

1 ENGROSSED SENATE
2 BILL NO. 1118

3 By: Sykes of the Senate

4 and

5 Terrill of the House

6

7 [public health and safety - property - forfeiture -
8 effective date]

9

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

11 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-503, as

12 last amended by Section 5, Chapter 223, O.S.L. 2007 (63 O.S. Supp.
13 2008, Section 2-503), is amended to read as follows:

14 Section 2-503. A. The following shall be subject to
15 forfeiture:

16 1. All controlled dangerous substances which have been
17 manufactured, distributed, dispensed, acquired, concealed or
18 possessed in violation of the Uniform Controlled Dangerous
19 Substances Act;

20 2. All raw materials, products and equipment of any kind and
21 all drug paraphernalia as defined by the Uniform Controlled
22 Dangerous Substances Act, which are used, or intended for use, in
23 manufacturing, compounding, processing, delivering, importing or
24 exporting, injecting, ingesting, inhaling, or otherwise introducing

1 into the human body any controlled dangerous substance in violation
2 of the provisions of the Uniform Controlled Dangerous Substances
3 Act;

4 3. All property which is used, or intended for use, as a
5 container for property described in paragraphs 1 and 2 of this
6 subsection;

7 4. All conveyances, including aircraft, vehicles, vessels, or
8 farm implements which are used to transport, conceal, or cultivate
9 for the purpose of distribution as defined in the Uniform Controlled
10 Dangerous Substances Act, or which are used in any manner to
11 facilitate the transportation or cultivation for the purpose of sale
12 or receipt of property described in paragraphs 1 or 2 of this
13 subsection or when the property described in paragraphs 1 or 2 of
14 this subsection is unlawfully possessed by an occupant thereof,
15 except that:

16 a. no conveyance used by a person as a common carrier in
17 the transaction of business as a common carrier shall
18 be forfeited under the provisions of the Uniform
19 Controlled Dangerous Substances Act unless it shall
20 appear that the owner or other person in charge of
21 such conveyance was a consenting party or privy to a
22 violation of the Uniform Controlled Dangerous
23 Substances Act, and

1 b. no conveyance shall be forfeited under the provisions
2 of this section by reason of any act or omission
3 established by the owner thereof to have been
4 committed or omitted without the knowledge or consent
5 of such owner, and if the act is committed by any
6 person other than such owner the owner shall establish
7 further that the conveyance was unlawfully in the
8 possession of a person other than the owner in
9 violation of the criminal laws of the United States,
10 or of any state;

11 5. All books, records and research, including formulas,
12 microfilm, tapes and data which are used in violation of the Uniform
13 Controlled Dangerous Substances Act;

14 6. All things of value furnished, or intended to be furnished,
15 in exchange for a controlled dangerous substance in violation of the
16 Uniform Controlled Dangerous Substances Act, all proceeds traceable
17 to such an exchange, and all monies, negotiable instruments, and
18 securities used, or intended to be used, to facilitate any violation
19 of the Uniform Controlled Dangerous Substances Act;

20 7. All monies, coin and currency found in close proximity to
21 any amount of forfeitable substances, to forfeitable drug
22 manufacturing or distribution paraphernalia or to forfeitable
23 records of the importation, manufacture or distribution of
24 substances, which are rebuttably presumed to be forfeitable under

1 the Uniform Controlled Dangerous Substances Act. The burden of
2 proof is upon claimants of the property to rebut this presumption;

3 8. All real property, including any right, title, and interest
4 in the whole of any lot or tract of land and any appurtenance or
5 improvement thereto, which is used, or intended to be used, in any
6 manner or part, to commit, or to facilitate the commission of, a
7 violation of the Uniform Controlled Dangerous Substances Act which
8 is punishable by imprisonment for more than one (1) year, except
9 that no property right, title or interest shall be forfeited
10 pursuant to this paragraph, by reason of any act or omission
11 established by the owner thereof to have been committed or omitted
12 without the knowledge or consent of that owner; and

13 9. All weapons possessed, used or available for use in any
14 manner to facilitate a violation of the Uniform Controlled Dangerous
15 Substances Act.

16 B. Any property or thing of value of a person is subject to
17 forfeiture if it is established by a preponderance of the evidence
18 that such property or thing of value was acquired by such person
19 during the period of the violation of the Uniform Controlled
20 Dangerous Substances Act or within a reasonable time after such
21 period and there was no likely source for such property or thing of
22 value other than the violation of the Uniform Controlled Dangerous
23 Substances Act.

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1 C. Any property or thing of value of a person is subject to
2 forfeiture if it is established by a preponderance of the evidence
3 that the person has not paid all or part of a fine imposed pursuant
4 to the provisions of Section 2-415 of this title.

