

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 838

By: Loveless of the Senate

and

Echols of the House

AS INTRODUCED

An Act relating to asset forfeiture; creating the Personal Asset Protection Act; providing short title; amending 63 O.S. 2011, Section 2-503, as amended by Section 5, Chapter 154, O.S.L. 2014 (63 O.S. Supp. 2014, Section 2-503), which relates to property subject to forfeiture; requiring conviction for certain property forfeiture; modifying certain burdens of proof; providing for jury trial in certain actions; establishing requirements for certain actions; modifying Fund for deposit of certain monies; modifying certain requirements for seized property; making language gender neutral; providing for noncodification; and providing an effective date.

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

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

This act shall be known and may be cited as the "Personal Asset Protection Act".

SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-503, as amended by Section 5, Chapter 154, O.S.L. 2014 (63 O.S. Supp. 2014, Section 2-503), is amended to read as follows:

1 Section 2-503. A. ~~The~~ Upon a person's conviction for a
2 violation of the Uniform Controlled Dangerous Substances Act, the
3 following property of such person shall be subject to forfeiture:

4 1. All controlled dangerous substances and synthetic controlled
5 substances which have been manufactured, distributed, dispensed,
6 acquired, concealed or possessed in violation of the Uniform
7 Controlled Dangerous Substances Act;

8 2. All raw materials, products and equipment of any kind and
9 all drug paraphernalia as defined by the Uniform Controlled
10 Dangerous Substances Act, which are used, or intended for use, in
11 manufacturing, compounding, processing, delivering, importing or
12 exporting, injecting, ingesting, inhaling, or otherwise introducing
13 into the human body any controlled dangerous substance or synthetic
14 controlled substance in violation of the provisions of the Uniform
15 Controlled Dangerous Substances Act;

16 3. All property which is used, or intended for use, as a
17 container for property described in paragraphs 1, 2, 5 and 6 of this
18 subsection;

19 4. All conveyances, including aircraft, vehicles, vessels, or
20 farm implements which are used to transport, conceal, or cultivate
21 for the purpose of distribution as defined in the Uniform Controlled
22 Dangerous Substances Act, or which are used in any manner to
23 facilitate the transportation or cultivation for the purpose of sale
24 or receipt of property described in paragraphs 1 or 2 of this

1 subsection or when the property described in paragraphs 1 or 2 of
2 this subsection is unlawfully possessed by an occupant thereof,
3 except that:

4 a. no conveyance used by a person as a common carrier in
5 the transaction of business as a common carrier shall
6 be forfeited under the provisions of the Uniform
7 Controlled Dangerous Substances Act unless it shall
8 appear that the owner or other person in charge of
9 such conveyance was a consenting party or privy to a
10 violation of the Uniform Controlled Dangerous
11 Substances Act, and

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

22 5. All books, records and research, including formulas,
23 microfilm, tapes and data which are used in violation of the Uniform
24 Controlled Dangerous Substances Act;

1 6. All things of value furnished, or intended to be furnished,
2 in exchange for a controlled dangerous substance in violation of the
3 Uniform Controlled Dangerous Substances Act, all proceeds traceable
4 to such an exchange, and all monies, negotiable instruments, and
5 securities used, or intended to be used, to facilitate any violation
6 of the Uniform Controlled Dangerous Substances Act;

7 7. All monies, coin and currency found in close proximity to
8 any amount of forfeitable substances, to forfeitable drug
9 manufacturing or distribution paraphernalia or to forfeitable
10 records of the importation, manufacture or distribution of
11 substances, ~~which are rebuttably presumed to be forfeitable under~~
12 ~~the Uniform Controlled Dangerous Substances Act. The burden of~~
13 ~~proof is upon claimants of the property to rebut this presumption;~~

14 8. All real property, including any right, title, and interest
15 in the whole of any lot or tract of land and any appurtenance or
16 improvement thereto, which is used, or intended to be used, in any
17 manner or part, to commit, or to facilitate the commission of, a
18 violation of the Uniform Controlled Dangerous Substances Act which
19 is punishable by imprisonment for more than one (1) year, except
20 that no property right, title or interest shall be forfeited
21 pursuant to this paragraph, by reason of any act or omission
22 established by the owner thereof to have been committed or omitted
23 without the knowledge or consent of that owner; and
24

1 9. All weapons possessed, used or available for use in any
2 manner to facilitate a violation of the Uniform Controlled Dangerous
3 Substances Act.

4 B. Any property or thing of value of a person is subject to
5 forfeiture if it is established by ~~a preponderance of the~~ clear and
6 convincing evidence that such property or thing of value was
7 acquired by such person during the period of the violation of the
8 Uniform Controlled Dangerous Substances Act or within a reasonable
9 time after such period and there was no likely source for such
10 property or thing of value other than the violation of the Uniform
11 Controlled Dangerous Substances Act. A party to a forfeiture action
12 under this section shall be entitled to a trial by jury. A trial
13 related to a forfeiture action shall be held in a single proceeding
14 with the trial of the related alleged crime unless the defendant
15 moves to bifurcate the trial.

