

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3500

By: Talley

7 COMMITTEE SUBSTITUTE

8
9 An Act relating to unmanned aircraft; amending
10 Section 1, Chapter 313, O.S.L. 2016 (3 O.S. Supp.
11 2019, Section 322), which relates to critical
12 infrastructure facilities; modifying definition of
13 critical infrastructure facility; deleting certain
14 height requirement; prohibiting use of certain
15 technology; allowing for certain confiscation and
16 forfeiture without criminal charges; providing for
17 certain penalty; amending 21 O.S. 2011, Section 1738,
18 which relates to seizure and forfeiture proceedings;
19 authorizing certain confiscation and forfeiture; and
20 providing an effective date.

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

22 SECTION 1. AMENDATORY Section 1, Chapter 313, O.S.L.
23 2016 (3 O.S. Supp. 2019, Section 322), is amended to read as
24 follows:

 Section 322. A. As used in this section:

 1. "Critical infrastructure facility" means:

- a. one of the following, if completely enclosed by a
fence or other physical barrier that is obviously

1 designed to exclude intruders, or if clearly marked
2 with a sign or signs that are posted on the property,
3 are reasonably likely to come to the attention of
4 intruders, and indicate that entry is forbidden or
5 flight of unmanned aircraft without site authorization
6 is forbidden:

- 7 (1) a petroleum or alumina refinery and all
8 associated tankage. Associated tankage shall
9 include all tankage used to store crude oil to be
10 refined at the refinery or to store refined
11 petroleum products which are the end products of
12 the refining process,
- 13 (2) an electrical power generating facility,
14 substation, switching station or electrical
15 control center,
- 16 (3) a chemical, polymer or rubber manufacturing
17 facility,
- 18 (4) a water intake structure, water treatment
19 facility, wastewater treatment plant or pump
20 station,
- 21 (5) a natural gas compressor station,
- 22 (6) a liquid natural gas terminal ~~or~~, a liquid
23 natural gas storage facility, a crude oil storage
24 facility or a condensate storage facility,

- 1 (7) a telecommunications central switching office,
2 (8) wireless telecommunications infrastructure,
3 including cell towers,
4 (9) a port, railroad switching yard, trucking
5 terminal or other freight transportation
6 facility,
7 (10) a gas processing plant, including a plant used in
8 the processing, treatment or fractionation of
9 natural gas or natural gas liquids,
10 (11) a transmission facility used by a federally
11 licensed radio or television station,
12 (12) a steelmaking facility that uses an electric arc
13 furnace to make steel,
14 (13) a facility identified and regulated by the United
15 States Department of Homeland Security Chemical
16 Facility Anti-Terrorism Standards (CFATS)
17 program,
18 (14) a dam that is regulated by the state or federal
19 government, ~~or~~
20 (15) a natural gas distribution utility facility,
21 including, but not limited to, pipeline
22 interconnections, a city gate or town border
23 station, metering station, aboveground piping, a
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1 regulator station and a natural gas storage
2 facility, or

3 b. any aboveground portion of an oil, gas, hazardous
4 liquid or chemical pipeline that is enclosed by a
5 fence or other physical barrier that is obviously
6 designed to exclude intruders;

7 2. "Dam" means any barrier, including any appurtenant
8 structures, that is constructed for the purpose of permanently or
9 temporarily impounding water; and

10 3. "Unmanned aircraft" means an aircraft without occupants that
11 is flown by a pilot via a ground control system or autonomously
12 through use of an onboard computer and other additional equipment
13 necessary to operate the aircraft and includes unmanned aircraft
14 commonly called drones.

15 B. Except as provided in subsection C of this section, a person
16 shall not intentionally or knowingly:

17 1. Operate an unmanned aircraft over a critical infrastructure
18 facility ~~if the unmanned aircraft is less than four hundred (400)~~
19 ~~feet above ground level;~~

20 2. Allow an unmanned aircraft to make contact with a critical
21 infrastructure facility, including any person or object on the
22 premises of or within the facility; or

1 3. Allow an unmanned aircraft to come within a distance of a
2 critical infrastructure facility that is close enough to interfere
3 with the operations of or cause a disturbance to the facility; or

4 4. Allow an unmanned aircraft to take recorded images through
5 the use of infrared or other similar thermal imaging technology that
6 reveals individuals or activities on site or the contents of a
7 structure located inside a critical infrastructure facility without
8 the consent of the property owner.

