

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

ENGROSSED HOUSE
BILL NO. 1112

and

An Act relating to motor vehicles; amending 47 O.S. 2011, Section 11-902b, which relates to forfeiture of motor vehicles; authorizing forfeiture of a motor vehicle under certain circumstances; and modifying order in which certain proceeds are paid.

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

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

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

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

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

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

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

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

21 1. A full description of the motor vehicle;

22 2. The date, time and place of the forfeiture hearing;

23 3. The legal authority under which the motor vehicle may be
24 forfeited; and

1 4. Notice of the right to intervene to protect an interest in
2 the motor vehicle.

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

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

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

23 E. Any person having an ownership or security interest in a
24 vehicle subject to forfeiture which is not perfected by a lien of

1 record may file a written objection to the motion to forfeit within
2 ten (10) days of the mailing of the notice of intent to forfeit.

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

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

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

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

14 G. If a person satisfies the requirements of subsection F of
15 this section, or if there is a lienholder of record that has
16 provided an affidavit pursuant to subsection D of this section, the
17 court shall order either an amount equal to the value of the
18 interest of that person in the motor vehicle to be paid to that
19 person upon sale of the motor vehicle after payment of costs and
20 expenses or release the vehicle from the forfeiture proceedings if
21 either the lienholder described in subsection D of this section or
22 the person intervening in accordance with subsection F of this
23 section has full right, title and interest in the vehicle.
24

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

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

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

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

12 4. Expression of public condemnation of the serious or
13 aggravated nature of the conduct of the convicted person; or

14 5. Satisfaction of monetary amounts for criminal penalties.

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

1 law for the sale of other forfeited property, except as otherwise
2 provided in this section.

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

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

4 1. To satisfy the interest of any lienholder of record;

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

8 ~~2.~~ 3. To satisfy impound expenses, including any towing,
9 wrecker service and storage expenses incurred prior to delivery to
10 the Department of Public Safety;

11 ~~3. To satisfy the interest of any lienholder of record;~~

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

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

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

22 7. The balance of the proceeds to be deposited in the Drug
23 Abuse Education and Treatment Revolving Fund established pursuant to
24

1 Section 2-503.2 of Title 63 of the Oklahoma Statutes for the benefit
2 of drug court treatment as provided by law.

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

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

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
11 April 1, 2014 - DO PASS
12
13
14
15
16
17
18
19
20
21
22
23
24