

1 STATE OF OKLAHOMA

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

3 SENATE BILL 621

By: Dahm

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5
6 AS INTRODUCED

7 An Act relating to asset forfeiture; creating the
8 Asset Forfeiture Process and Private Property
9 Protection Act; providing short title; defining
10 terms; stating legislative intent; providing for
11 exclusivity of provisions; requiring forfeiture of
12 certain assets; requiring conviction for certain
13 forfeiture; specifying evidentiary standard;
14 prohibiting certain asset forfeiture; directing
15 resolution of certain ambiguity; requiring court-
16 appointed counsel under certain circumstances;
17 authorizing forfeiture procedures; specifying
18 property subject to forfeiture; providing for
19 substitution of assets; prohibiting additional
20 remedies; prohibiting certain liability; providing
21 for proportional forfeiture; establishing procedures
22 for designation of certain property; authorizing
23 certain seizure; requiring certain receipt;
24 authorizing certain motion; establishing procedures
for certain title; requiring securing of certain
property; requiring maintenance of certain records;
authorizing certain bond; providing exception;
authorizing certain petition; authorizing certain
hearing; directing discovery; authorizing jury trial;
establishing procedures for certain trial;
establishing procedures for certain determination;
exempting certain security interest from forfeiture;
prohibiting certain intervention; requiring notice to
certain persons; establishing procedures for certain
parties; prohibiting forfeiture of property of
certain owners; requiring certain order; prohibiting
retaining of certain property; directing disposition
of certain proceeds; establishing certain reporting
requirements; providing for disposition of certain
property; requiring return of certain property;
specifying responsibility for certain damage and

1 costs; establishing certain penalty; granting certain
2 standing; directing interaction with certain
3 governmental units; specifying liability for certain
4 costs and fees; repealing 21 O.S. 2011, Section 1738,
5 which relates to seizure and forfeiture proceedings;
6 repealing Section 7, Chapter 235, O.S.L. 2012 (36
7 O.S. Supp. 2014, Section 365), which relates to
8 forfeiture; repealing 47 O.S. 2011, Section 1505,
9 which relates to property subject to forfeiture;
10 repealing 63 O.S. 2011, Section 4255, which relates
11 to forfeiture of property; providing for
12 codification; and providing an effective date.

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

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1201 of Title 60, unless there
16 is created a duplication in numbering, reads as follows:

17 This act shall be known and may be cited as the "Asset
18 Forfeiture Process and Private Property Protection Act".

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1202 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 As used in this Act:

23 1. "Contraband" means goods that are unlawful to import, export
24 or possess;

25 2. "Conveyance" means a device used for transportation and
26 includes a motor vehicle, trailer, snowmobile, airplane, and vessel
27 and any equipment attached to it. The term does not include
28 property that is stolen or taken in violation of the law;

1 3. "Instrumentality" means property otherwise lawful to possess
2 that is used in an offense. An "instrumentality" includes a tool, a
3 firearm, a conveyance, a computer, computer software, a
4 telecommunications device, money, and other means of exchange; and

5 4. "Law subject to forfeiture" means a state law that carries a
6 felony penalty and that explicitly includes forfeiture as a
7 punishment or sanction for the offense.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1203 of Title 60, unless there
10 is created a duplication in numbering, reads as follows:

11 This act intends to:

- 12 1. Deter criminal activity by reducing its economic
13 incentives;
- 14 2. Increase the pecuniary loss from criminal activity; and
- 15 3. Protect against the wrongful forfeiture of property.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1204 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 This act sets out the exclusive process governing forfeitures in
20 the state of Oklahoma and supersedes any conflicting provisions in
21 law.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1205 of Title 60, unless there
24 is created a duplication in numbering, reads as follows:

1 When a person is convicted of violating a law subject to
2 forfeiture, the court, consistent with this act, shall order the
3 person to forfeit:

4 1. Proceeds and property the person derived directly from the
5 commission of the crime;

6 2. Proceeds and property directly traceable to proceeds and
7 property derived directly from the commission of the crime; and

8 3. Instrumentalities the person used in the commission of the
9 crime.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1206 of Title 60, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Property used in or derived from the violation of a law is
14 subject to forfeiture only if:

15 1. The violation is of a law subject to forfeiture; and

16 2. The violation is established by proof of a criminal
17 conviction.

