An Act

ENROLLED HOUSE
BILL NO. 1112

By: Rousselot, Biggs and Smalley of the House

and

David of the Senate

An Act relating to motor vehicles; amending 47 O.S. 2011, Section 11-902b, which relates to forfeiture of motor vehicles; authorizing forfeiture of a motor vehicle under certain circumstances; and modifying order in which certain proceeds are paid.

SUBJECT: Forfeiture of motor vehicles

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902b, is amended to read as follows:

Section 11-902b. A. The district attorney may file a motion requesting forfeiture of the motor vehicle involved in the commission of an eligible offense as provided in this section. The provisions of this section shall apply to ~~any~~:

1. Any person who has been previously convicted of an offense under Section 11-902, 11-903, or 11-904 of ~~Title 47 of the Oklahoma Statutes~~ this title and who on or after ~~the effective date of this act~~ July 1, 1999, is convicted of an offense under Section 11-902, 11-903, or 11-904 of ~~Title 47 of the Oklahoma Statutes~~ this title within ten (10) years of any prior conviction under Section 11-902, 11-903, or 11-904 of ~~Title 47 of the Oklahoma Statutes~~ this title and where at least one of the offenses, current or prior, involved the death of or serious bodily injury to another person; or

2. Any person who has been convicted of a third or subsequent felony offense under Section 11-902 of this title.

B. A motion for forfeiture may be filed at the time of charging but not later than thirty (30) days after the verdict or plea of guilty or nolo contendere. If a motion of intent to forfeit is filed prior to the verdict or plea of guilty or nolo contendere, the proceedings shall be stayed until the disposition of the criminal case. Notice shall be required even though the proceedings are stayed. If the motion is filed prior to the disposition on the criminal case, the district attorney shall notify the Oklahoma Tax Commission and the Tax Commission shall place a lien upon the vehicle title. No person shall sell, damage, destroy, transfer or perfect a security interest on any vehicle subject to forfeiture. Prior to filing a motion for forfeiture, the district attorney shall verify whether the vehicle was sold during any period of impoundment as provided by law. Any vehicle sold in an impound sale to pay towing, wrecker services or storage expenses shall not be subject to forfeiture as provided in this ~~act~~ section.

C. Upon filing a motion for forfeiture, except when the proceedings are stayed pursuant to subsection B of this section, the court shall schedule a hearing on the matter. The hearing shall be not less than twenty (20) days nor more than forty-five (45) days from the date the motion is filed. The district attorney within three (3) days of filing a motion of intent to forfeit shall notify the convicted person, lienholders of record, and any person appearing to have an ownership or security interest in the vehicle. The notice shall contain the date, time and place of the hearing. When a motion for forfeiture has been stayed pending disposition of the criminal case and a verdict or plea of guilty or nolo contendere has been entered, the district attorney shall give notice of the forfeiture hearing not less than ten (10) days prior to the hearing. The notice of persons specified in this subsection shall be by certified mail to the address shown upon the records of the Oklahoma Tax Commission. For owners or interested parties, other than lienholders of record, whose addresses are unknown, but who are believed to have an interest in the vehicle, notice shall be by one publication in a newspaper of general circulation in the county where the motion is filed. The written notice shall include:

1. A full description of the motor vehicle;

2. The date, time and place of the forfeiture hearing;

3. The legal authority under which the motor vehicle may be forfeited; and

4. Notice of the right to intervene to protect an interest in the motor vehicle.

D. A forfeiture proceeding shall not extinguish any security interest of a lienholder of record; provided, however, the court may order the sale of the motor vehicle and the satisfaction of that security interest from the proceeds of sale as provided in subsection K of this section.

For purposes of a forfeiture proceeding, an affidavit obtained from the lienholder of record, in the absence of evidence of bad faith, shall be prima facie evidence of the amount of secured indebtedness owed to that lienholder. It shall be the responsibility of the district attorney to obtain such affidavit prior to the forfeiture proceeding.

In the absence of evidence of bad faith, no lienholder of record shall be required to attend the forfeiture proceeding to protect its interest in the motor vehicle. However, each lienholder of record shall be given notice of the forfeiture hearing as provided in subsection C of this section. The district attorney shall notify each lienholder of record at least ten (10) days before the sale of the motor vehicle ordered forfeited pursuant to this section; provided, the lienholder was not represented at the forfeiture proceeding.

E. Any person having an ownership or security interest in a vehicle subject to forfeiture which is not perfected by a lien of record may file a written objection to the motion to forfeit within ten (10) days of the mailing of the notice of intent to forfeit.

F. At the hearing, any person who claims an ownership or security interest in the motor vehicle which is not perfected by a lien of record shall be required to establish by a preponderance of the evidence that:

1. The person has an interest in the motor vehicle and such interest was acquired in good faith;

2. The person is not the person convicted of the offense that resulted in the forfeiture proceeding; and

3. The person did not know or have reasonable cause to believe that the vehicle would be used in the commission of a felony offense.

