

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 55th Legislature (2016)

4 ENGROSSED SENATE
5 BILL NO. 1113

 By: Holt and Loveless of the
 Senate

6 and

7 Grau of the House

8
9 An Act relating to asset forfeiture; amending 63 O.S.
10 2011, Section 2-506, as amended by Section 1, Chapter
11 284, O.S.L. 2014 (63 O.S. Supp. 2015, Section 2-506),
12 which relates to seizure of property; requiring
13 payment of fees, costs and interest to prevailing
14 party in certain actions; and providing an effective
15 date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-506, as
18 amended by Section 1, Chapter 284, O.S.L. 2014 (63 O.S. Supp. 2015,
19 Section 2-506), is amended to read as follows:

20 Section 2-506. A. Any peace officer of this state shall seize
21 the following property:

22 1. Any property described in subsection A of Section 2-503 of
23 this title. Such property shall be held as evidence until a
24 forfeiture has been declared or release ordered, except for property
 described in paragraphs 1, 2 and 3 of subsection A of Section 2-503

1 of this title, or in the case of money, coins, and currency,
2 deposited as provided in subsection E of Section 2-503 of this
3 title; provided, any money, coins and currency taken or detained
4 pursuant to this section may be deposited in an interest-bearing
5 account by or at the direction of the district attorney in the
6 office of the county treasurer if the district attorney determines
7 the currency is not to be held as evidence. All interest earned on
8 such monies shall be returned to the claimant or forfeited with the
9 money, coins and currency which was taken or detained as provided by
10 law;

11 2. Any property described in subsection B of Section 2-503 of
12 this title; or

13 3. Any property described in subsection C of Section 2-503 of
14 this title.

15 B. Notice of seizure and intended forfeiture proceeding shall
16 be filed in the office of the clerk of the district court for the
17 county wherein such property is seized and shall be given all owners
18 and parties in interest. Notwithstanding any other provision of
19 law, no filing fees shall be assessed by the court clerk for the
20 filing of any forfeiture action.

21 C. Notice shall be given by the agency seeking forfeiture
22 according to one of the following methods:

23 1. Upon each owner or party in interest whose right, title or
24 interest is of record in the Tax Commission, by mailing a copy of

1 the notice by certified mail to the address as given upon the
2 records of the Tax Commission;

3 2. Upon each owner or party in interest whose name and address
4 is known to the attorney in the office of the agency prosecuting the
5 action to recover unpaid fines, by mailing a copy of the notice by
6 registered mail to the last-known address; or

7 3. Upon all other owners or interested parties, whose addresses
8 are unknown, but who are believed to have an interest in the
9 property, by one publication in a newspaper of general circulation
10 in the county where the seizure was made.

11 D. Within forty-five (45) days after the mailing or publication
12 of the notice, the owner of the property and any other party in
13 interest or claimant may file a verified answer and claim to the
14 property described in the notice of seizure and of the intended
15 forfeiture proceeding.

16 E. If at the end of forty-five (45) days after the notice has
17 been mailed or published there is no verified answer on file, the
18 court shall hear evidence upon the fact of the unlawful use and
19 shall order the property forfeited to the state, if such fact is
20 proved. Except as otherwise provided for in Section 2-503 of this
21 title, any such property shall be forfeited to the state and sold
22 under judgment of the court pursuant to the provisions of Section 2-
23 508 of this title.

1 F. If a verified answer is filed, the forfeiture proceeding
2 shall be set for hearing.

3 G. At a hearing in a proceeding against property described in
4 paragraphs 3 through 9 of subsection A or subsections B and C of
5 Section 2-503 of this title, the requirements set forth in said
6 paragraph or subsection, respectively, shall be satisfied by the
7 state by a preponderance of the evidence.

8 H. The claimant of any right, title, or interest in the
9 property may prove a lien, mortgage, or conditional sales contract
10 to be a bona fide or innocent ownership interest and that such
11 right, title, or interest was created without any knowledge or
12 reason to believe that the property was being, or was to be, used
13 for the purpose charged.

14 I. In the event of such proof, the court shall order the
15 property released to the bona fide or innocent owner, lien holder,
16 mortgagee or vendor if the amount due him is equal to, or in excess
17 of, the value of the property as of the date of the seizure, it
18 being the intention of this section to forfeit only the right, title
19 or interest of the purchaser.