18 B. The state shall establish that seized property is
19 forfeitable under Section 5 of this act by clear and convincing
20 evidence.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1207 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

24 There is no civil asset forfeiture.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1208 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 The court shall resolve any ambiguity in this act relating to
5 the State taking property through asset forfeiture in favor of the
6 property owner.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1209 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 If a court determines that a person opposing forfeiture is
11 financially unable to obtain representation by counsel, the court,
12 at the request of the person, shall ensure that the person is
13 represented by an attorney at the state's expense. The attorney
14 shall submit a statement of reasonable fees and costs to the court
15 in a manner directed by the court.

16 SECTION 10. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1210 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Except for federal forfeitures consistent with Section 40 of
20 this act, forfeiture may occur only pursuant to an explicit grant of
21 authority in State law. An ordinance enacted by a county,
22 municipality, or other unit of government authorizing forfeiture is
23 not valid.

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1 B. A prosecutor having jurisdiction over a law subject to
2 forfeiture has authority to pursue forfeiture.

3 SECTION 11. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1211 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Property subject to forfeiture is limited to:

7 1. Land, buildings, containers, conveyances, equipment,
8 materials, products, money, securities, and negotiable instruments;
9 and

10 2. Ammunition, firearms, and ammunition-and-firearm accessories
11 used in the furtherance or commission of, or obtained from the
12 proceeds of, a violation of a law subject to forfeiture.

13 B. No property right exists in contraband, including scheduled
14 drugs without a valid prescription. Contraband is subject to
15 seizure and must be disposed of according to state law. Contraband
16 is not subject to forfeiture under this chapter.

17 SECTION 12. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1212 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 Upon the state's motion following conviction, the court may
21 order the forfeiture of substitute property owned fully by the
22 defendant up to the value of unreachable property only if the state
23 proves by a preponderance of the evidence that the defendant
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1 intentionally transferred, sold or deposited property with a third
2 party to avoid the court's jurisdiction.

3 SECTION 13. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1213 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 Except as otherwise provided in this chapter, the State may not
7 seek additional remedies including, but not limited to, personal
8 money judgments.

9 SECTION 14. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1214 of Title 60, unless there
11 is created a duplication in numbering, reads as follows:

12 A. A defendant is not jointly and severally liable for
13 forfeiture awards owed by other defendants.

14 B. When ownership is unclear, a court may order each defendant
15 to forfeit property on a pro rata basis proportional to the proceeds
16 that each defendant personally received.

17 SECTION 15. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1215 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Property subject to forfeiture must be identified by the
21 State in an indictment of a grand jury or by information in the
22 court in any related criminal proceeding in which a person with an
23 interest in the property has been simultaneously charged with a
24 violation of a law subject to forfeiture.

1 B. The indictment or information must specify the time and
2 place of the violation, identify the property, and particularly
3 describe its use in the commission of the crime or derivation from
4 the commission of the crime.

5 C. At any time prior to trial, the state, with the consent of
6 the court and any defendant with an interest in the property, may
7 file an ancillary charge alleging that property is subject to
8 forfeiture.

9 SECTION 16. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1216 of Title 60, unless there
11 is created a duplication in numbering, reads as follows:

12 At the request of the state, a court may issue an ex parte
13 preliminary order to seize or secure property for which forfeiture
14 is sought and to provide for its custody. Application, issuance,
15 execution, and return are subject to state law.

16 SECTION 17. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1217 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 Property subject to forfeiture may be seized without a court
20 order if:

21 1. The seizure is incident to a lawful arrest or a lawful
22 search;

23 2. The property subject to seizure has been the subject of a
24 prior judgment in favor of the state; or

1 3. The state has probable cause to believe that the delay
2 occasioned by the necessity to obtain process would result in the
3 removal or destruction of the property and that the property is
4 forfeitable under Section 5 of this act.

