

1 **CORRECTED**

2
3 STATE OF OKLAHOMA

4 2nd Session of the 57th Legislature (2020)

5 COMMITTEE SUBSTITUTE

6 FOR

HOUSE BILL NO. 4136

By: Roberts (Sean)

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9 COMMITTEE SUBSTITUTE

10 An Act relating to asset forfeiture; amending 21 O.S.
11 2011, Section 1738, which relates to seizure and
12 forfeiture of property; authorizing seizure and
13 forfeiture of property under certain circumstances;
14 providing procedures for claiming ownership of seized
15 vehicle; directing owner of seized vehicle to sign
16 certain statement; requiring statement to be filed
17 and forwarded to Department of Public Safety;
18 directing the Department to refer name to federal
19 agency under certain circumstances; authorizing the
20 filing of civil lawsuits for damages; providing
21 exemption for car rental companies; prohibiting
22 seizure of vehicles belonging to car rental
23 companies; requiring certain notification to car
24 rental companies; directing the Department to create
filing system for signed statements; authorizing
query of records by certain attorneys; making
statements public information once released;
providing construing provision; and providing an
effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1738, is
amended to read as follows:

1 Section 1738. A. 1. Any commissioned peace officer of this
2 state is authorized to seize any equipment, vehicle, airplane,
3 vessel or any other conveyance that is used in the commission of any
4 armed robbery offense defined in Section 801 of this title, used to
5 facilitate the intentional discharge of any kind of firearm in
6 violation of Section 652 of this title, used in violation of the
7 Trademark Anti-Counterfeiting Act, used in the attempt or commission
8 of any act of burglary in the first or second degree, motor vehicle
9 theft, unauthorized use of a vehicle, obliteration of distinguishing
10 numbers on vehicles or criminal possession of vehicles with altered,
11 removed or obliterated numbers as defined by Sections 1431, 1435,
12 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of
13 Title 47 of the Oklahoma Statutes, used in the commission of any
14 arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of
15 this title, used in any manner to facilitate or participate in the
16 commission of any human trafficking offense in violation of Section
17 748 of this title, or used by any defendant when such vehicle or
18 other conveyance is used in any manner by a prostitute, pimp or
19 panderer to facilitate or participate in the commission of any
20 prostitution offense in violation of Sections 1028, 1029 or 1030 of
21 this title; provided, however, that the vehicle or conveyance of a
22 customer or anyone merely procuring the services of a prostitute
23 shall not be included.

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1 2. No conveyance used by a person as a common carrier in the
2 transaction of business as a common carrier shall be forfeited under
3 the provisions of this section unless it shall appear that the owner
4 or other person in charge of such conveyance was a consenting party
5 or privy to the unlawful use of the conveyance in violation of this
6 section.

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

15 B. In addition to the property described in subsection A of
16 this section, the following property is also subject to forfeiture
17 pursuant to this section:

18 1. Property used in the commission of theft of livestock or in
19 any manner to facilitate the theft of livestock;

20 2. The proceeds gained from the commission of theft of
21 livestock;

22 3. Personal property acquired with proceeds gained from the
23 commission of theft of livestock;

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1 4. All conveyances, including aircraft, vehicles or vessels,
2 and horses or dogs which are used to transport or in any manner to
3 facilitate the transportation for the purpose of the commission of
4 theft of livestock;

5 5. Any items having a counterfeit mark and all property that is
6 owned by or registered to the defendant that is employed or used in
7 connection with any violation of the Trademark Anti-Counterfeiting
8 Act;

9 6. Any weapon possessed, used or available for use in any
10 manner during the commission of a felony within the State of
11 Oklahoma, or any firearm that is possessed by a convicted felon;

12 7. Any police scanner used in violation of Section 1214 of this
13 title;

14 8. Any computer and its components and peripherals, including
15 but not limited to the central processing unit, monitor, keyboard,
16 printers, scanners, software, and hardware, when it is used in the
17 commission of any crime in this state;

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

20 10. All conveyances, including aircraft, vehicles or vessels,
21 monies, coins and currency, or other instrumentality used or
22 intended to be used, in any manner or part, to commit a violation of
23 paragraph 1 of subsection A of Section 1021 of this title, where the
24 victim of the crime is a minor child, subsection B of Section 1021

1 of this title, Section 1021.2 of this title, paragraph 1 of
2 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of
3 subsection A of Section 1123 of this title;

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

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

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

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1 14. a. Any vehicle operated on the streets and highways of
2 this state by a person who is unlawfully present in
3 the United States and who previously has been
4 convicted of a misdemeanor or felony offense in this
5 state or another state, which offense creates
6 reasonable concern that operation of a motor vehicle
7 by said individual creates a public safety risk by
8 reason of the mere operation of the vehicle or what
9 the person can accomplish utilizing the vehicle.
10 These offenses shall include, but are not limited to,
11 driving under the influence of alcohol or other
12 intoxicating substance, driving while impaired, child
13 endangerment, breaking and entering, robbery, sexual
14 assault, kidnapping and human trafficking. If any
15 political subdivision of the State of Oklahoma
16 purposefully fails to implement the provisions of this
17 paragraph due to a written or unwritten policy ordered
18 by one or more elected officials of that political
19 subdivision, and as a proximate result harm comes to
20 any person lawfully present in the United States, the
21 elected officials of that political subdivision shall
22 be personally liable to the person or persons so
23 injured.

