

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 1328

By: Schreiber

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2021, Section 1738, which relates to the
9 seizure and forfeiture of property; providing for the
10 seizure and forfeiture of equipment or
11 instrumentalities used in the commission of certain
12 criminal offenses; and providing an effective date.

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

14 SECTION 1. AMENDATORY 21 O.S. 2021, Section 1738, is
15 amended to read as follows:

16 Section 1738. A. 1. Any commissioned peace officer of this
17 state is authorized to seize any equipment, vehicle, airplane,
18 vessel or any other conveyance that is used in the commission of any
19 armed robbery offense defined in Section 801 of this title, used to
20 facilitate the intentional discharge of any kind of firearm in
21 violation of Section 652 of this title, used in violation of the
22 Trademark Anti-Counterfeiting Act, used in the attempt or commission
23 of any act of burglary in the first or second degree, motor vehicle
24 theft, unauthorized use of a vehicle, obliteration of distinguishing

1 numbers on vehicles or criminal possession of vehicles with altered,
2 removed or obliterated numbers as defined by Sections 1431, 1435,
3 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of
4 Title 47 of the Oklahoma Statutes, used in the commission of any
5 arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of
6 this title, used in any manner to facilitate or participate in the
7 commission of any human trafficking offense in violation of Section
8 748 of this title, or used by any defendant when such vehicle or
9 other conveyance is used in any manner by a prostitute, pimp or
10 panderer to facilitate or participate in the commission of any
11 prostitution offense in violation of Sections 1028, 1029 or 1030 of
12 this title; provided, however, that the vehicle or conveyance of a
13 customer or anyone merely procuring the services of a prostitute
14 shall not be included.

15 2. No conveyance used by a person as a common carrier in the
16 transaction of business as a common carrier shall be forfeited under
17 the provisions of this section unless it shall appear that the owner
18 or other person in charge of such conveyance was a consenting party
19 or privy to the unlawful use of the conveyance in violation of this
20 section.

21 3. No conveyance shall be forfeited under the provisions of
22 this section by reason of any act or omission established by the
23 owner thereof to have been committed or omitted without the
24 knowledge or consent of such owner, and if the act is committed by

1 any person other than such owner, the owner shall establish further
2 that the conveyance was unlawfully in the possession of a person
3 other than the owner in violation of the criminal laws of the United
4 States or of any state.

5 B. In addition to the property described in subsection A of
6 this section, the following property is also subject to forfeiture
7 pursuant to this section:

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

10 2. The proceeds gained from the commission of theft of
11 livestock;

12 3. Personal property acquired with proceeds gained from the
13 commission of theft of livestock;

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

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

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

1 7. Any police scanner used in violation of Section 1214 of this
2 title;

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

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

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

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

21 12. Any and all property used in any manner or part to
22 facilitate, participate or further the commission of a human
23 trafficking offense in violation of Section 748 of this title, and
24 all property, including monies, real estate, or any other tangible

1 assets or property of or derived from or used by a prostitute, pimp
2 or panderer in any manner or part to facilitate, participate or
3 further the commission of any prostitution offense in violation of
4 Sections 1028, 1029 or 1030 of this title; provided, however, any
5 monies, real estate or any other tangible asset or property of a
6 customer or anyone merely procuring the services of a prostitute
7 shall not be included; ~~and~~

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

13 14. Any and all equipment or instrumentality used or intended
14 to be used in any manner or part to commit any act of catalytic
15 converter theft in violation of subsection B of Section 1435 of this
16 title and any monies, coins, currency, or financial instruments
17 used, intended for use, derived from or traceable as proceeds from a
18 violation of subsection B of Section 1435 of this title;

19 15. Any and all equipment or instrumentality used or intended
20 to be used in any manner or part to commit any act of copper theft
21 in violation of Section 1727 of this title, and any monies, coins,
22 currency, or financial instruments used, intended for use, derived
23 from or traceable as proceeds from a violation of Section 1727 of
24 this title; and

1 16. Any and all equipment or instrumentality used or intended
2 to be used in any manner or part to commit any violation of the
3 Oklahoma Scrap Metal Dealers Act, and any monies, coins, currency,
4 or financial instruments used, intended for use, or derived from or
5 traceable as proceeds from a violation of the Oklahoma Scrap Metal
6 Dealers Act.

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

15 D. 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.

19 E. Notice shall be given according to one of the following
20 methods:

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

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

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

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

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

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

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

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

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

17 L. If the amount due to such person is less than the value of
18 the property, or if no bona fide claim is established, the property
19 may be forfeited to the state and may be sold pursuant to judgment
20 of the court, as on sale upon execution, and as provided in Section
21 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
22 provided for by law and for property bearing a counterfeit mark
23 which shall be destroyed.

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

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

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

1 P. The proceeds of the sale of any property shall be
2 distributed as follows, in the order 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
5 such person's 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 reasonable expenses of
8 preserving the property;

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

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

1 released to a bona fide or innocent owner, lien holder, mortgagee,
2 or vendor and if such funds are available in said fund.

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

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

23 S. Whenever any property is forfeited pursuant to this section,
24 the district court having jurisdiction of the proceeding may order

1 that the forfeited property may be retained for its official use by
2 the state, county, or municipal law enforcement agency which seized
3 the property.

4 SECTION 2. This act shall become effective November 1, 2023.

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