

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1382

By: Fisher

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7 COMMITTEE SUBSTITUTE

8 An Act relating to the Oklahoma Antiterrorism Act;  
9 making certain property subject to forfeiture;  
10 providing notice requirements; providing procedure  
11 for forfeiture; providing limitations on forfeiture;  
12 providing that property is not subject to replevin;  
13 providing for allocation of proceeds; establishing a  
14 revolving fund; providing purpose and source of  
15 revenue for revolving fund; providing for private  
16 action for damages; providing amount of recovery;  
17 providing statute of limitations; providing for  
18 incorporation of act into the Oklahoma Antiterrorism  
19 Act; providing for codification; providing for  
20 noncodification; and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 1268.9 of Title 21, unless there  
24 is created a duplication in numbering, reads as follows:

A. All property, including but not limited to money, used in  
the course of, intended for use in the course of, derived from,  
traceable to or realized through conduct in violation of the

1 Oklahoma Antiterrorism Act is subject to civil forfeiture to the  
2 state.

3 B. A person, other than the offender, who is injured as a  
4 result of a criminal offense under the Oklahoma Antiterrorism Act  
5 and a law enforcement agency or other governmental agency that  
6 participated in the investigation, mitigation, seizure, or  
7 forfeiture process for a criminal offense under the Oklahoma  
8 Antiterrorism Act may file a claim for costs or damages, and the  
9 property described in subsection A of this section shall be used to  
10 satisfy any costs or damages awarded for the claim.

11 C. Notice of seizure and intended forfeiture proceeding shall  
12 be filed in the office of the clerk of the district court for the  
13 county wherein such property is seized and shall be given all owners  
14 and parties in interest. No filing fees shall be assessed by the  
15 court clerk for the filing of any forfeiture action pursuant to this  
16 section.

17 D. Notice shall be given by the agency seeking forfeiture  
18 according to one of the following methods:

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

23 2. Upon each owner or party in interest whose name and address  
24 are known to the attorney in the office of the prosecuting agency,

1 by mailing a copy of the notice by registered mail to the last-known  
2 address; or

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

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

12 F. If at the end of forty-five (45) days after the notice has  
13 been mailed or published there is no verified answer on file, the  
14 court shall hear evidence upon the fact of the unlawful use and  
15 shall order the property forfeited to the state, if such fact is  
16 proved.

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

19 H. At the hearing, the prosecuting agency shall prove by a  
20 preponderance of the evidence that the property was used in the  
21 attempt or commission of an act specified in subsection A of this  
22 section with knowledge by the owner of the item.

23 I. The claimant of any right, title, or interest in the  
24 property may prove a lien, mortgage or conditional sales contract to

1 be a bona fide or innocent ownership interest and that such right,  
2 title, or interest was created without any knowledge or reason to  
3 believe that the property was being, or was to be, used for the  
4 purpose charged.

5 1. In the event of such proof, the court shall order the  
6 property released to the bona fide or innocent owner, lienholder,  
7 mortgagee or vendor if the amount due to such person is equal to or  
8 in excess of the value of the property on the date of the seizure;  
9 it being the intention of this section to forfeit only the right,  
10 title or interest of the purchaser.

11 2. If the amount due to such person is less than the value of  
12 the property, or if no bona fide claim is established, the property  
13 shall be forfeited to the state and sold under judgment of the  
14 court.

15 J. Property taken or detained under this section shall not be  
16 repleviable, but shall be deemed to be in the custody of the law  
17 enforcement agency conducting the seizure, subject only to the  
18 orders and decrees of the court or the official having jurisdiction  
19 thereof. Said official shall maintain a true and accurate inventory  
20 and record of all such property seized under the provisions of this  
21 section.

22 K. The allocation of proceeds from a forfeiture and disposition  
23 under this section shall be paid in the following order:  
24

1        1. To a claimant having an interest pursuant to subsection B of  
2 this section;

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

7        3. To the payment of the actual reasonable expenses of  
8 preserving the item; and

9        4. The balance to a revolving fund in the office of the county  
10 treasurer of the county wherein the property was seized, if the case  
11 is filed by the district attorney, or to the revolving fund  
12 established by subsection M of this section if the case is filed by  
13 the Attorney General, to be distributed as follows: one-half (1/2)  
14 to the investigating law enforcement agency and one-half (1/2) to  
15 the prosecuting agency.

16        L. The limitations period for a claim brought under this  
17 section is five (5) years from the date of the discovery of the  
18 violation of the Oklahoma Antiterrorism Act.

19        M. There is hereby created in the State Treasury a revolving  
20 fund for the Office of Attorney General to be designated the  
21 "Antiterrorism Forfeiture Fund". The fund shall be a continuing  
22 fund, not subject to fiscal year limitations, and shall consist of  
23 all monies received by the Office of Attorney General pursuant to  
24 subsection K of this section. All monies accruing to the credit of

1 said fund are hereby appropriated and may be budgeted and expended  
2 by the Office of Attorney General as provided in subsection K of  
3 this section. Expenditures from said fund shall be made upon  
4 warrants issued by the State Treasurer against claims filed as  
5 prescribed by law with the Director of the Office of Management and  
6 Enterprise Services for approval and payment.

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1268.10 of Title 21, unless  
9 there is created a duplication in numbering, reads as follows:

10 A. A person, other than the offender, who is injured as a  
11 result of a criminal offense under the Oklahoma Antiterrorism Act  
12 may file an action for damages against the person who violated the  
13 Oklahoma Antiterrorism Act.

14 B. A person who files an action under this section is entitled  
15 to recover three times the actual damages sustained or Ten Thousand  
16 Dollars (\$10,000.00), whichever is greater, as well as attorney fees  
17 in the trial and appellate courts if the person prevails in the  
18 claim.

19 C. The limitations period for an action under this section is  
20 five (5) years from the date of discovery of the violation of the  
21 Oklahoma Antiterrorism Act.

22 D. A person who receives a judgment under this section may seek  
23 satisfaction of the judgment under Section 1 of this act.

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1 SECTION 3. NEW LAW A new section of law not to be  
2 codified in the Oklahoma Statutes reads as follows:

3 Sections 1 and 2 of this act are hereby incorporated into and  
4 deemed to be included in the Oklahoma Antiterrorism Act.

5 SECTION 4. This act shall become effective November 1, 2015.

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7 55-1-6947 GRS 02/19/15

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