1 b. When the person operating the seized vehicle is not
2 the lawful owner of the vehicle and the lawful owner
3 comes forward to claim possession of the vehicle, as a
4 condition for release of the vehicle, the owner of the
5 vehicle shall be required to sign a statement
6 acknowledging that the owner is now aware of the
7 illegal status and criminal history of the person and
8 that if the owner loans the vehicle or any other
9 vehicle to the person again:

10 (1) the owner shall be referred to the federal
11 government for possible charges of aiding and
12 abetting unlawful immigration, and

13 (2) the owner shall be liable to any victims of crime
14 resulting from the use of the vehicle by the
15 person.

16 Once the statement has been signed, the statement
17 shall be duly filed by the local jurisdiction and
18 immediately forwarded to the Department of Public
19 Safety. If the person in illegal immigration status
20 is found to be operating the vehicle again, the
21 Department of Public Safety shall immediately refer
22 the name of the person to the appropriate federal
23 agency for a possible charge of aiding and abetting
24 illegal immigration. After the statement has been

1 signed, for any person who is a victim of any crime
2 that is the proximate result of the use of the
3 vehicle, such as the offender used the vehicle to
4 transport himself to the location where he committed
5 the crime, then that victim shall be authorized to
6 file a civil lawsuit against the owner of the vehicle
7 for all damages resulting from the crime. The signed
8 statement shall be evidence that creates a presumption
9 of negligence on the part of the owner of the vehicle
10 in allowing the offender access to the vehicle.

11 c. Except for car rental companies, the provisions of
12 subparagraph b of this paragraph applies to businesses
13 that loan vehicles to persons who are unlawfully
14 present in the United States or that employs persons
15 who are unlawfully present in the United States and
16 allows the person to use the vehicle in the course of
17 employment.

18 d. Vehicles belonging to car rental companies shall not
19 be seized. The car rental company shall be notified
20 of the status of the person within two (2) business
21 days, not counting weekends and holidays. The normal
22 rules of negligence shall not be suspended.

23 e. The Department of Public Safety shall create a filing
24 system of the signed statements created by virtue of

1 subparagraph b of this paragraph and those records
2 shall be subject to query by any duly licensed
3 attorney representing a crime victim. Once the signed
4 statements are released, the statements shall become
5 public information.

6 f. Nothing in this paragraph shall be construed or
7 implemented so as to contravene or hinder any existing
8 local law enforcement arrangements with federal
9 immigration authorities including, but not limited to,
10 Section 287(g) programs. If a conflict exists, the
11 provisions of this paragraph shall not apply.

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

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

1 E. Notice shall be given according to one of the following
2 methods:

3 1. Upon each owner or party in interest whose right, title, or
4 interest is of record in the Oklahoma Tax Commission or with the
5 county clerk for filings under the Uniform Commercial Code, served
6 in the manner of service of process in civil cases prescribed by
7 Section 2004 of Title 12 of the Oklahoma Statutes;

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

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

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

20 G. If at the end of sixty (60) days after the notice has been
21 mailed or published there is no verified answer on file, the court
22 shall hear evidence upon the fact of the unlawful use and may order
23 the property forfeited to the state, if such fact is proven.
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1 H. If a verified answer is filed, the forfeiture proceeding
2 shall be set for hearing.

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

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

14 K. In the event of such proof, the court may order the property
15 released to the bona fide or innocent owner, lien holder, mortgagee,
16 or vendor if the amount due such person 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,
19 title, or interest of the purchaser, except for items bearing a
20 counterfeit mark or used exclusively to manufacture a counterfeit
21 mark.

22 L. If the amount due to such person is less than the value of
23 the property, or if no bona fide claim is established, the property
24 may be forfeited to the state and may be sold pursuant to judgment

1 of the court, as on sale upon execution, and as provided in Section
2 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
3 provided for by law and for property bearing a counterfeit mark
4 which shall be destroyed.

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

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

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

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

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

12 2. To the payment of the actual reasonable expenses of
13 preserving the property;

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

17 4. The balance to a revolving fund in the office of the county
18 treasurer of the county wherein the property was seized, to be
19 distributed as follows: one-third (1/3) to the investigating law
20 enforcement agency; one-third (1/3) of said fund to be used and
21 maintained as a revolving fund by the district attorney to be used
22 to defray any lawful expenses of the office of the district
23 attorney; and one-third (1/3) to go to the jail maintenance fund,
24 with a yearly accounting to the board of county commissioners in

1 whose county the fund is established. If the petitioner is not the
2 district attorney, then the one-third (1/3) which would have been
3 designated to that office shall be distributed to the petitioner.
4 Monies distributed to the jail maintenance fund shall be used to pay
5 costs for the storage of such property if such property is ordered
6 released to a bona fide or innocent owner, lien holder, mortgagee,
7 or vendor and if such funds are available in said fund.

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

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

1 such property was unlawfully in the possession of a person other
2 than the owner in violation of the criminal laws of the United
3 States or of any state.

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

9 SECTION 2. This act shall become effective November 1, 2020.

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