

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1020

By: Olsen

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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 seizure
and forfeiture proceedings; requiring forfeiture
9 proceedings follow related criminal convictions;
amending 63 O.S. 2021, Section 2-506, which relates
10 to seizure of property by peace officer; requiring
forfeiture proceedings follow related criminal
11 convictions; and providing an effective date.

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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 C. Property described in subsection A or B of this section may
14 be held as evidence until a forfeiture has been declared or a
15 release ordered. ~~Forfeiture~~ Following the conviction of a person
16 for an offense to which forfeiture applies, forfeiture actions under
17 this section may be brought by the district attorney in the proper
18 county of venue as petitioner; provided, in the event the district
19 attorney elects not to file such action, or fails to file such
20 action within ninety (90) days of the date of the ~~seizure of such~~
21 ~~equipment~~ conviction, the property shall be returned to the owner.

22 D. Notice of seizure and intended forfeiture proceeding shall
23 be filed in the office of the clerk of the district court for the
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1 county wherein such property is seized and shall be given all owners
2 and parties in interest.

3 E. Notice shall be given according to one of the following
4 methods:

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

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

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

17 F. Within sixty (60) days after the mailing or publication of
18 the notice, the owner of the property and any other party in
19 interest or claimant may file a verified answer and claim to the
20 property described in the notice of seizure and of the intended
21 forfeiture proceeding.

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

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

5 I. At the hearing the petitioner shall prove by clear and
6 convincing evidence that property was used in the attempt or
7 commission of an act specified in subsection A of this section or is
8 property described in subsection B of this section with knowledge by
9 the owner of the property.

10 J. The claimant of any right, title, or interest in the
11 property may prove the lien, mortgage, or conditional sales contract
12 to be bona fide and that the right, title, or interest created by
13 the document was created without any knowledge or reason to believe
14 that the property was being, or was to be, used for the purpose
15 charged.

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

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1 L. If the amount due to such person is less than the value of
2 the property, or if no bona fide claim is established, the property
3 may be forfeited to the state and may be sold pursuant to judgment
4 of the court, as on sale upon execution, and as provided in Section
5 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
6 provided for by law and for property bearing a counterfeit mark
7 which shall be destroyed.

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

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

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

9 P. The proceeds of the sale of any property shall be
10 distributed as follows, in the order indicated:

11 1. To the bona fide or innocent purchaser, conditional sales
12 vendor, or mortgagee of the property, if any, up to the amount of
13 such person's interest in the property, when the court declaring the
14 forfeiture orders a distribution to such person;

15 2. To the payment of the actual reasonable expenses of
16 preserving the property;

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

20 4. The balance to a revolving fund in the office of the county
21 treasurer of the county wherein the property was seized, to be
22 distributed as follows: one-third (1/3) to the investigating law
23 enforcement agency; one-third (1/3) of said fund to be used and
24 maintained as a revolving fund by the district attorney to be used

1 to defray any lawful expenses of the office of the district
2 attorney; and one-third (1/3) to go to the jail maintenance fund,
3 with a yearly accounting to the board of county commissioners in
4 whose county the fund is established. If the petitioner is not the
5 district attorney, then the one-third (1/3) which would have been
6 designated to that office shall be distributed to the petitioner.
7 Monies distributed to the jail maintenance fund shall be used to pay
8 costs for the storage of such property if such property is ordered
9 released to a bona fide or innocent owner, lien holder, mortgagee,
10 or vendor and if such funds are available in said fund.

11 Q. If the court finds that the property was not used in the
12 attempt or commission of an act specified in subsection A of this
13 section and was not property subject to forfeiture pursuant to
14 subsection B of this section and is not property bearing a
15 counterfeit mark, the court shall order the property released to the
16 owner as the right, title, or interest appears on record in the Tax
17 Commission as of the seizure.