5 SECTION 18. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1218 of Title 60, unless there
7 is created a duplication in numbering, reads as follows:

8 When property is seized, the law enforcement officer shall give
9 an itemized receipt to the person in possession of the property or
10 in the absence of any person leave a receipt in the place where the
11 property was found, if reasonably possible.

12 SECTION 19. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1219 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 A motion for a bill of particulars may be made before
16 arraignment, within ninety (90) days after arraignment or at any
17 later time that the court permits. A bill of particulars may be
18 amended at any time subject to conditions that justice requires.

19 SECTION 20. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1220 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 A. At the time of seizure or entry of a restraining order, the
23 state acquires provisional title to the seized property.

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1 Provisional title authorizes the state to hold and protect the
2 property.

3 B. Title to the property vests with the state when the trier of
4 fact renders a final forfeiture verdict and relates back to the time
5 when the state acquired provisional title. However, this title is
6 subject to claims by third parties adjudicated under this chapter.

7 SECTION 21. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1221 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 When property is seized, the state shall use reasonable
11 diligence to secure the property and prevent waste.

12 SECTION 22. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1222 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A state entity having custody of seized property that is
16 subject to forfeiture shall maintain the following records:

- 17 1. The exact kinds, quantities, and forms of the property;
- 18 2. The date and from whom it received the property;
- 19 3. The violation of law that subjected the property to seizure;
- 20 4. The liens against the seized property;
- 21 5. The make, model, and serial number of each seized firearm;
- 22 6. To whom and when the notice of forfeiture was given;
- 23 7. To whom it delivered the property; and

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1 8. The date and manner of destruction or disposition of the
2 property.

3 B. The records required under subsection A of this section are
4 subject to the state's freedom of information act.

5 SECTION 23. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1223 of Title 60, unless there
7 is created a duplication in numbering, reads as follows:

8 A. If the owner of property that has been seized seeks its
9 possession before the criminal trial, the owner may post bond or
10 give substitute property in an amount equal to the fair market value
11 of the seized property at the time the bond amount is determined.

12 B. On the posting of bond or the giving of substitute property,
13 the state shall return the seized property to the owner within a
14 reasonable period of time not to exceed three (3) business days.
15 The forfeiture action may then proceed against the bond or
16 substitute property as if it were the seized property.

17 C. This section does not apply to property reasonably held for
18 investigatory purposes.

19 SECTION 24. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1224 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 Prior to the entry of a court's order disposing of the
23 forfeiture action, any person who has an interest in seized property
24 may file with the Attorney General a petition for remission or

1 mitigation of the forfeiture. The Attorney General shall remit or
2 mitigate the forfeiture upon terms and conditions the Attorney
3 General deems reasonable if the Attorney General finds that:

- 4 1. The petitioner did not intend to violate the law; or
- 5 2. Extenuating circumstances justify the remission or
6 mitigation of the forfeiture.

7 SECTION 25. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1225 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Following the seizure of property under this act, a
11 defendant or third party has a right to a pretrial hearing to
12 determine the validity of the seizure.

13 B. The claimant may claim at any time prior to sixty (60) days
14 before trial of the related criminal violation the right to
15 possession of property by motion to the court to issue a writ of
16 replevin.

17 C. The claimant shall file a motion establishing the validity
18 of the alleged right, title or interest in the property.

19 D. The court shall hear the motion no more than thirty (30)
20 days after the motion is filed.

21 E. The state shall file an answer showing probable cause for
22 the seizure or cross-motions at least ten (10) days before the
23 hearing.

24 F. The court shall grant the motion if it finds that:

1 1. It is likely the final judgment will be that the state must
2 return the property to the claimant; or

3 2. The property is the only reasonable means for a defendant to
4 pay for legal representation in the forfeiture or criminal
5 proceeding.

6 G. In lieu of ordering the issuance of the writ, the court may
7 order the state to give security for satisfaction of any judgment,
8 including damages, that may be rendered in the action or order other
9 relief as may be just.