16 C. Any property or thing of value of a person is subject to
17 forfeiture if it is established by ~~a preponderance of the~~ clear and
18 convincing evidence that the person has not paid all or part of a
19 fine imposed pursuant to the provisions of Section 2-415 of this
20 title.

21 D. All items forfeited in this section shall be forfeited under
22 the procedures established in Section 2-506 of this title. Whenever
23 any item is forfeited pursuant to this section except for items
24 confiscated by the Oklahoma State Bureau of Narcotics and Dangerous

1 Drugs Control, the Department of Public Safety, the Oklahoma State
2 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
3 Commission, the Department of Corrections, or the Office of the
4 Attorney General, the district court of the district shall order
5 that such item, money, or monies derived from the sale of such item
6 be deposited by the state, county or city law enforcement agency
7 which seized the item in the ~~revolving fund provided for in Section~~
8 ~~2-506 of this title; provided, such item, money or monies derived~~
9 ~~from the sale of such item forfeited due to nonpayment of a fine~~
10 ~~imposed pursuant to the provisions of Section 2-415 of this title~~
11 ~~shall be apportioned as provided in Section 2-416 of this title~~
12 General Revenue Fund. Items, money or monies seized pursuant to
13 subsections A and B of this section shall not be applied or
14 considered toward satisfaction of the fine imposed by Section 2-415
15 of this title. All raw materials used or intended to be used by
16 persons to unlawfully manufacture or attempt to manufacture any
17 controlled dangerous substance in violation of the Uniform
18 Controlled Dangerous Substances Act shall be summarily forfeited
19 pursuant to the provisions of Section 2-505 of this title.

20 E. All property taken or detained under this section by the
21 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the
22 Department of Public Safety, the Oklahoma State Bureau of
23 Investigation, the Alcoholic Beverage Laws Enforcement Commission,
24 the Department of Corrections, or the Office of the Attorney

1 General, shall ~~not~~ be repleviable, but shall remain in the custody
2 of the Bureaus, Departments, Commission, or Office, respectively,
3 subject only to the orders and decrees of a court of competent
4 jurisdiction. The Director of the Oklahoma State Bureau of
5 Narcotics and Dangerous Drugs Control, the Commissioner of Public
6 Safety, the Director of the Oklahoma State Bureau of Investigation,
7 the Director of the Alcoholic Beverage Laws Enforcement Commission,
8 the Director of the Department of Corrections, and the Attorney
9 General shall follow the procedures outlined in Section 2-506 of
10 this title dealing with notification of seizure, intent of
11 forfeiture, final disposition procedures, and release to innocent
12 claimants with regard to all property included in this section
13 detained by the Department of Public Safety, the Oklahoma State
14 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
15 Commission, the Department of Corrections, or the Office of the
16 Attorney General. Property taken or detained by the Oklahoma State
17 Bureau of Narcotics and Dangerous Drugs Control, the Department of
18 Public Safety, the Oklahoma State Bureau of Investigation, the
19 Alcoholic Beverage Laws Enforcement Commission, the Department of
20 Corrections, or the Office of the Attorney General shall be disposed
21 of or sold pursuant to the provisions of Section 2-508 of this
22 title. Any money, coins, and currency, taken or detained pursuant
23 to this section ~~may~~ shall be deposited in ~~an interest bearing~~
24 ~~account by or at the direction of the State Treasurer~~ the General

1 Revenue Fund if the seizing agency determines the currency is not to
2 be held as evidence. All interest earned on such monies shall be
3 returned to the claimant or forfeited with the money, coins, and
4 currency which was taken or detained as provided by law.

5 F. The proceeds of any forfeiture of items seized by the
6 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall
7 be distributed as follows:

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 his
10 or her interest in the property, when the court declaring a
11 forfeiture orders a distribution to such person; and

12 2. The balance to the ~~Bureau of Narcotics Revolving Fund~~
13 ~~established pursuant to Section 2-107 of this title, provided the~~
14 ~~Bureau may enter into agreements with municipal, tribal, county,~~
15 ~~state or federal law enforcement agencies, or other state agencies~~
16 ~~with CLEET-certified law enforcement officers, assisting in the~~
17 ~~forfeiture or underlying criminal investigation, to return to such~~
18 ~~an agency a percentage of said proceeds~~ General Revenue Fund.

19 G. Any agency that acquires seized or forfeited property or
20 money shall maintain a true and accurate inventory and record of all
21 such property seized pursuant to this section.

22 SECTION 3. This act shall become effective November 1, 2015.
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