18 R. No vehicle, airplane, or vessel used by a person as a common
19 carrier in the transaction of business as a common carrier shall be
20 forfeited pursuant to the provisions of this section unless it shall
21 be proven that the owner or other person in charge of such
22 conveyance was a consenting party or privy to the attempt or
23 commission of an act specified in subsection A or B of this section.
24 No property shall be forfeited pursuant to the provisions of this

1 section by reason of any act or omission established by the owner
2 thereof to have been committed or omitted without the knowledge or
3 consent of such owner, and by any person other than such owner while
4 such property was unlawfully in the possession of a person other
5 than the owner in violation of the criminal laws of the United
6 States or of any state.

7 S. Whenever any property is forfeited pursuant to this section,
8 the district court having jurisdiction of the proceeding may order
9 that the forfeited property may be retained for its official use by
10 the state, county, or municipal law enforcement agency which seized
11 the property.

12 SECTION 2. AMENDATORY 63 O.S. 2021, Section 2-506, is
13 amended to read as follows:

14 Section 2-506. A. Any peace officer of this state shall seize
15 the following property:

16 1. Any property described in subsection A of Section 2-503 of
17 this title. Such property shall be held as evidence until a
18 forfeiture has been declared or release ordered, except for property
19 described in paragraphs 1, 2 and 3 of subsection A of Section 2-503
20 of this title, or in the case of money, coins, and currency,
21 deposited as provided in subsection E of Section 2-503 of this
22 title; provided, any money, coins and currency taken or detained
23 pursuant to this section may be deposited in an interest-bearing
24 account by or at the direction of the district attorney in the

1 office of the county treasurer if the district attorney determines
2 the currency is not to be held as evidence. All interest earned on
3 such monies shall be returned to the claimant or forfeited with the
4 money, coins and currency which was taken or detained as provided by
5 law;

6 2. Any property described in subsection B of Section 2-503 of
7 this title; or

8 3. Any property described in subsection C of Section 2-503 of
9 this title.

10 B. Forfeiture actions under this section may only be brought
11 following the conviction of a person for an offense to which
12 forfeiture applies. Notice of seizure and intended forfeiture
13 proceeding shall be filed in the office of the clerk of the district
14 court for the county wherein such property is seized and shall be
15 given all owners and parties in interest. Notwithstanding any other
16 provision of law, no filing fees shall be assessed by the court
17 clerk for the filing of any forfeiture action.

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

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

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1 2. Upon each owner or party in interest whose name and address
2 is known to the attorney in the office of the agency prosecuting the
3 action to recover unpaid fines, by mailing a copy of the notice by
4 registered mail to the last-known address; or

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

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

14 E. If at the end of forty-five (45) days after the notice has
15 been mailed or published there is no verified answer on file, the
16 court shall hear evidence upon the fact of the unlawful use and
17 shall order the property forfeited to the state, if such fact is
18 proved. Except as otherwise provided for in Section 2-503 of this
19 title, any such property shall be forfeited to the state and sold
20 under judgment of the court pursuant to the provisions of Section 2-
21 508 of this title.

22 F. If a verified answer is filed, the forfeiture proceeding
23 shall be set for hearing.

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1 G. At a hearing in a proceeding against property described in
2 paragraphs 3 through 9 of subsection A or subsections B and C of
3 Section 2-503 of this title, the requirements set forth in said
4 paragraph or subsection, respectively, shall be satisfied by the
5 state by a preponderance of the evidence.

6 H. The claimant of any right, title, or interest in the
7 property may prove a lien, mortgage, or conditional sales contract
8 to be a bona fide or innocent ownership interest and that such
9 right, title, or interest was created without any knowledge or
10 reason to believe that the property was being, or was to be, used
11 for the purpose charged.

12 I. In the event of such proof, the court shall order the
13 property released to the bona fide or innocent owner, lien holder,
14 mortgagee or vendor if the amount due him is equal to, or in excess
15 of, the value of the property as of the date of the seizure, it
16 being the intention of this section to forfeit only the right, title
17 or interest of the purchaser.

18 J. If the amount due to such person is less than the value of
19 the property, or if no bona fide claim is established, the property
20 shall be forfeited to the state and sold under judgment of the
21 court, as provided for in Section 2-508 of this title, except as
22 otherwise provided for in Section 2-503 of this title.

