

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE
4 FOR

HOUSE BILL NO. 3752

By: Fetgatter

8 COMMITTEE SUBSTITUTE

9 An Act relating to crimes and punishments; making
10 certain acts unlawful; providing penalties; amending
21 O.S. 2021, Section 1738, which relates to the
11 seizure and forfeiture of property used in crimes;
12 providing for the seizure and forfeiture of real
property under certain circumstances; providing for
codification; and declaring an emergency.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1793 of Title 21, unless there
18 is created a duplication in numbering, reads as follows:

19 A. It shall be unlawful for the owner of real property which
20 has been used for the purpose of growing and harvesting marijuana
21 crops to willfully desert or abandon the real property without first
22 restoring the land to its previous condition.

23 B. Any person who violates the provisions of this section
24 shall, upon conviction, be guilty of a misdemeanor punishable by

1 imprisonment in the county jail for a term of one (1) year, by a
2 fine of One Hundred Thousand Dollars (\$100,000.00), or by both fine
3 and imprisonment. In addition to or in lieu of a fine, the court
4 may order the person to reimburse the county for the cost to
5 remediate any damage to the land caused by the property owner.

6 SECTION 2. AMENDATORY 21 O.S. 2021, Section 1738, is
7 amended to read as follows:

8 Section 1738. A. 1. Any commissioned peace officer of this
9 state is authorized to seize any equipment, vehicle, airplane,
10 vessel or any other conveyance that is used in the commission of any
11 armed robbery offense defined in Section 801 of this title, used to
12 facilitate the intentional discharge of any kind of firearm in
13 violation of Section 652 of this title, used in violation of the
14 Trademark Anti-Counterfeiting Act, used in the attempt or commission
15 of any act of burglary in the first or second degree, motor vehicle
16 theft, unauthorized use of a vehicle, obliteration of distinguishing
17 numbers on vehicles or criminal possession of vehicles with altered,
18 removed or obliterated numbers as defined by Sections 1431, 1435,
19 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of
20 Title 47 of the Oklahoma Statutes, used in the commission of any
21 arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of
22 this title, used in any manner to facilitate or participate in the
23 commission of any human trafficking offense in violation of Section
24 748 of this title, or used by any defendant when such vehicle or

1 other conveyance is used in any manner by a prostitute, pimp or
2 panderer to facilitate or participate in the commission of any
3 prostitution offense in violation of ~~Sections~~ Section 1028, 1029 or
4 1030 of this title; provided, however, that the vehicle or
5 conveyance of a customer or anyone merely procuring the services of
6 a prostitute shall not be included.

7 2. No conveyance used by a person as a common carrier in the
8 transaction of business as a common carrier shall be forfeited under
9 the provisions of this section unless it shall appear that the owner
10 or other person in charge of such conveyance was a consenting party
11 or privy to the unlawful use of the conveyance in violation of this
12 section.

13 3. No conveyance shall be forfeited under the provisions of
14 this section by reason of any act or omission established by the
15 owner thereof to have been committed or omitted without the
16 knowledge or consent of such owner, and if the act is committed by
17 any person other than such owner, the owner shall establish further
18 that the conveyance was unlawfully in the possession of a person
19 other than the owner in violation of the criminal laws of the United
20 States or of any state.

21 B. In addition to the property described in subsection A of
22 this section, the following property is also subject to forfeiture
23 pursuant to this section:
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- 1 1. Property used in the commission of theft of livestock or in
2 any manner to facilitate the theft of livestock;
- 3 2. The proceeds gained from the commission of theft of
4 livestock;
- 5 3. Personal property acquired with proceeds gained from the
6 commission of theft of livestock;
- 7 4. All conveyances, including aircraft, vehicles or vessels,
8 and horses or dogs which are used to transport or in any manner to
9 facilitate the transportation for the purpose of the commission of
10 theft of livestock;
- 11 5. Any items having a counterfeit mark and all property that is
12 owned by or registered to the defendant that is employed or used in
13 connection with any violation of the Trademark Anti-Counterfeiting
14 Act;
- 15 6. Any weapon possessed, used or available for use in any
16 manner during the commission of a felony within the State of
17 Oklahoma, or any firearm that is possessed by a convicted felon;
- 18 7. Any police scanner used in violation of Section 1214 of this
19 title;
- 20 8. Any computer and its components and peripherals, including
21 but not limited to the central processing unit, monitor, keyboard,
22 printers, scanners, software, and hardware, when it is used in the
23 commission of any crime in this state;