20 J. If the amount due to such person is less than the value of
21 the property, or if no bona fide claim is established, the property
22 shall be forfeited to the state and sold under judgment of the
23 court, as provided for in Section 2-508 of this title, except as
24 otherwise provided for in Section 2-503 of this title.

1 K. Property taken or detained under this section shall not be
2 repleviable, but shall be deemed to be in the custody of the office
3 of the district attorney of the county wherein the property was
4 seized, subject only to the orders and decrees of the court or the
5 official having jurisdiction thereof; said official shall maintain a
6 true and accurate inventory and record of all such property seized
7 under the provisions of this section. The provisions of this
8 subsection shall not apply to property taken or detained by the
9 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the
10 Department of Public Safety, the Oklahoma State Bureau of
11 Investigation, the Alcoholic Beverage Laws Enforcement Commission,
12 the Department of Corrections or the Office of the Attorney General.
13 Property taken or detained by the Oklahoma State Bureau of Narcotics
14 and Dangerous Drugs Control, the Department of Public Safety, the
15 Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws
16 Enforcement Commission, the Department of Corrections or the Office
17 of the Attorney General shall be subject to the provisions of
18 subsections E and F of Section 2-503 of this title.

19 L. The proceeds of the sale of any property not taken or
20 detained by the Oklahoma State Bureau of Narcotics and Dangerous
21 Drugs Control, 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

1 Attorney General shall be distributed as follows, in the order
2 indicated:

3 1. To the bona fide or innocent purchaser, conditional sales
4 vendor or mortgagee of the property, if any, up to the amount of his
5 or her interest in the property, when the court declaring the
6 forfeiture orders a distribution to such person;

7 2. To the payment of the actual expenses of preserving the
8 property and legitimate costs related to the civil forfeiture
9 proceedings. For purposes of this paragraph, the term "legitimate
10 costs" shall not include court costs associated with any civil
11 forfeiture proceeding; and

12 3. The balance to a revolving fund in the office of the county
13 treasurer of the county wherein the property was seized, said fund
14 to be used as a revolving fund solely for enforcement of controlled
15 dangerous substances laws, drug abuse prevention and drug abuse
16 education, and maintained by the district attorney in his or her
17 discretion for those purposes with a yearly accounting to the board
18 of county commissioners in whose county the fund is established and
19 to the District Attorneys Council; provided, one hundred percent
20 (100%) of the balance of the proceeds of such sale of property
21 forfeited due to nonpayment of a fine imposed pursuant to the
22 provisions of Section 2-415 of this title shall be apportioned as
23 provided in Section 2-416 of this title. The revolving fund shall
24 be audited by the State Auditor and Inspector at least every two (2)

1 years in the manner provided in Section 171 of Title 19 of the
2 Oklahoma Statutes. Said audit shall include, but not be limited to,
3 a compliance audit. A district attorney may enter into agreements
4 with municipal, tribal, county or state agencies to return to such
5 an agency a percentage of proceeds of the sale of any property
6 seized by the agency and forfeited under the provisions of this
7 section. The District Attorneys Council shall adopt guidelines
8 which ensure that such agencies receive a reasonable percentage of
9 such proceeds, considering the relative contribution of each agency
10 to the drug enforcement and prosecution operations relating to the
11 seizure. In formulating said guidelines, the District Attorneys
12 Council shall examine federal guidelines on asset distribution and
13 use said guidelines as a basis for establishing guidelines for this
14 state. The Attorney General is hereby authorized to mediate
15 disputes between district attorneys and such agencies concerning the
16 application of said guidelines in particular instances. Any agency
17 that receives proceeds from an asset distribution shall maintain a
18 true and accurate record of all such assets.

19 M. Whenever any vehicle, airplane or vessel is forfeited under
20 the Uniform Controlled Dangerous Substances Act, the district court
21 of jurisdiction may order that the vehicle, airplane or vessel
22 seized may be retained by the state, county or city law enforcement
23 agency which seized the vehicle, airplane or vessel for its official
24 use.