9 C. This section shall not apply to conduct committed by:

10 1. The federal government, the state or a political subdivision
11 of the state;

12 2. A person under contract with or otherwise acting under the
13 direction or on behalf of the federal government, the state or a
14 political subdivision of the state;

15 3. A law enforcement agency;

16 4. A person under contract with or otherwise acting under the
17 direction or on behalf of a law enforcement agency;

18 5. An owner or operator of the critical infrastructure
19 facility;

20 6. A person under contract with or otherwise acting under the
21 direction or on behalf of an owner or operator of the critical
22 infrastructure facility;

23 7. A person who has the prior written consent of the owner or
24 operator of the critical infrastructure facility; or

1 8. The owner or occupant of the property on which the critical
2 infrastructure facility is located or a person who has the prior
3 written consent of the owner or occupant of that property; ~~or.~~

4 ~~9. An operator of an unmanned aircraft that is being used for a~~
5 ~~commercial purpose, if the operator is authorized by the Federal~~
6 ~~Aviation Administration to conduct operations over that airspace.~~

7 D. Any person in violation of this section may be civilly
8 liable for damages to the critical infrastructure facility to
9 include, but not be limited to, damage to property, the environment
10 or human health.

11 E. Any unmanned aircraft flown in violation of this section may
12 be confiscated and forfeited to the State of Oklahoma by any law
13 enforcement authority pursuant to Section 1738 of Title 21 of the
14 Oklahoma Statutes. Such confiscation and forfeiture shall not
15 require that criminal charges be filed against the person piloting
16 the unmanned aircraft.

17 F. Any person who shall willfully fly an unmanned aircraft over
18 property containing a critical infrastructure facility without
19 permission by the owner of the property or lawful occupant thereof
20 shall, upon conviction, be guilty of a misdemeanor punishable by a
21 fine of not less than One Thousand Dollars (\$1,000.00), or by
22 imprisonment in the county jail for a term of six (6) months, or by
23 both such fine and imprisonment.

1 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1738, is
2 amended to read as follows:

3 Section 1738. A. 1. Any commissioned peace officer of this
4 state is authorized to seize any equipment, vehicle, airplane,
5 vessel or any other conveyance that is used in the commission of any
6 armed robbery offense defined in Section 801 of this title, used to
7 facilitate the intentional discharge of any kind of firearm in
8 violation of Section 652 of this title, used in violation of the
9 Trademark Anti-Counterfeiting Act, used in the attempt or commission
10 of any act of burglary in the first or second degree, motor vehicle
11 theft, unauthorized use of a vehicle, obliteration of distinguishing
12 numbers on vehicles or criminal possession of vehicles with altered,
13 removed or obliterated numbers as defined by Sections 1431, 1435,
14 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of
15 Title 47 of the Oklahoma Statutes, used in the commission of any
16 arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of
17 this title, used in any manner to facilitate or participate in the
18 commission of any human trafficking offense in violation of Section
19 748 of this title, or used by any defendant when such vehicle or
20 other conveyance is used in any manner by a prostitute, pimp or
21 panderer to facilitate or participate in the commission of any
22 prostitution offense in violation of Sections 1028, 1029 or 1030 of
23 this title; provided, however, that the vehicle or conveyance of a
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1 customer or anyone merely procuring the services of a prostitute
2 shall not be included.

3 2. No conveyance used by a person as a common carrier in the
4 transaction of business as a common carrier shall be forfeited under
5 the provisions of this section unless it shall appear that the owner
6 or other person in charge of such conveyance was a consenting party
7 or privy to the unlawful use of the conveyance in violation of this
8 section.

