shall be
6 taken. Each sample taken pursuant to this section
7 shall be large enough for the destroying agency and
8 the defendant or suspect to have an independent test
9 performed on the substance for purposes of
10 identification.

11 2. If a defendant or suspect is known to the destroying agency,
12 the destroying agency shall give at least seven (7) days' written
13 notice to the defendant, suspect or counsel for the defendant or
14 suspect of:

- 15 a. the date, the time, and the place where the
16 photographing will take place and notice of the right
17 to attend the photographing, and
- 18 b. the right to obtain samples of the controlled
19 dangerous substance for independent testing and use as
20 evidence.

21 3. The written notice shall also inform the defendant, suspect
22 or counsel for the defendant or suspect that the destroying agency
23 must be notified in writing within seven (7) days from receipt of
24 the notice of the intent of the suspect or defendant to obtain

1 random samples and make arrangements for the taking of samples. The
2 samples for the defendant or suspect must be taken by a person
3 licensed by the Drug Enforcement Administration. If the defendant
4 or counsel for the defendant fails to notify the destroying agency
5 in writing of an intent to obtain samples and fails to make
6 arrangements for the taking of samples, a sample taken pursuant to
7 subparagraph d of paragraph 1 of this subsection shall be made
8 available upon request of the defendant or suspect.

9 The representative samples, the photographs, the reports, and
10 the records made under this section and properly identified shall be
11 admissible in any court or administrative proceeding for any
12 purposes for which the seized substance itself would have been
13 admissible.

14 C. All other property not otherwise provided for in the Uniform
15 Controlled Dangerous Substances Act which has come into the
16 possession of the Oklahoma State Bureau of Narcotics and Dangerous
17 Drugs Control, the Department of Public Safety, the Oklahoma State
18 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
19 Commission, the Department of Corrections, the Office of the
20 Attorney General, or a district attorney may be disposed of by order
21 of the district court when no longer needed in connection with any
22 litigation. If the owner of the property is unknown to the agency
23 or district attorney, the agency or district attorney shall hold the
24 property for at least six (6) months prior to filing a petition for

1 disposal with the district court except for laboratory equipment
2 which may be forfeited when no longer needed in connection with
3 litigation, unless the property is perishable. The Director or
4 Commissioner of the agency, the Attorney General, or district
5 attorney shall file a petition in the district court of Oklahoma
6 County or in the case of a district attorney, the petition shall be
7 filed in a county within the jurisdiction of the district attorney
8 requesting the authority to:

9 1. Conduct a sale of the property at a public auction or use an
10 Internet auction, which may include online bidding; or

11 2. Convert title of the property to the Oklahoma State Bureau
12 of Narcotics and Dangerous Drugs Control, the Department of Public
13 Safety, the Oklahoma State Bureau of Investigation, the Alcoholic
14 Beverage Laws Enforcement Commission, the Department of Corrections,
15 the Office of the Attorney General, or to the district attorney's
16 office for the purposes provided for in subsection J, K or L of this
17 section.

18 The Director, Commissioner, Attorney General or district
19 attorney shall attach to the petition:

- 20 a. a list describing the property, including all
21 identifying numbers and marks, if any,
22 b. the date the property came into the possession of the
23 agency or district attorney, and
24 c. the name and address of the owner, if known.

1 For any item having an apparent value in excess of One Hundred
2 Dollars (\$100.00), but less than Five Hundred Dollars (\$500.00), the
3 notice of the hearing of the petition for the sale of the property,
4 except laboratory equipment used in the processing, manufacturing or
5 compounding of controlled dangerous substances in violation of the
6 provisions of the Uniform Controlled Dangerous Substances Act, shall
7 be given to every known owner, as set forth in the petition, by
8 first-class mail to the last-known address of the owner at least ten
9 (10) days prior to the date of the hearing. An affidavit of notice
10 being sent shall be filed with the court by a representative of the
11 agency, the Director or Commissioner of the agency, the Attorney
12 General or district attorney. For items in excess of Five Hundred
13 Dollars (\$500.00), a notice of the hearing of the petition for the
14 sale of said property shall be delivered to every known owner as set
15 forth in the petition by certified mail. Notice of a hearing on a
16 petition for forfeiture or sale of laboratory equipment used in the
17 processing, manufacturing or compounding of controlled dangerous
18 substances in violation of the Uniform Controlled Dangerous
19 Substances Act shall not be required.