1 N. If the court finds that the state failed to satisfy the
2 required showing provided for in subsection G of this section, the
3 court shall order the property released to the owner or owners.

4 O. Except as provided for in subsection Q of this section, a
5 bona fide or innocent owner, lien holder, mortgagee or vendor that
6 recovers property pursuant to this section shall not be liable for
7 storage fees.

8 P. Except as provided for in subsection Q of this section,
9 storage fees shall be paid by the agency which is processing the
10 seizure and forfeiture from funds generated by seizure and
11 forfeiture actions.

12 Q. The bona fide or innocent owner, lien holder, mortgagee or
13 vendor shall reclaim subject seized property within thirty (30) days
14 of written notice from the seizing agency. If such person fails to
15 reclaim the property within the thirty-day time period, then storage
16 fees may be assessed against their secured interest.

17 R. 1. At any hearing held relevant to this section, a report
18 of the findings of the laboratory of the Oklahoma State Bureau of
19 Investigation, the medical examiner's report of investigation or
20 autopsy report, or a laboratory report from a forensic laboratory
21 operated by the State of Oklahoma or any political subdivision
22 thereof, which has been made available to the accused by the office
23 of the district attorney or other party to the forfeiture at least
24 five (5) days prior to the hearing, with reference to all or part of

1 the evidence submitted, when certified as correct by the persons
2 making the report shall be received as evidence of the facts and
3 findings stated, if relevant and otherwise admissible in evidence.
4 If such report is deemed relevant by the forfeiture applicant or the
5 respondent, the court shall admit such report without the testimony
6 of the person making the report, unless the court, pursuant to this
7 subsection, orders such person to appear.

8 2. When any alleged controlled dangerous substance has been
9 submitted to the laboratory of the OSBI for analysis, and such
10 analysis shows that the submitted material is a controlled dangerous
11 substance, the distribution of which constitutes a felony under the
12 laws of this state, no portion of such substance shall be released
13 to any other person or laboratory except to the criminal justice
14 agency originally submitting the substance to the OSBI for analysis,
15 absent an order of a district court. The defendant shall
16 additionally be required to submit to the court a procedure for
17 transfer and analysis of the subject material to ensure the
18 integrity of the sample and to prevent the material from being used
19 in any illegal manner.

20 3. The court, upon motion of either party, shall order the
21 attendance of any person preparing a report submitted as evidence in
22 the hearing when it appears there is a substantial likelihood that
23 material evidence not contained in said report may be produced by
24 the testimony of any person having prepared a report. The hearing

1 shall be held and, if sustained, an order issued not less than five
2 (5) days prior to the time when the testimony shall be required.

3 4. If within five (5) days prior to the hearing or during a
4 hearing, a motion is made pursuant to this section requiring a
5 person having prepared a report to testify, the court may hear a
6 report or other evidence but shall continue the hearing until such
7 time notice of the motion and hearing is given to the person making
8 the report, the motion is heard, and, if sustained, the testimony
9 ordered can be given.

10 S. In any forfeiture proceeding under this chapter in which the
11 defendant or claimant prevails, the court may order the plaintiff
12 processing the seizure and forfeiture to pay from funds generated by
13 seizure and forfeiture actions:

14 1. Reasonable attorney fees and other litigation costs
15 reasonably incurred by the defendant or claimant directly related to
16 the claim on which the defendant or claimant prevailed;

17 2. Postjudgment interest; and

18 3. In cases involving currency or other negotiable instruments:

19 a. interest actually paid to the state from the date of
20 seizure or arrest of the property that resulted from
21 the investment of the property in an interest-bearing
22 account or instrument, and

23 b. an imputed amount of interest that such currency,
24 instruments, or proceeds would have earned at the rate

1 applicable to the thirty-day Treasury Bill, for any
2 period during which no interest was paid, not
3 including any period when the property reasonably was
4 in use as evidence in an official proceeding or in
5 conducting scientific tests for the purpose of
6 collecting evidence, commencing fifteen (15) days
7 after the property was seized by a law enforcement
8 agency or was turned over to a law enforcement agency
9 by a federal law enforcement authority.

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

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12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND CIVIL PROCEDURE,
13 dated 03/22/2016 - DO PASS.
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