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

17 B. In addition to the property described in subsection A of
18 this section, the following property is also subject to forfeiture
19 pursuant to this section:

20 1. Property used in the commission of theft of livestock or in
21 any manner to facilitate the theft of livestock;

22 2. The proceeds gained from the commission of theft of
23 livestock;

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1 3. Personal property acquired with proceeds gained from the
2 commission of theft of livestock;

3 4. All conveyances, including aircraft, vehicles or vessels,
4 and horses or dogs which are used to transport or in any manner to
5 facilitate the transportation for the purpose of the commission of
6 theft of livestock;

7 5. Any items having a counterfeit mark and all property that is
8 owned by or registered to the defendant that is employed or used in
9 connection with any violation of the Trademark Anti-Counterfeiting
10 Act;

11 6. Any weapon possessed, used or available for use in any
12 manner during the commission of a felony within the State of
13 Oklahoma, or any firearm that is possessed by a convicted felon;

14 7. Any police scanner used in violation of Section 1214 of this
15 title;

16 8. Any computer and its components and peripherals, including
17 but not limited to the central processing unit, monitor, keyboard,
18 printers, scanners, software, and hardware, when it is used in the
19 commission of any crime in this state;

20 9. All property used in the commission of, or in any manner to
21 facilitate, a violation of Section 1040.12a of this title;

22 10. All conveyances, including aircraft, vehicles or vessels,
23 monies, coins and currency, or other instrumentality used or
24 intended to be used, in any manner or part, to commit a violation of

1 paragraph 1 of subsection A of Section 1021 of this title, where the
2 victim of the crime is a minor child, subsection B of Section 1021
3 of this title, Section 1021.2 of this title, paragraph 1 of
4 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of
5 subsection A of Section 1123 of this title;

6 11. All conveyances, including aircraft, vehicles or vessels,
7 monies, coins and currency, or other instrumentality used in any
8 manner or part, to commit any violation of the provisions set forth
9 in Section 748 of this title;

10 12. Any and all property used in any manner or part to
11 facilitate, participate or further the commission of a human
12 trafficking offense in violation of Section 748 of this title, and
13 all property, including monies, real estate, or any other tangible
14 assets or property of or derived from or used by a prostitute, pimp
15 or panderer in any manner or part to facilitate, participate or
16 further the commission of any prostitution offense in violation of
17 Sections 1028, 1029 or 1030 of this title; provided, however, any
18 monies, real estate or any other tangible asset or property of a
19 customer or anyone merely procuring the services of a prostitute
20 shall not be included; ~~and~~

21 13. Any vehicle, airplane, vessel, or parts of a vehicle whose
22 numbers have been removed, altered or obliterated so as to prevent
23 determination of the true identity or ownership of said property and
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1 parts of vehicles which probable cause indicates are stolen but
2 whose true ownership cannot be determined; and

3 14. Any unmanned aircraft flown in violation of Section 322 of
4 Title 3 of the Oklahoma Statutes.

5 C. Property described in subsection A or B of this section may
6 be held as evidence until a forfeiture has been declared or a
7 release ordered. Forfeiture actions under this section may be
8 brought by the district attorney in the proper county of venue as
9 petitioner; provided, in the event the district attorney elects not
10 to file such action, or fails to file such action within ninety (90)
11 days of the date of the seizure of such equipment, the property
12 shall be returned to the owner.

13 D. Notice of seizure and intended forfeiture proceeding shall
14 be filed in the office of the clerk of the district court for the
15 county wherein such property is seized and shall be given all owners
16 and parties in interest.

17 E. Notice shall be given according to one of the following
18 methods:

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

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

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

8 F. Within sixty (60) days after the mailing or publication of
9 the notice, the owner of the property and any other party in
10 interest or claimant may file a verified answer and claim to the
11 property described in the notice of seizure and of the intended
12 forfeiture proceeding.

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

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

19 I. At the hearing the petitioner shall prove by clear and
20 convincing evidence that property was used in the attempt or
21 commission of an act specified in subsection A of this section or is
22 property described in subsection B of this section with knowledge by
23 the owner of the property.

1 J. The claimant of any right, title, or interest in the
2 property may prove the lien, mortgage, or conditional sales contract
3 to be bona fide and that the right, title, or interest created by
4 the document was created without any knowledge or reason to believe
5 that the property was being, or was to be, used for the purpose
6 charged.