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1 9. All property used in the commission of, or in any manner to
2 facilitate, a violation of Section 1040.12a of this title;

3 10. All conveyances, including aircraft, vehicles or vessels,
4 monies, coins and currency, or other instrumentality used or
5 intended to be used, in any manner or part, to commit a violation of
6 paragraph 1 of subsection A of Section 1021 of this title, where the
7 victim of the crime is a minor child, subsection B of Section 1021
8 of this title, Section 1021.2 of this title, paragraph 1 of
9 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of
10 subsection A of Section 1123 of this title;

11 11. All conveyances, including aircraft, vehicles or vessels,
12 monies, coins and currency, or other instrumentality used in any
13 manner or part, to commit any violation of the provisions set forth
14 in Section 748 of this title;

15 12. Any and all property used in any manner or part to
16 facilitate, participate or further the commission of a human
17 trafficking offense in violation of Section 748 of this title, and
18 all property, including monies, real estate, or any other tangible
19 assets or property of or derived from or used by a prostitute, pimp
20 or panderer in any manner or part to facilitate, participate or
21 further the commission of any prostitution offense in violation of
22 ~~Sections~~ Section 1028, 1029 or 1030 of this title; provided,
23 however, any monies, real estate or any other tangible asset or
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1 property of a customer or anyone merely procuring the services of a
2 prostitute shall not be included; ~~and~~

3 13. Any vehicle, airplane, vessel, or parts of a vehicle whose
4 numbers have been removed, altered or obliterated so as to prevent
5 determination of the true identity or ownership of said property and
6 parts of vehicles which probable cause indicates are stolen but
7 whose true ownership cannot be determined; and

8 14. Any real property used in any manner or part to commit any
9 violation of the provisions set forth in Section 1 of this act.

10 C. Property described in subsection A or B of this section may
11 be held as evidence until a forfeiture has been declared or a
12 release ordered. Forfeiture actions under this section may be
13 brought by the district attorney in the proper county of venue as
14 petitioner; provided, in the event the district attorney elects not
15 to file such action, or fails to file such action within ninety (90)
16 days of the date of the seizure of such equipment, the property
17 shall be returned to the owner.

18 D. Notice of seizure and intended forfeiture proceeding shall
19 be filed in the office of the clerk of the district court for the
20 county wherein such property is seized and shall be given all owners
21 and parties in interest.

22 E. Notice shall be given according to one of the following
23 methods:
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1 1. Upon each owner or party in interest whose right, title, or
2 interest is of record in the Oklahoma Tax Commission or with the
3 county clerk for filings under the Uniform Commercial Code, served
4 in the manner of service of process in civil cases prescribed by
5 Section 2004 of Title 12 of the Oklahoma Statutes;

6 2. Upon each owner or party in interest whose name and address
7 is known, served in the manner of service of process in civil cases
8 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

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

13 F. Within sixty (60) days after the mailing or publication of
14 the notice, the owner of the property and any other party in
15 interest or claimant may file a verified answer and claim to the
16 property described in the notice of seizure and of the intended
17 forfeiture proceeding.

18 G. If at the end of sixty (60) days after the notice has been
19 mailed or published there is no verified answer on file, the court
20 shall hear evidence upon the fact of the unlawful use and may order
21 the property forfeited to the state, if such fact is proven.

22 H. If a verified answer is filed, the forfeiture proceeding
23 shall be set for hearing.

1 I. At the hearing the petitioner shall prove by clear and
2 convincing evidence that property was used in the attempt or
3 commission of an act specified in subsection A of this section or is
4 property described in subsection B of this section with knowledge by
5 the owner of the property.

6 J. The claimant of any right, title, or interest in the
7 property may prove the lien, mortgage, or conditional sales contract
8 to be bona fide and that the right, title, or interest created by
9 the document was created without any knowledge or reason to believe
10 that the property was being, or was to be, used for the purpose
11 charged.

12 K. In the event of such proof, the court may order the property
13 released to the bona fide or innocent owner, lien holder, mortgagee,
14 or vendor if the amount due such person is equal to, or in excess
15 of, the value of the property as of the date of the seizure, it
16 being the intention of this section to forfeit only the right,
17 title, or interest of the purchaser, except for items bearing a
18 counterfeit mark or used exclusively to manufacture a counterfeit
19 mark.