10 SECTION 26. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1226 of Title 60, unless there
12 is created a duplication in numbering, reads as follows:

13 Discovery is subject to the rules of criminal procedure.

14 SECTION 27. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1227 of Title 60, unless there
16 is created a duplication in numbering, reads as follows:

17 Any party to a forfeiture action has a right to trial by jury.

18 SECTION 28. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1228 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

21 A. A trial related to the forfeiture of property must be held
22 in a single proceeding together with the trial of the related
23 alleged crime unless the defendant moves to bifurcate the trial.

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1 B. The court, upon motion of a defendant, shall separate the
2 trial of the criminal matter against the defendant from the matter
3 related to the forfeiture of property.

4 C. The court, upon motion of a defendant, shall allow a
5 defendant to waive the right to trial by jury related to the
6 forfeiture of property while preserving the right to trial by jury
7 of any crime alleged.

8 D. If the court bifurcates the jury trial, the court shall
9 first instruct and submit to the jury the issue of the guilt or
10 innocence of the defendant to be determined by proof beyond a
11 reasonable doubt and shall restrict argument of counsel to those
12 issues.

13 E. If the court bifurcates the jury trial, each party may
14 introduce evidence in the forfeiture phase that was not introduced
15 in the criminal phase.

16 F. If the jury finds a defendant guilty of the related criminal
17 offense and the defendant did not waive the right to trial by jury
18 related to the forfeiture, the court shall instruct and submit to
19 the jury the issue of the forfeiture. The court may use
20 interrogatories to address the forfeiture issue.

21 SECTION 29. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1229 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. Following determination by the trier of fact, the owner may
2 petition the court to determine whether the forfeiture is
3 unconstitutionally excessive under the state or U.S. Constitution.

4 B. The owner has the burden of establishing that the forfeiture
5 is grossly disproportional to the seriousness of the offense by a
6 preponderance of the evidence at a hearing conducted by the court
7 without a jury.

8 C. In determining whether the forfeiture of an instrumentality
9 is constitutionally excessive, the court shall consider all relevant
10 factors including, but not limited to:

11 1. The seriousness of the offense and its impact on the
12 community, including the duration of the activity and the harm
13 caused by the person whose property is subject to forfeiture;

14 2. The extent to which the person whose property is subject to
15 forfeiture participated in the offense;

16 3. The extent to which the property was used in committing the
17 offense;

18 4. The sentence imposed for committing the crime subject to
19 forfeiture; and

20 5. Whether the offense was completed or attempted.

21 D. In determining the value of the instrumentality subject to
22 forfeiture, the court shall consider relevant factors including, but
23 not limited to:

24 1. The fair market value of the property;

1 2. The value of the property to the person whose property is
2 subject to forfeiture including hardship to the owner if the
3 forfeiture is realized; and

4 3. The hardship from the loss of a motor vehicle or other
5 property to family members or others if the property is forfeited
6 assets.

7 E. The court may not consider the value of the instrumentality
8 to the state in determining whether the forfeiture of an
9 instrumentality is constitutionally excessive.

10 SECTION 30. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1230 of Title 60, unless there
12 is created a duplication in numbering, reads as follows:

13 A. A bona fide security interest is not subject to forfeiture
14 unless the person claiming a security interest had actual knowledge
15 that the property was subject to forfeiture at the time the property
16 was seized or restrained under this chapter.

17 B. A person claiming a security interest bears the burden of
18 establishing the validity of the interest by a preponderance of the
19 evidence.

20 SECTION 31. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1231 of Title 60, unless there
22 is created a duplication in numbering, reads as follows:

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1 A. A person not charged in the indictment or information but
2 who has an interest in property subject to forfeiture may not
3 intervene after the criminal trial has begun.