20 The notice shall contain a brief description of the property,
21 and the location and date of the hearing. In addition, notice of
22 the hearing shall be posted in three public places in the county,
23 one such place being the county courthouse at the regular place
24 assigned for the posting of legal notices. At the hearing, if no

1 owner appears and establishes ownership of the property, the court
2 may enter an order authorizing the Director, Commissioner, Attorney
3 General, or district attorney to donate the property pursuant to
4 subsection J, K or L of this section, to sell the property at a
5 public auction, including an Internet auction, which may include
6 online bidding, to the highest bidder, or to convert title of the
7 property to the Oklahoma State Bureau of Narcotics and Dangerous
8 Drugs Control, the Department of Public Safety, the Oklahoma State
9 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
10 Commission, the Department of Corrections, or the Office of the
11 Attorney General for the purposes provided for in subsection J, K or
12 L of this section after at least ten (10) days of notice has been
13 given by publication in one issue of a legal newspaper of the
14 county. If the property is offered for sale at public auction,
15 including an Internet auction, and no bid is received that exceeds
16 fifty percent (50%) of the value of the property, such value to be
17 announced prior to the sale, the Director, Commissioner, Attorney
18 General, or district attorney may refuse to sell the item pursuant
19 to any bid received. The Director, Commissioner, Attorney General,
20 or district attorney shall make a return of the sale and, when
21 confirmed by the court, the order confirming the sale shall vest in
22 the purchaser title to the property so purchased.

23 D. The money received from the sale of property by the Oklahoma
24 State Bureau of Narcotics and Dangerous Drugs Control shall be used

1 for general drug enforcement purposes. These funds shall be
2 transferred to the Bureau of Narcotics Revolving Fund established
3 pursuant to Section 2-107 of this title or in the case of a district
4 attorney, the revolving fund provided for in paragraph 3 of
5 subsection L of Section 2-506 of this title.

6 E. At the request of the Department of Public Safety, the
7 district attorney or a designee of the district attorney may conduct
8 any forfeiture proceedings as described in Section 2-503 of this
9 title on any property subject to forfeiture as described in
10 subsection A, B or C of Section 2-503 of this title. The money
11 received from the sale of property by the Department of Public
12 Safety shall be deposited in the Department of Public Safety
13 Restricted Revolving Fund and shall be expended for law enforcement
14 purposes.

15 F. The money received from the sale of property by the
16 Alcoholic Beverage Laws Enforcement Commission shall be deposited in
17 the General Revenue Fund of the state.

18 G. The money received from the sale of property from the
19 Oklahoma State Bureau of Investigation shall be deposited in the
20 OSBI Revolving Fund and shall be expended for law enforcement
21 purposes.

22 H. The Director of the Department of Corrections shall make a
23 return of the sale and when confirmed by the court, the order
24 confirming the sale shall vest in the purchaser title to the

1 property so purchased. Twenty-five percent (25%) of the money
2 received from the sale shall be disbursed to a revolving fund in the
3 office of the county treasurer of the county wherein the property
4 was seized, said fund to be used as a revolving fund solely for
5 enforcement of controlled dangerous substances laws, drug abuse
6 prevention and drug abuse education. The remaining seventy-five
7 percent (75%) shall be deposited in the Department of Corrections
8 Revolving Fund to be expended for equipment for probation and parole
9 officers and correctional officers.