23 K. Property taken or detained under this section shall not be
24 repleviable, but shall be deemed to be in the custody of the office

1 of the district attorney of the county wherein the property was
2 seized, subject only to the orders and decrees of the court or the
3 official having jurisdiction thereof; said official shall maintain a
4 true and accurate inventory and record of all such property seized
5 under the provisions of this section. The provisions of this
6 subsection shall not apply to property taken or detained by the
7 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the
8 Department of Public Safety, the Oklahoma State Bureau of
9 Investigation, the Alcoholic Beverage Laws Enforcement Commission,
10 the Department of Corrections or the Office of the Attorney General.
11 Property taken or detained by the Oklahoma State Bureau of Narcotics
12 and Dangerous Drugs Control, the Department of Public Safety, the
13 Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws
14 Enforcement Commission, the Department of Corrections or the Office
15 of the Attorney General shall be subject to the provisions of
16 subsections E and F of Section 2-503 of this title.

17 L. The proceeds of the sale of any property not taken or
18 detained by the Oklahoma State Bureau of Narcotics and Dangerous
19 Drugs Control, the Department of Public Safety, the Oklahoma State
20 Bureau of Investigation, the Alcoholic Beverage Laws Enforcement
21 Commission, the Department of Corrections or the Office of the
22 Attorney General shall be distributed as follows, in the order
23 indicated:
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1 1. To the bona fide or innocent purchaser, conditional sales
2 vendor or mortgagee of the property, if any, up to the amount of his
3 or her interest in the property, when the court declaring the
4 forfeiture orders a distribution to such person;

5 2. To the payment of the actual expenses of preserving the
6 property and legitimate costs related to the civil forfeiture
7 proceedings. For purposes of this paragraph, the term "legitimate
8 costs" shall not include court costs associated with any civil
9 forfeiture proceeding; and

10 3. The balance to a revolving fund in the office of the county
11 treasurer of the county wherein the property was seized, said fund
12 to be used as a revolving fund solely for enforcement of controlled
13 dangerous substances laws, drug abuse prevention and drug abuse
14 education, and maintained by the district attorney in his or her
15 discretion for those purposes with a yearly accounting to the board
16 of county commissioners in whose county the fund is established and
17 to the District Attorneys Council; provided, one hundred percent
18 (100%) of the balance of the proceeds of such sale of property
19 forfeited due to nonpayment of a fine imposed pursuant to the
20 provisions of Section 2-415 of this title shall be apportioned as
21 provided in Section 2-416 of this title. The revolving fund shall
22 be audited by the State Auditor and Inspector at least every two (2)
23 years in the manner provided in Section 171 of Title 19 of the
24 Oklahoma Statutes. Said audit shall include, but not be limited to,

1 a compliance audit. A district attorney may enter into agreements
2 with municipal, tribal, county or state agencies to return to such
3 an agency a percentage of proceeds of the sale of any property
4 seized by the agency and forfeited under the provisions of this
5 section. The District Attorneys Council shall adopt guidelines
6 which ensure that such agencies receive a reasonable percentage of
7 such proceeds, considering the relative contribution of each agency
8 to the drug enforcement and prosecution operations relating to the
9 seizure. In formulating said guidelines, the District Attorneys
10 Council shall examine federal guidelines on asset distribution and
11 use said guidelines as a basis for establishing guidelines for this
12 state. The Attorney General is hereby authorized to mediate
13 disputes between district attorneys and such agencies concerning the
14 application of said guidelines in particular instances. Any agency
15 that receives proceeds from an asset distribution shall maintain a
16 true and accurate record of all such assets.

17 M. Whenever any vehicle, airplane or vessel is forfeited under
18 the Uniform Controlled Dangerous Substances Act, the district court
19 of jurisdiction may order that the vehicle, airplane or vessel
20 seized may be retained by the state, county or city law enforcement
21 agency which seized the vehicle, airplane or vessel for its official
22 use.

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1 N. If the court finds that the state failed to satisfy the
2 required showing provided for in subsection G of this section, the
3 court shall order the property released to the owner or owners.