4 B. Following the entry of a verdict of forfeiture of property
5 pursuant to this chapter or the entry of a guilty plea in court on
6 the record, the state shall exercise reasonable diligence to
7 identify persons with a potential interest in the property and make
8 reasonable efforts to give notice to potential claimants. The state
9 shall provide written notice of its intent to dispose of the
10 property to any person known or alleged to have an interest in the
11 property exempted from forfeiture under this chapter, including any
12 person potentially making claims for:

- 13 1. Court-ordered child support;
- 14 2. Employment-related compensation; or
- 15 3. Payment of unsecured debts.

16 The notice must also be made by publication in a reasonable
17 geographic area.

18 C. A person other than the defendant asserting a legal interest
19 in the property, within sixty (60) days of the date of the notice,
20 may petition the court for a hearing to adjudicate the validity of
21 the alleged interest in the property. The request for the hearing
22 must be signed by the petitioner under penalty of perjury and state
23 the nature and extent of the petitioner's right, title or interest
24 in the property; the time and circumstances of the petitioner's

1 acquisition of the right, title or interest; and any additional
2 facts supporting the petitioner's claim and the relief sought.

3 D. Upon the filing of a petition, the court shall schedule the
4 hearing as soon as practicable but in no event later than six (6)
5 months after the sentencing of any defendant convicted upon the same
6 indictment. The court shall issue or amend a final order of
7 forfeiture in accordance with its determination if, after the
8 hearing, the court determines that:

9 1. The petitioner has a legal right, title or interest in the
10 property, and such right, title or interest renders the order of
11 forfeiture invalid in whole or in part because the right, title or
12 interest was vested in the petitioner rather than the defendant or
13 was superior to any right, title or interest of the defendant at the
14 time the property was seized or restrained under this chapter; or

15 2. The petitioner is a bona fide purchaser for value of the
16 right, title or interest in the property and was at the time of
17 purchase without cause to believe that the property was subject to
18 forfeiture under this chapter. The state has the burden of proof
19 with respect to the issue of whether the petitioner was without
20 cause to believe that the property was subject to forfeiture at the
21 time of purchase or other acquisition of value.

22 E. A qualified indigent who wishes to contest the forfeiture of
23 property and appears to have an exempt interest has a right to
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1 court-appointed counsel as provided in Section 9 of this act. In
2 addition, the court shall waive the person's court fees.

3 SECTION 32. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1232 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The property of an innocent partial or joint owner may not
7 be forfeited under any forfeiture statute. The process for
8 determining whether a person is an innocent partial or joint owner
9 is set out in this section.

10 B. A person who has any form of partial or joint interest,
11 including joint tenancy, tenancy in common or tenancy by the
12 entirety, in property subject to forfeiture existing at the time the
13 illegal conduct giving rise to forfeiture occurred and who claims to
14 be an innocent partial or joint owner shall make a prima facie case
15 that the person has a legal right, title or interest in the property
16 seized or restrained under this chapter.

17 C. If subsection B of this section is satisfied and the state
18 seeks to proceed with the forfeiture against the person's ownership
19 interest, the state shall prove by a preponderance of the evidence
20 that the person had actual knowledge of the underlying crime giving
21 rise to the forfeiture or was willfully blind to its commission.

22 D. If subsection C of this section is satisfied and the person
23 seeks to establish the person's innocent owner status, the person
24 shall show by a preponderance of the evidence that the person did

1 all that reasonably could be expected under the circumstances to
2 prohibit, abate or terminate the illegal use of the property. The
3 person may show that the person did all that reasonably could be
4 expected by demonstrating, among other things, that the person, to
5 the extent permitted by law:

6 1. Gave timely notice to an appropriate law enforcement agency
7 of information that led the person to know the conduct giving rise
8 to a forfeiture would occur or had occurred; or

9 2. In a timely fashion revoked or made a good-faith attempt to
10 revoke permission for those engaging in the illegal conduct to use
11 the property or took reasonable actions in consultation with a law
12 enforcement agency to discourage or prevent the illegal use of the
13 property.

14 A person is not required under this subsection to take steps
15 that the person reasonably believes would be likely to subject the
16 person to physical danger.

17 E. If subsection D of this section is satisfied, the court
18 shall find that the claimant was not a party to the crime and is an
19 innocent partial or joint owner.