10 I. The money received from the sale of property from the Office
11 of the Attorney General shall be deposited in the Attorney General
12 Law Enforcement Revolving Fund and shall be expended for law
13 enforcement purposes. The Office of the Attorney General may enter
14 into agreements with municipal, county or state agencies to return
15 to such an agency a percentage of proceeds of the sale of any
16 property seized by the agency and forfeited under the provisions of
17 this section.

18 J. Any property, including but not limited to uncontaminated
19 laboratory equipment used in the processing, manufacturing or
20 compounding of controlled dangerous substances in violation of the
21 provisions of the Uniform Controlled Dangerous Substances Act, upon
22 a court order, may be donated for classroom or laboratory use by the
23 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,
24 Department of Public Safety, district attorney, the Alcoholic

1 Beverage Laws Enforcement Commission, the Department of Corrections,
2 or the Office of the Attorney General to any public secondary school
3 or technology center school in this state or any institution of
4 higher education within The Oklahoma State System of Higher
5 Education.

6 K. Any vehicle or firearm which has come into the possession
7 and title vested in the Oklahoma State Bureau of Narcotics and
8 Dangerous Drugs Control, the Department of Public Safety, the
9 Oklahoma State Bureau of Investigation, the Office of the Attorney
10 General or a district attorney, may be transferred, donated or
11 offered for lease to any sheriff's office, tribal law enforcement
12 agency, campus police department pursuant to the provisions of the
13 Oklahoma Campus Security Act, or police department in this state on
14 an annual basis to assist with the enforcement of the provisions of
15 the Uniform Controlled Dangerous Substances Act. Each agency shall
16 promulgate rules, regulations and procedures for leasing vehicles
17 and firearms. No fully automatic weapons will be subject to the
18 leasing agreement. All firearms leased may be utilized only by
19 C.L.E.E.T.-certified officers who have received training in the type
20 and class of weapon leased. Every lessee shall be required to
21 submit an annual report to the leasing agency stating the condition
22 of all leased property. A lease agreement may be renewed annually
23 at the option of the leasing agency. Upon termination of a lease
24 agreement, the property shall be returned to the leasing agency for

1 sale or other disposition. All funds derived from lease agreements
2 or other disposition of property no longer useful to law enforcement
3 shall be deposited in the agency's revolving fund, or in the case of
4 the Department of Public Safety, the Department of Public Safety
5 Restricted Revolving Fund, and shall be expended for law enforcement
6 purposes.

7 L. Before disposing of any property pursuant to subsections C
8 through I of this section, the Oklahoma State Bureau of Narcotics
9 and Dangerous Drugs Control, the Department of Public Safety, the
10 Alcoholic Beverage Laws Enforcement Commission, the Oklahoma State
11 Bureau of Investigation, the Department of Corrections, the Office
12 of the Attorney General, or a district attorney may transfer or
13 donate the property to another state agency, tribal law enforcement
14 agency, or school district for use upon request. In addition to the
15 provisions of this section, the Oklahoma State Bureau of Narcotics
16 and Dangerous Drugs Control may transfer or donate property for any
17 purpose pursuant to Section 2-106.2 of this title. The agencies and
18 any district attorney that are parties to any transfer of property
19 pursuant to this subsection shall enter into written agreements to
20 carry out any such transfer of property. Any such agreement may
21 also provide for the granting of title to any property being
22 transferred as the parties deem appropriate. If the transfer of
23 property is to a school district, a written agreement shall be
24 entered into with the superintendent of the school district. No

1 weapons may be transferred to a school district except as provided
2 for in subsection K of this section.

3 M. No property seized pursuant to the provisions of the Uniform
4 Dangerous Controlled Substances Act or money received from the sale
5 of such property shall be transferred directly or indirectly to any
6 federal law enforcement authority or other federal agency unless the
7 property seized includes cash of Fifty Thousand Dollars (\$50,000.00)
8 or more.

9 SECTION 2. This act shall become effective November 1, 2016.

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