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February 23, 2016

**AS AMENDED**

SENATE BILL NO. 1113

By: Holt

[ asset forfeiture - seizure of property - prevailing party - effective date ]

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

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

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

1. Any property described in subsection A of Section 2-503 of this title. Such property shall be held as evidence until a forfeiture has been declared or release ordered, except for property described in paragraphs 1, 2 and 3 of subsection A of Section 2-503 of this title, or in the case of money, coins, and currency, deposited as provided in subsection E of Section 2-503 of this title; provided, any money, coins and currency taken or detained pursuant to this section may be deposited in an interest-bearing account by or at the direction of the district attorney in the office of the county treasurer if the district attorney determines

1 the currency is not to be held as evidence. All interest earned on  
2 such monies shall be returned to the claimant or forfeited with the  
3 money, coins and currency which was taken or detained as provided by  
4 law;

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

7 3. Any property described in subsection C of Section 2-503 of  
8 this title.

9 B. Notice of seizure and intended forfeiture proceeding shall  
10 be filed in the office of the clerk of the district court for the  
11 county wherein such property is seized and shall be given all owners  
12 and parties in interest. Notwithstanding any other provision of  
13 law, no filing fees shall be assessed by the court clerk for the  
14 filing of any forfeiture action.

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

17 1. Upon each owner or party in interest whose right, title or  
18 interest is of record in the Tax Commission, by mailing a copy of  
19 the notice by certified mail to the address as given upon the  
20 records of the Tax Commission;

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

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

5        D. Within forty-five (45) days after the mailing or publication  
6 of the notice, the owner of the property and any other party in  
7 interest or claimant may file a verified answer and claim to the  
8 property described in the notice of seizure and of the intended  
9 forfeiture proceeding.

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

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

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

1       H. The claimant of any right, title, or interest in the  
2 property may prove a lien, mortgage, or conditional sales contract  
3 to be a bona fide or innocent ownership interest and that such  
4 right, title, or interest was created without any knowledge or  
5 reason to believe that the property was being, or was to be, used  
6 for the purpose charged.

7       I. In the event of such proof, the court shall order the  
8 property released to the bona fide or innocent owner, lien holder,  
9 mortgagee or vendor if the amount due him is equal to, or in excess  
10 of, the value of the property as of the date of the seizure, it  
11 being the intention of this section to forfeit only the right, title  
12 or interest of the purchaser.

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

18       K. Property taken or detained under this section shall not be  
19 repleviable, but shall be deemed to be in the custody of the office  
20 of the district attorney of the county wherein the property was  
21 seized, subject only to the orders and decrees of the court or the  
22 official having jurisdiction thereof; said official shall maintain a  
23 true and accurate inventory and record of all such property seized  
24 under the provisions of this section. The provisions of this

1 subsection shall not apply to property taken or detained by the  
2 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the  
3 Department of Public Safety, the Oklahoma State Bureau of  
4 Investigation, the Alcoholic Beverage Laws Enforcement Commission,  
5 the Department of Corrections or the Office of the Attorney General.  
6 Property taken or detained by the Oklahoma State Bureau of Narcotics  
7 and Dangerous Drugs Control, the Department of Public Safety, the  
8 Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws  
9 Enforcement Commission, the Department of Corrections or the Office  
10 of the Attorney General shall be subject to the provisions of  
11 subsections E and F of Section 2-503 of this title.

12 L. The proceeds of the sale of any property not taken or  
13 detained by the Oklahoma State Bureau of Narcotics and Dangerous  
14 Drugs Control, the Department of Public Safety, the Oklahoma State  
15 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement  
16 Commission, the Department of Corrections or the Office of the  
17 Attorney General shall be distributed as follows, in the order  
18 indicated:

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

23 2. To the payment of the actual expenses of preserving the  
24 property and legitimate costs related to the civil forfeiture

1 proceedings. For purposes of this paragraph, the term "legitimate  
2 costs" shall not include court costs associated with any civil  
3 forfeiture proceeding; and