20 F. A person who acquired an ownership interest in property
21 after the commission of a crime giving rise to the forfeiture has
22 occurred and who claims to be an innocent partial or joint owner,
23 shall make a prima facie case that the person legal right, title or
24 interest in the property seized or restrained under this chapter.

1 G. If subsection F of this section is satisfied and the state
2 seeks to proceed with the forfeiture against the person's ownership
3 interest, the state shall prove by a preponderance of the evidence
4 that at the time the person acquired the property interest the
5 person had actual knowledge that the property was subject to
6 forfeiture or was willfully blind to the commission of the crime
7 that subjected the property to forfeiture.

8 H. If the state fails to meet its burden in subsection G of
9 this section, the court shall find that the person was not a party
10 to the crime and is an innocent partial or joint owner.

11 I. An otherwise valid claim under subsection F of this section
12 may not be denied on the grounds that the person gave nothing of
13 value in exchange for the property if:

14 1. The property is the person's primary residence;

15 2. Depriving the person of the property would deprive the
16 person of the means to maintain reasonable shelter in the community
17 for the person and all dependents residing with the person;

18 3. The property is not, and is not traceable to, the proceeds
19 of any criminal offense; and

20 4. The person acquired interest in the property through
21 marriage, divorce or legal separation or the person was the spouse
22 or legal dependent of someone whose death resulted in the transfer
23 of the property to the person through inheritance or probate, except
24 that the court shall limit the value of any real property interest

1 for which innocent ownership is recognized under this paragraph to
2 the value necessary to maintain reasonable shelter in the community
3 for the person and all dependents residing with the person.

4 J. If the innocent joint or partial owner's claim is
5 established under this section, the state shall relinquish all
6 claims of title to the property that may have vested with it.

7 K. If the court determines that an innocent joint or partial
8 owner has any form of partial or joint interest in a conveyance
9 subject to forfeiture related to operating a conveyance while
10 impaired, the court may order that the innocent joint or partial
11 owner participate in the ignition interlock device program under
12 state law as a condition of ordering the device be returned to the
13 innocent owner.

14 L. If the court determines that an innocent joint or partial
15 owner has any form of partial or joint interest in property, other
16 than property described in subsection K of this section, the court
17 shall enter an appropriate order reflecting the innocent owner's
18 preference for:

- 19 1. Severing the property;
- 20 2. Transferring the property to the state with a provision that
21 the state compensate the innocent owner to the extent of the owner's
22 ownership interest once a final order of forfeiture has been entered
23 and the property has been reduced to liquid assets; or

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1 3. Permitting the innocent owner to retain the property subject
2 to a lien in favor of the state to the extent of the forfeitable
3 interest in the property.

4 SECTION 33. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1233 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 If a trier of fact finds that property is to be forfeited, the
8 court shall order the state to:

9 1. Return stolen property to its owner;

10 2. Sell all other firearms, ammunition, and firearm accessories
11 to licensed firearms dealers in a commercially reasonable manner;
12 and

13 3. Sell other property in a commercially reasonable manner.

14 SECTION 34. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1234 of Title 60, unless there
16 is created a duplication in numbering, reads as follows:

17 The law enforcement agency that seized property forfeited under
18 this act may not retain it for its own use or sell it directly or
19 indirectly to any employee of the agency, to a person related to an
20 employee by blood or marriage or to another law enforcement agency.

21 SECTION 35. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1235 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. Proceeds seized and proceeds from the sale of forfeited
2 assets may be distributed only following a court order. The court
3 shall order the funds be used to pay, in order of priority, for the
4 following purposes:

- 5 1. Storage and sale expenses;
- 6 2. Satisfaction of valid liens against the property;
- 7 3. Restitution ordered to the victim of the criminal offense;
- 8 4. Reimbursement of investigation costs, excluding salaries
9 that the law enforcement agency incurred in the seizure of the
10 assets subject to the forfeiture action;
- 11 5. Court-ordered child support obligations;
- 12 6. Claims for compensation by the defendant's employees; and
- 13 7. Claims for compensation by defendant's unsecured creditors.

