

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senator Hopkins**

# A Bill

**SENATE BILL**

## For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS CODE OF 1987 TITLE 5,  
9 CHAPTER 64, SECTION 505 TO PROVIDE FOR IN PERSONAM  
10 JURISDICTION IN DRUG OFFENSE FORFEITURES; AND FOR OTHER  
11 PURPOSES."

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13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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15 SECTION 1. Arkansas Code Annotated Section 5-64-505 is hereby amended  
16 by inserting additional subsections to read as follows:

17 "(m) Forfeitures under this section may be based on in rem or in  
18 personam jurisdiction. In personam jurisdiction may be based on the person's  
19 presence in the state, or on his conduct in the state, as set out in Ark. Code  
20 Ann. Section 16-4-101(c).

21 (n) The following additional provisions shall apply to in personam  
22 forfeiture proceedings:

23 (1) A temporary restraining order under this section may be entered ex  
24 parte on application of the state, upon a showing that:

25 (i) There is probable cause to believe that the property with respect  
26 to which the order is sought is subject to forfeiture under this Section; and

27 (ii) Notice of the action would jeopardize the availability of the  
28 property for forfeiture.

29 (2) Notice of the entry of a temporary restraining order and an  
30 opportunity for hearing must be afforded to persons known to have an interest  
31 in the property. The hearing must be held at the earliest possible date  
32 consistent with A.R.C.P. Rule 65 and is limited to the issues of whether:

33 (i) There is a probability that the state will prevail on the issue of  
34 forfeiture and that failure to enter the order will result in the property  
35 being destroyed, conveyed, alienated, encumbered, disposed of, received,

1 removed from the jurisdiction of the court, concealed, or otherwise made  
2 unavailable for forfeiture; and

3 (ii) The need to preserve the availability of property through the  
4 entry of the requested order outweighs the hardship on any owner or interest  
5 holder against whom the order is to be entered.

6 (3) The state has the burden of proof by a preponderance of the  
7 evidence to show that the defendant's property is subject to forfeiture.

8 (4) On a determination of liability of a person for conduct giving rise  
9 to forfeiture under this section, the court shall enter a judgment of  
10 forfeiture of the property subject to forfeiture as alleged in the complaint  
11 and may authorize the prosecuting attorney or any law enforcement officer to  
12 seize all property subject to forfeiture pursuant to Section 5-64-505(a) not  
13 previously seized or not then under seizure. The order of forfeiture shall be  
14 consistent with subsection (k) of this section. In connection with the  
15 judgment, the court, on application of the state, may enter any appropriate  
16 order to protect the interest of the state in property ordered forfeited.

17 (5) Subsequent to the finding of liability and order of forfeiture the  
18 following procedures apply:

19 (i) The attorney for the state shall give notice of pending forfeiture,  
20 in the manner provided in A.R.C.P. Rule 4, to all owners and interest holders  
21 who have not previously been given notice.

22 (ii) An owner of or interest holder in property that has been ordered  
23 forfeited and whose claim is not precluded may file a claim within thirty (30)  
24 days after initial notice of pending forfeiture or after notice under A.R.C.P.  
25 Rule 4, whichever is earlier.

26 (iii) The court may amend the in personam order of forfeiture if the  
27 court determines that a claimant has established that he or she has an  
28 interest in the property and that that interest is exempt under Section 5-64-  
29 505(a)(4), (6), or (7)."

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31 SECTION 2. It is the express intent of this Act to create in personam  
32 jurisdiction for personal property in forfeiture proceedings. This type of  
33 jurisdiction has been authorized through legislation in several states. See,  
34 e.g., Arizona Revised Statutes Annotated Sections 13-4301 to -4315; Hawaii  
35 Revised Statutes Sections 712A-1 to 712A-20; and Louisiana Revised Statutes

1 Sections 40:2601 to 40:2622. See also the Model Asset Seizure and Forfeiture  
2 Act prepared by the American Prosecutors Research Institute's National Drug  
3 Prosecution Center.

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5 SECTION 3. All provisions of this Act of a general and permanent nature  
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
7 Revision Commission shall incorporate the same in the Code.

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9 SECTION 4. If any provision of this Act or the application thereof to  
10 any person or circumstance is held invalid, such invalidity shall not affect  
11 other provisions or applications of the Act which can be given effect without  
12 the invalid provision or application, and to this end the provisions of this  
13 Act are declared to be severable.

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15 SECTION 5. All laws and parts of laws in conflict with this Act are  
16 hereby repealed.

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