5 D. All items forfeited in this section shall be forfeited under
6 the procedures established in Section 2-506 of this title. Whenever
7 any item is forfeited pursuant to this section except for items
8 confiscated by the Oklahoma State Bureau of Narcotics and Dangerous
9 Drugs Control, the Department of Public Safety, the Oklahoma State
10 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
11 Commission, the Department of Corrections, or the Office of the
12 Attorney General, the district court of the district shall order
13 that such item, money, or monies derived from the sale of such item
14 be deposited by the state, county or city law enforcement agency
15 which seized the item in the revolving fund provided for in Section
16 2-506 of this title; provided, such item, money or monies derived
17 from the sale of such item forfeited due to nonpayment of a fine
18 imposed pursuant to the provisions of Section 2-415 of this title
19 shall be apportioned as provided in Section 2-416 of this title.
20 Items, money or monies seized pursuant to subsections A and B of
21 this section shall not be applied or considered toward satisfaction
22 of the fine imposed by Section 2-415 of this title. All raw
23 materials used or intended to be used by persons to unlawfully
24 manufacture or attempt to manufacture any controlled dangerous

1 substance in violation of the Uniform Controlled Dangerous
2 Substances Act shall be summarily forfeited pursuant to the
3 provisions of Section 2-505 of this title.

4 E. All property taken or detained under this section by the
5 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the
6 Department of Public Safety, the Oklahoma State Bureau of
7 Investigation, the Alcoholic Beverage Laws Enforcement Commission,
8 the Department of Corrections, or the Office of the Attorney
9 General, shall not be repleviable, but shall remain in the custody
10 of the Bureaus, Departments, Commission, or Office, respectively,
11 subject only to the orders and decrees of a court of competent
12 jurisdiction. The Director of the Oklahoma State Bureau of
13 Narcotics and Dangerous Drugs Control, the Commissioner of Public
14 Safety, the Director of the Oklahoma State Bureau of Investigation,
15 the Director of the Alcoholic Beverage Laws Enforcement Commission,
16 the Director of the Department of Corrections, and the Attorney
17 General shall follow the procedures outlined in Section 2-506 of
18 this title dealing with notification of seizure, intent of
19 forfeiture, final disposition procedures, and release to innocent
20 claimants with regard to all property included in this section
21 detained by the Department of Public Safety, the Oklahoma State
22 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
23 Commission, the Department of Corrections, or the Office of the
24 Attorney General. Property taken or detained by the Oklahoma State

1 Bureau of Narcotics and Dangerous Drugs Control, the Department of
2 Public Safety, the Oklahoma State Bureau of Investigation, the
3 Alcoholic Beverage Laws Enforcement Commission, the Department of
4 Corrections, or the Office of the Attorney General shall be disposed
5 of or sold pursuant to the provisions of Section 2-508 of this
6 title. Any money, coins, and currency, taken or detained pursuant
7 to this section may be deposited in an interest bearing account by
8 or at the direction of the State Treasurer if the seizing agency
9 determines the currency is not to be held as evidence. All interest
10 earned on such monies shall be returned to the claimant or forfeited
11 with the money, coins, and currency which was taken or detained as
12 provided by law.

13 F. The proceeds of any forfeiture of items seized by the
14 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall
15 be distributed as follows:

16 1. To the bona fide or innocent purchaser, conditional sales
17 vendor or mortgagee of the property, if any, up to the amount of his
18 interest in the property, when the court declaring a forfeiture
19 orders a distribution to such person; and

20 2. The balance to the Oklahoma State Bureau of Narcotics'
21 revolving fund or the Bureau's agency special account established
22 pursuant to Section 7.2 of Title 62 of the Oklahoma Statutes,
23 provided the Bureau may enter into agreements with municipal,
24 county, state or federal law enforcement agencies, assisting in the

1 forfeiture or underlying criminal investigation, to return to such
2 an agency a percentage of said proceeds.

3 ~~The Bureau may expend up to Two Million Dollars (\$2,000,000.00)~~
4 ~~of the forfeited funds within a fiscal year without prior approval~~
5 ~~of the Legislature. Documentation of such expenditures shall be~~
6 ~~forwarded to the Governor, Speaker of the House of Representatives~~
7 ~~and the President Pro Tempore of the Senate on a quarterly basis.~~
8 ~~Any additional expenditures of forfeited funds shall be pre approved~~
9 ~~by the annual appropriations process or the Contingency Review~~
10 ~~Board.~~

11 G. Any agency that acquires seized or forfeited property or
12 money shall maintain a true and accurate inventory and record of all
13 such property seized pursuant to this section.

14 SECTION 2. This act shall become effective November 1, 2009.

15 Passed the Senate the 2nd day of March, 2009.

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18 Presiding Officer of the Senate
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20 Passed the House of Representatives the ____ day of _____,
21 2009.

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24 Presiding Officer of the House
of Representatives