14 B. All remaining funds must be deposited into the state's
15 treasury and credited to the general fund.

16 SECTION 36. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1236 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 A. For each forfeiture action occurring in the state,
20 regardless of the authority for it, the participating law
21 enforcement agency and prosecutor shall provide a written record of
22 the forfeiture incident to the state reporting agency.

23 B. The record must include the amount forfeited, the underlying
24 crime or conduct, its date, and whether the property had a lien

1 against it. The record must also list the number of firearms
2 forfeited and the make, model, and serial number of each firearm
3 forfeited. The record must indicate how the property was disposed.

4 C. The law enforcement agency and the prosecutor shall report
5 to the state reporting agency all instances in which property seized
6 for forfeiture is returned to its owner either because forfeiture is
7 not pursued or for any other reason.

8 D. For forfeitures resulting from the activities of multi-
9 jurisdictional law enforcement entities, each entity on its own
10 behalf shall report the information required in this section.

11 E. The state reporting agency may require information not
12 specified in this section to be reported as well.

13 F. Reports must be made on a monthly basis in a manner
14 prescribed by the state reporting agency.

15 G. The state reporting agency shall report annually to the
16 legislature and the public on the nature and extent of forfeitures.

17 H. The state reporting agency shall include in its report
18 required under subsection G of this section recommended changes to
19 forfeiture law to better ensure that forfeiture proceedings are
20 handled in a manner that is fair to innocent property owners,
21 secured interest holders, citizens, and taxpayers.

22 I. The state reporting agency shall include in its report
23 required under subsection G of this section information on law
24 enforcement agencies and prosecutorial offices not in compliance

1 with this section and shall order the state to withhold payment of
2 any funds to those agencies and offices until compliance is
3 achieved.

4 SECTION 37. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1237 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 A. This section covers procedures for disposing of property
8 when the owner is deported from the United States to a foreign
9 country.

10 B. If the owner of property is deported after:

11 1. Being convicted of a violation of a state law that is
12 subject to forfeiture; and

13 2. The property is found to be an instrumentality or proceeds
14 of the violation of that state law, the court shall enter an order
15 disposing of the property in accordance with Sections 33, 34, and 35
16 of this act.

17 C. If the owner of property is deported, but:

18 1. The owner is not convicted of violating a state law that is
19 subject to forfeiture; or

20 2. The property is not found to be an instrumentality or
21 proceeds from the violation of a state law subject to forfeiture for
22 which the owner of the property is convicted, the property shall be
23 returned to the next of kin of the person deported.

24

1 D. If the next of kin is not known or refuses the property, the
2 state shall exercise reasonable diligence to identify persons with a
3 potential interest in the property and make reasonable efforts to
4 give notice to potential claimants. The state shall provide written
5 notice to persons known or alleged to have an interest in the
6 property, including other family members and any person potentially
7 making claims for court-ordered child support, employment-related
8 compensation or payment of debts. The notice must also be made by
9 publication in a reasonable geographic area.

10 E. If no claim is made within sixty (60) days of the notice's
11 publication date, the court shall enter an order disposing of the
12 property in accordance with Section 33, 34, and 35 of this act.

13 F. A person wanting to assert a legal claim to the property
14 shall, within sixty (60) days of the date of the applicable notice
15 in subsection D of this section, petition the court for a hearing to
16 adjudicate the validity of the alleged interest in the property.
17 The petition for the hearing must be signed by the claimant under
18 penalty of perjury. It must state the nature and extent of the
19 claimant's right, title or interest in the property; the time and
20 circumstances of the claimant's acquisition of the right, title or
21 interest; and any additional facts supporting the claim and the
22 relief sought.

23 G. The court shall schedule a hearing as soon as practicable to
24 determine if the claimant has a legal right, title or interest in

1 the property or is a bona fide purchaser for value of the legal
2 right, title or interest in the property.