4 3. The balance to a revolving fund in the office of the county  
5 treasurer of the county wherein the property was seized, said fund  
6 to be used as a revolving fund solely for enforcement of controlled  
7 dangerous substances laws, drug abuse prevention and drug abuse  
8 education, and maintained by the district attorney in his or her  
9 discretion for those purposes with a yearly accounting to the board  
10 of county commissioners in whose county the fund is established and  
11 to the District Attorneys Council; provided, one hundred percent  
12 (100%) of the balance of the proceeds of such sale of property  
13 forfeited due to nonpayment of a fine imposed pursuant to the  
14 provisions of Section 2-415 of this title shall be apportioned as  
15 provided in Section 2-416 of this title. The revolving fund shall  
16 be audited by the State Auditor and Inspector at least every two (2)  
17 years in the manner provided in Section 171 of Title 19 of the  
18 Oklahoma Statutes. Said audit shall include, but not be limited to,  
19 a compliance audit. A district attorney may enter into agreements  
20 with municipal, tribal, county or state agencies to return to such  
21 an agency a percentage of proceeds of the sale of any property  
22 seized by the agency and forfeited under the provisions of this  
23 section. The District Attorneys Council shall adopt guidelines  
24 which ensure that such agencies receive a reasonable percentage of

1 such proceeds, considering the relative contribution of each agency  
2 to the drug enforcement and prosecution operations relating to the  
3 seizure. In formulating said guidelines, the District Attorneys  
4 Council shall examine federal guidelines on asset distribution and  
5 use said guidelines as a basis for establishing guidelines for this  
6 state. The Attorney General is hereby authorized to mediate  
7 disputes between district attorneys and such agencies concerning the  
8 application of said guidelines in particular instances. Any agency  
9 that receives proceeds from an asset distribution shall maintain a  
10 true and accurate record of all such assets.

11 M. Whenever any vehicle, airplane or vessel is forfeited under  
12 the Uniform Controlled Dangerous Substances Act, the district court  
13 of jurisdiction may order that the vehicle, airplane or vessel  
14 seized may be retained by the state, county or city law enforcement  
15 agency which seized the vehicle, airplane or vessel for its official  
16 use.

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

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

24

1 P. Except as provided for in subsection Q of this section,  
2 storage fees shall be paid by the agency which is processing the  
3 seizure and forfeiture from funds generated by seizure and  
4 forfeiture actions.

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

10 R. 1. At any hearing held relevant to this section, a report  
11 of the findings of the laboratory of the Oklahoma State Bureau of  
12 Investigation, the medical examiner's report of investigation or  
13 autopsy report, or a laboratory report from a forensic laboratory  
14 operated by the State of Oklahoma or any political subdivision  
15 thereof, which has been made available to the accused by the office  
16 of the district attorney or other party to the forfeiture at least  
17 five (5) days prior to the hearing, with reference to all or part of  
18 the evidence submitted, when certified as correct by the persons  
19 making the report shall be received as evidence of the facts and  
20 findings stated, if relevant and otherwise admissible in evidence.  
21 If such report is deemed relevant by the forfeiture applicant or the  
22 respondent, the court shall admit such report without the testimony  
23 of the person making the report, unless the court, pursuant to this  
24 subsection, orders such person to appear.



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

13        3. The court, upon motion of either party, shall order the  
14 attendance of any person preparing a report submitted as evidence in  
15 the hearing when it appears there is a substantial likelihood that  
16 material evidence not contained in said report may be produced by  
17 the testimony of any person having prepared a report. The hearing  
18 shall be held and, if sustained, an order issued not less than five  
19 (5) days prior to the time when the testimony shall be required.

20        4. If within five (5) days prior to the hearing or during a  
21 hearing, a motion is made pursuant to this section requiring a  
22 person having prepared a report to testify, the court may hear a  
23 report or other evidence but shall continue the hearing until such  
24 time notice of the motion and hearing is given to the person making

1 the report, the motion is heard, and, if sustained, the testimony  
2 ordered can be given.

3 S. In any forfeiture proceeding under this chapter in which the  
4 defendant or claimant substantially prevails, the agency that is  
5 processing the seizure and forfeiture shall pay from funds generated  
6 by seizure and forfeiture actions:

7 1. Reasonable attorney fees and other litigation costs  
8 reasonably incurred by the defendant or claimant;

9 2. Postjudgment interest; and

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

11 a. interest actually paid to the state from the date of  
12 seizure or arrest of the property that resulted from  
13 the investment of the property in an interest-bearing  
14 account or instrument, and

15 b. an imputed amount of interest that such currency,  
16 instruments, or proceeds would have earned at the rate  
17 applicable to the thirty-day Treasury Bill, for any  
18 period during which no interest was paid, not  
19 including any period when the property reasonably was  
20 in use as evidence in an official proceeding or in  
21 conducting scientific tests for the purpose of  
22 collecting evidence, commencing fifteen (15) days  
23 after the property was seized by a law enforcement  
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1                   agency or was turned over to a law enforcement agency  
2                   by a federal law enforcement authority.

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

4   COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
5   February 23, 2016 - DO PASS AS AMENDED  
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