4 O. Except as provided for in subsection Q of this section, a
5 bona fide or innocent owner, lien holder, mortgagee or vendor that
6 recovers property pursuant to this section shall not be liable for
7 storage fees.

8 P. Except as provided for in subsection Q of this section,
9 storage fees shall be paid by the agency which is processing the
10 seizure and forfeiture from funds generated by seizure and
11 forfeiture actions.

12 Q. The bona fide or innocent owner, lien holder, mortgagee or
13 vendor shall reclaim subject seized property within thirty (30) days
14 of written notice from the seizing agency. If such person fails to
15 reclaim the property within the thirty-day time period, then storage
16 fees may be assessed against their secured interest.

17 R. 1. At any hearing held relevant to this section, a report
18 of the findings of the laboratory of the Oklahoma State Bureau of
19 Investigation, the medical examiner's report of investigation or
20 autopsy report, or a laboratory report from a forensic laboratory
21 operated by the State of Oklahoma or any political subdivision
22 thereof, which has been made available to the accused by the office
23 of the district attorney or other party to the forfeiture at least
24 five (5) days prior to the hearing, with reference to all or part of

1 the evidence submitted, when certified as correct by the persons
2 making the report shall be received as evidence of the facts and
3 findings stated, if relevant and otherwise admissible in evidence.
4 If such report is deemed relevant by the forfeiture applicant or the
5 respondent, the court shall admit such report without the testimony
6 of the person making the report, unless the court, pursuant to this
7 subsection, orders such person to appear.

8 2. When any alleged controlled dangerous substance has been
9 submitted to the laboratory of the OSBI for analysis, and such
10 analysis shows that the submitted material is a controlled dangerous
11 substance, the distribution of which constitutes a felony under the
12 laws of this state, no portion of such substance shall be released
13 to any other person or laboratory except to the criminal justice
14 agency originally submitting the substance to the OSBI for analysis,
15 absent an order of a district court. The defendant shall
16 additionally be required to submit to the court a procedure for
17 transfer and analysis of the subject material to ensure the
18 integrity of the sample and to prevent the material from being used
19 in any illegal manner.

20 3. The court, upon motion of either party, shall order the
21 attendance of any person preparing a report submitted as evidence in
22 the hearing when it appears there is a substantial likelihood that
23 material evidence not contained in said report may be produced by
24 the testimony of any person having prepared a report. The hearing

1 shall be held and, if sustained, an order issued not less than five
2 (5) days prior to the time when the testimony shall be required.

3 4. If within five (5) days prior to the hearing or during a
4 hearing, a motion is made pursuant to this section requiring a
5 person having prepared a report to testify, the court may hear a
6 report or other evidence but shall continue the hearing until such
7 time notice of the motion and hearing is given to the person making
8 the report, the motion is heard, and, if sustained, the testimony
9 ordered can be given.

10 S. In any forfeiture proceeding under this chapter in which the
11 defendant or claimant prevails, the court may order the plaintiff
12 processing the seizure and forfeiture to pay from funds generated by
13 seizure and forfeiture actions:

14 1. Reasonable attorney fees and other litigation costs
15 reasonably incurred by the defendant or claimant directly related to
16 the claim on which the defendant or claimant prevailed;

17 2. Postjudgment interest; and

18 3. In cases involving currency or other negotiable instruments:

19 a. interest actually paid to the state from the date of
20 seizure or arrest of the property that resulted from
21 the investment of the property in an interest-bearing
22 account or instrument, and

23 b. an imputed amount of interest that such currency,
24 instruments, or proceeds would have earned at the rate

1 applicable to the thirty-day Treasury Bill, for any
2 period during which no interest was paid, not
3 including any period when the property reasonably was
4 in use as evidence in an official proceeding or in
5 conducting scientific tests for the purpose of
6 collecting evidence, commencing fifteen (15) days
7 after the property was seized by a law enforcement
8 agency or was turned over to a law enforcement agency
9 by a federal law enforcement authority.

10 SECTION 3. This act shall become effective November 1, 2023.

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12 59-1-5002 GRS 11/15/22
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