3 SECTION 38. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1238 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The state shall return property to the owner within a
7 reasonable period of time not to exceed three (3) business days
8 after a court finds that:

- 9 1. The owner had a bona fide security interest;
- 10 2. The owner was an innocent owner;
- 11 3. Charges against the owner were dismissed; or
- 12 4. The owner was found not guilty of the criminal charge that
13 is the basis for the forfeiture action.

14 B. If property returned under subsection A of this section has
15 been damaged, the owner may make a claim in small claims court or
16 court for the damages to the seized property against the agency that
17 seized the property.

18 C. The state is responsible for any storage fees and related
19 costs applicable to property returned under subsection A of this
20 section.

21 SECTION 39. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1239 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. Any person acting under color of law, official title or
2 position who takes any action intending to conceal, transfer,
3 withhold, retain, divert or otherwise prevent any proceeds,
4 conveyances, real property or any things of value forfeited under
5 the law of the state or the United States from being applied,
6 deposited, used or returned to the owner in accordance with this
7 chapter is subject to a civil penalty in an amount of three times
8 the value of the forfeited property concealed, transferred,
9 withheld, retained or diverted.

10 B. Any taxpayer to the state has standing to challenge in court
11 any action contrary to this act.

12 SECTION 40. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1240 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 A. No unit of state government may transfer a criminal
16 investigation or proceeding to the federal government to circumvent
17 state forfeiture law.

18 B. For a state government unit to transfer a criminal
19 investigation or proceeding that includes forfeiture to the federal
20 government, a state court shall affirmatively find that:

21 1. The suspected criminal activity giving rise to the
22 forfeiture is interstate in nature and sufficiently complex to
23 justify the transfer; or

24

1 2. The seized property is forfeitable only as a violation of
2 federal law.

3 C. All funds paid by the federal government must be deposited
4 into the state treasury. The state shall credit:

5 1. The state government unit involved with the federal
6 government sufficiently to reimburse it for investigation costs,
7 excluding salaries, that the state government unit incurred related
8 to the seizure of the assets subject to the forfeiture action; and

9 2. The remainder to the general fund.

10 D. No unit of state government may accept from the federal
11 government any instrumentality or payment of proceeds not permitted
12 by subsection C of this section.

13 E. The state government unit shall report all transfers to the
14 federal government of an investigation or criminal proceeding that
15 involves forfeiture per the reporting requirements in Section 36 of
16 this act.

17 F. Any taxpayer has standing to challenge in court the receipt
18 of any proceeds or instrumentality by a state government unit from
19 the federal government contrary to subsections C and D of this
20 section.

21 SECTION 41. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1241 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. In any forfeiture proceeding under this chapter in which the
2 claimant prevails, the state is liable for:

3 1. Reasonable attorney fees and other litigation costs
4 reasonably incurred by the claimant;

5 2. Postjudgment interest; and

6 3. In cases involving currency, other negotiable instruments or
7 the proceeds of an interlocutory sale:

8 a. Interest actually paid to the state from the date of
9 seizure of the property that resulted from the
10 investment of the property in an interest-bearing
11 account or instrument, and

12 b. An imputed amount of interest that the currency,
13 instruments or proceeds would have earned at the rate
14 applicable to the 30-day U.S. Treasury Bill, for any
15 period during which no interest was paid, not
16 including any period when the property reasonably was
17 in use as evidence in an official proceeding or in
18 conducting scientific tests for the purpose of
19 collecting evidence, commencing fifteen (15) days
20 after the property was seized by a law enforcement
21 agency.

22 SECTION 42. REPEALER 21 O.S. 2011, Section 1738, is
23 hereby repealed.

1 SECTION 43. REPEALER Section 7, Chapter 235, O.S.L. 2012
2 (36 O.S. Supp. 2014, Section 365), is hereby repealed.

3 SECTION 44. REPEALER 47 O.S. 2011, Section 1505, is
4 hereby repealed.

5 SECTION 45. REPEALER 63 O.S. 2011, Section 4255, is
6 hereby repealed.

7 SECTION 46. This act shall become effective November 1, 2015.

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