20 L. 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 may be forfeited to the state and may be sold pursuant to judgment
23 of the court, as on sale upon execution, and as provided in Section
24 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise

1 provided for by law and for property bearing a counterfeit mark
2 which shall be destroyed.

3 M. Property taken or detained pursuant to this section shall
4 not be repleviable, but shall be deemed to be in the custody of the
5 petitioner or in the custody of the law enforcement agency as
6 provided in the Trademark Anti-Counterfeiting Act. Except for
7 property required to be destroyed pursuant to the Trademark Anti-
8 Counterfeiting Act, the petitioner shall release said property to
9 the owner of the property if it is determined that the owner had no
10 knowledge of the illegal use of the property or if there is
11 insufficient evidence to sustain the burden of showing illegal use
12 of such property. If the owner of the property stipulates to the
13 forfeiture and waives the hearing, the petitioner may determine if
14 the value of the property is equal to or less than the outstanding
15 lien. If such lien exceeds the value of the property, the property
16 may be released to the lien holder. Property which has not been
17 released by the petitioner shall be subject to the orders and
18 decrees of the court or the official having jurisdiction thereof.

19 N. The petitioner, or the law enforcement agency holding
20 property pursuant to the Trademark Anti-Counterfeiting Act, shall
21 not be held civilly liable for having custody of the seized property
22 or proceeding with a forfeiture action as provided for in this
23 section.

1 O. Attorney fees shall not be assessed against the state or the
2 petitioner for any actions or proceeding pursuant to Section 1701 et
3 seq. of this title.

4 P. The proceeds of the sale of any property shall be
5 distributed as follows, in the order indicated:

6 1. To the bona fide or innocent purchaser, conditional sales
7 vendor, or mortgagee of the property, if any, up to the amount of
8 such person's interest in the property, when the court declaring the
9 forfeiture orders a distribution to such person;

10 2. To the payment of the actual reasonable expenses of
11 preserving the property;

12 3. To the victim of the crime to compensate said victim for any
13 loss incurred as a result of the act for which such property was
14 forfeited; and

15 4. The balance to a revolving fund in the office of the county
16 treasurer of the county wherein the property was seized, to be
17 distributed as follows: one-third (1/3) to the investigating law
18 enforcement agency; one-third (1/3) of said fund to be used and
19 maintained as a revolving fund by the district attorney to be used
20 to defray any lawful expenses of the office of the district
21 attorney; and one-third (1/3) to go to the jail maintenance fund,
22 with a yearly accounting to the board of county commissioners in
23 whose county the fund is established. If the petitioner is not the
24 district attorney, then the one-third (1/3) which would have been

1 designated to that office shall be distributed to the petitioner.
2 Monies distributed to the jail maintenance fund shall be used to pay
3 costs for the storage of such property if such property is ordered
4 released to a bona fide or innocent owner, lien holder, mortgagee,
5 or vendor and if such funds are available in said fund.

6 Q. If the court finds that the property was not used in the
7 attempt or commission of an act specified in subsection A of this
8 section and was not property subject to forfeiture pursuant to
9 subsection B of this section and is not property bearing a
10 counterfeit mark, the court shall order the property released to the
11 owner as the right, title, or interest appears on record in the Tax
12 Commission as of the seizure.

13 R. No vehicle, airplane, or vessel used by a person as a common
14 carrier in the transaction of business as a common carrier shall be
15 forfeited pursuant to the provisions of this section unless it shall
16 be proven that the owner or other person in charge of such
17 conveyance was a consenting party or privy to the attempt or
18 commission of an act specified in subsection A or B of this section.
19 No property shall be forfeited pursuant to the provisions of this
20 section by reason of any act or omission established by the owner
21 thereof to have been committed or omitted without the knowledge or
22 consent of such owner, and by any person other than such owner while
23 such property was unlawfully in the possession of a person other
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1 than the owner in violation of the criminal laws of the United
2 States or of any state.

3 S. Whenever any property is forfeited pursuant to this section,
4 the district court having jurisdiction of the proceeding may order
5 that the forfeited property may be retained for its official use by
6 the state, county, or municipal law enforcement agency which seized
7 the property.

8 SECTION 3. It being immediately necessary for the preservation
9 of the public peace, health or safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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