G. If a person satisfies the requirements of subsection F of this section, or if there is a lienholder of record that has provided an affidavit pursuant to subsection D of this section, the court shall order either an amount equal to the value of the interest of that person in the motor vehicle to be paid to that person upon sale of the motor vehicle after payment of costs and expenses or release the vehicle from the forfeiture proceedings if either the lienholder described in subsection D of this section or the person intervening in accordance with subsection F of this section has full right, title and interest in the vehicle.

H. At the hearing, the court may order the forfeiture of the motor vehicle if it is determined by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

1. Incapacitation of the convicted person from the commission of any future offense under Section 11-902, 11-903, or 11-904 of ~~Title 47 of the Oklahoma Statutes~~ this title;

2. Protection of the safety and welfare of the public;

3. Deterrence of other persons who are potential offenders under Section 11-902, 11-903, or 11-904 of ~~Title 47 of the Oklahoma Statutes~~ this title;

4. Expression of public condemnation of the serious or aggravated nature of the conduct of the convicted person; or

5. Satisfaction of monetary amounts for criminal penalties.

I. Upon forfeiture of a motor vehicle pursuant to this act, the court shall require the owner to surrender the motor vehicle, the certificate of title, and the registration of the motor vehicle. The vehicle, the certificate of title, and the registration shall be delivered to the Department of Public Safety within three (3) days of the forfeiture order. The expense of delivering the vehicle shall be paid by the district attorney. Costs of delivering the vehicle to the Department shall be reimbursable as costs of conducting the sale. A motor vehicle forfeited pursuant to this act, shall be sold by the Department of Public Safety as provided by

law for the sale of other forfeited property, except as otherwise provided in this section.

J. If a vehicle was impounded at the time of delivery to the Department and a forfeiture order is subsequently issued, all towing, wrecker services, and storage expenses shall be satisfied from the sale of the vehicle. If a vehicle is released from forfeiture and the vehicle has been delivered to the Department with impound expenses still owing, all impound expenses, including towing, wrecker service and storage expenses, shall be paid by the person prevailing on the dismissal of the forfeiture proceeding and the release of the vehicle to such person. If a notice for sale of the vehicle was filed for satisfaction of impound expenses prior to the filing of a motion for forfeiture, the vehicle shall be sold as provided by law for unpaid towing, wrecker services, and storage expenses and shall not be subject to forfeiture. If the convicted person redeems his or her interest in the vehicle at a sale for impound expenses, a forfeiture proceeding may thereafter proceed as authorized by this act. Neither the notice of sale for towing, wrecker services, and storage expenses nor the sale of such vehicle for impound expenses shall serve to extend the requirement for filing a motion to forfeit as provided in subsection B of this section.

K. Except as provided in subsection J of this section, proceeds from the sale of any vehicle forfeited pursuant to this act shall be paid in the following order:

1. To satisfy the interest of any lienholder of record;

2. To the Department of Public Safety for the cost of conducting the sale, including expense of delivery, court filing fees, and publication expense;

~~2.~~ 3. To satisfy impound expenses, including any towing, wrecker service and storage expenses incurred prior to delivery to the Department of Public Safety;

~~3. To satisfy the interest of any lienholder of record;~~

4. To satisfy the interest of any person making proof as provided in subsection F of this section;

5. To satisfy criminal penalties, costs and assessments pursuant to paragraph 5 of subsection H of this section if so ordered by the court;

6. To the office of the district attorney who filed the forfeiture proceeding not exceeding twenty-five percent (25%) of any remaining proceeds. Such payment shall be deposited in a special fund for such purpose as determined by the district attorney's office; and

7. The balance of the proceeds to be deposited in the Drug Abuse Education and Treatment Revolving Fund established pursuant to Section 2-503.2 of Title 63 of the Oklahoma Statutes for the benefit of drug court treatment as provided by law.

L. If a motor vehicle subject to forfeiture as provided by this act is a vehicle leased pursuant to a commercial rental agreement for a period of ninety (90) days or less, then the vehicle shall not be subject to the forfeiture proceedings provided by this act.

M. Upon the court dismissing a forfeiture proceeding, any lien placed upon the vehicle title by the Oklahoma Tax Commission pursuant to subsection B of this section shall be released.

Passed the House of Representatives the 4th day of March, 2014.

Presiding Officer of the House
of Representatives

Passed the Senate the 14th day of April, 2014.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 15th
day of April, 20 14, at 2:30 o'clock P M.
By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 21st
day of April, 20 14, at 2:29 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 21st
day of April, 20 14, at 5:40 o'clock P. M.
By: Chi Benge