7 K. In the event of such proof, the court may order the property
8 released to the bona fide or innocent owner, lien holder, mortgagee,
9 or vendor if the amount due such person is equal to, or in excess
10 of, the value of the property as of the date of the seizure, it
11 being the intention of this section to forfeit only the right,
12 title, or interest of the purchaser, except for items bearing a
13 counterfeit mark or used exclusively to manufacture a counterfeit
14 mark.

15 L. If the amount due to such person is less than the value of
16 the property, or if no bona fide claim is established, the property
17 may be forfeited to the state and may be sold pursuant to judgment
18 of the court, as on sale upon execution, and as provided in Section
19 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
20 provided for by law and for property bearing a counterfeit mark
21 which shall be destroyed.

22 M. Property taken or detained pursuant to this section shall
23 not be repleviable, but shall be deemed to be in the custody of the
24 petitioner or in the custody of the law enforcement agency as

1 provided in the Trademark Anti-Counterfeiting Act. Except for
2 property required to be destroyed pursuant to the Trademark Anti-
3 Counterfeiting Act, the petitioner shall release said property to
4 the owner of the property if it is determined that the owner had no
5 knowledge of the illegal use of the property or if there is
6 insufficient evidence to sustain the burden of showing illegal use
7 of such property. If the owner of the property stipulates to the
8 forfeiture and waives the hearing, the petitioner may determine if
9 the value of the property is equal to or less than the outstanding
10 lien. If such lien exceeds the value of the property, the property
11 may be released to the lien holder. Property which has not been
12 released by the petitioner shall be subject to the orders and
13 decrees of the court or the official having jurisdiction thereof.

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

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

22 P. The proceeds of the sale of any property shall be
23 distributed as follows, in the order 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
3 such person's 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 reasonable expenses of
6 preserving the property;
- 7 3. To the victim of the crime to compensate said victim for any
8 loss incurred as a result of the act for which such property was
9 forfeited; and
- 10 4. The balance to a revolving fund in the office of the county
11 treasurer of the county wherein the property was seized, to be
12 distributed as follows: one-third (1/3) to the investigating law
13 enforcement agency; one-third (1/3) of said fund to be used and
14 maintained as a revolving fund by the district attorney to be used
15 to defray any lawful expenses of the office of the district
16 attorney; and one-third (1/3) to go to the jail maintenance fund,
17 with a yearly accounting to the board of county commissioners in
18 whose county the fund is established. If the petitioner is not the
19 district attorney, then the one-third (1/3) which would have been
20 designated to that office shall be distributed to the petitioner.
21 Monies distributed to the jail maintenance fund shall be used to pay
22 costs for the storage of such property if such property is ordered
23 released to a bona fide or innocent owner, lien holder, mortgagee,
24 or vendor and if such funds are available in said fund.

1 Q. If the court finds that the property was not used in the
2 attempt or commission of an act specified in subsection A of this
3 section and was not property subject to forfeiture pursuant to
4 subsection B of this section and is not property bearing a
5 counterfeit mark, the court shall order the property released to the
6 owner as the right, title, or interest appears on record in the Tax
7 Commission as of the seizure.

8 R. No vehicle, airplane, or vessel used by a person as a common
9 carrier in the transaction of business as a common carrier shall be
10 forfeited pursuant to the provisions of this section unless it shall
11 be proven that the owner or other person in charge of such
12 conveyance was a consenting party or privy to the attempt or
13 commission of an act specified in subsection A or B of this section.
14 No property shall be forfeited pursuant to the provisions of this
15 section by reason of any act or omission established by the owner
16 thereof to have been committed or omitted without the knowledge or
17 consent of such owner, and by any person other than such owner while
18 such property was unlawfully in the possession of a person other
19 than the owner in violation of the criminal laws of the United
20 States or of any state.

21 S. Whenever any property is forfeited pursuant to this section,
22 the district court having jurisdiction of the proceeding may order
23 that the forfeited property may be retained for its official use by
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1 the state, county, or municipal law enforcement agency which seized
2 the property.

3 SECTION 3. This act shall become effective November 1, 2020.
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5 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 02/27/2020 -
6 DO PASS, As Amended.
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