

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Representative Purdom**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

8 "AN ACT TO ESTABLISH A PROCEDURE FOR FORFEITURE OF  
9 PROPERTY FOR CRIMINAL ACTS INVOLVING THE FELONY THEFT OF  
10 PROPERTY WHICH IS LIVESTOCK, TO PRESCRIBE THE DUTIES AND  
11 PROCEDURES TO BE FOLLOWED BY LAW ENFORCEMENT AGENCIES, AND  
12 TO PRESCRIBE THE DISTRIBUTION OF THE SALE OF THE PROCEEDS  
13 OF THE FORFEITED PROPERTY; AND FOR OTHER PURPOSES."

## Subtitle

16 "AN ACT TO ESTABLISH A PROCEDURE FOR FORFEITURE OF  
17 PROPERTY FOR CRIMINAL THEFT OF LIVESTOCK AND TO DISTRIBUTE  
18 THE PROCEEDS."

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

22 SECTION 1. As used in this act, unless the context otherwise  
23 requires:

24 (1) "Theft of livestock" means a theft of property which is classified  
25 as a felony violation, pursuant to Arkansas Code § 5-36-103, and amendments  
26 thereto, in which the property taken was livestock.

27 (2) "Livestock" means cattle, swine, sheep, goats, horses and mules and  
28 any carcass, skin or part of such animal.

29 (3) "Contraband property" means property of any nature including  
30 personal, tangible or intangible but shall not include real property.

32 SECTION 2. (a) The following property is subject to forfeiture  
33 pursuant to this act:

34 (1) Contraband property used or intended to be used in the  
35 commission of theft of livestock;

1           (2) The proceeds gained from the commission of theft of  
2 livestock;

3           (3) Personal property acquired with proceeds gained from the  
4 commission of theft of livestock;

5           (4) All conveyances, including aircraft, vessels, vehicles, or  
6 horses which are used or intended for the use to transport or in any manner to  
7 facilitate the transportation for the purpose of the commission of theft of  
8 livestock. No conveyance used by any person as a common carrier in the  
9 transportation of business as a common carrier is subject to forfeiture under  
10 this section unless it appears that the owner or other person in charge of the  
11 conveyance is a consenting party or privy to a violation of this act. No  
12 conveyance is subject to forfeiture under this section by reason of any act or  
13 omission established by the owners thereof to have been committed or omitted  
14 without the owners knowledge or consent. A forfeiture of a conveyance  
15 encumbered by a bona fide security interest is subject to the interest of the  
16 secured party or parties;

17           (5) All books, records and research products and materials  
18 including microfilm, tapes and data which are used or intended for the use in  
19 the theft of livestock;

20           (6) Everything of value furnished, or intended to be furnished or  
21 traded or used as payment or invested for anything of value in return for the  
22 commission of the theft of livestock but shall not include real property. It  
23 may be presumed that this property was acquired with proceeds gained from the  
24 commission of theft of livestock and are subject to forfeiture;

25           (b) Property which is used in the commission of theft of livestock  
26 which has title of ownership with two (2) parties on the title or a cosigner  
27 is subject to forfeiture, if one party on the title uses the property in the  
28 commission of theft of livestock or receives titled property as the proceeds  
29 of such felony even if the second party claims that such second party did not  
30 have knowledge or involvement in such felony.

31           (c) All moneys, coin, and currency found in possession of the persons  
32 arrested for the theft of livestock or found in, on, or in close proximity to  
33 any forfeited property used or intended for the use in the theft of livestock  
34 shall be presumed to be forfeitable under this section. The burden of proof is  
35 upon claimants of this property to rebut this presumption.

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SECTION 3. (a) The prosecuting attorney of the judicial circuit within whose jurisdiction there is property which is sought to be forfeited pursuant to Section 2, shall promptly proceed against the property by filing in the circuit court having jurisdiction of such property a petition for an order to show cause why the court should not order forfeiture of such property. The petition shall be verified and shall set forth:

- (1) A statement that the action is brought pursuant to Section 2 of this act;
- (2) The law enforcement agency bringing the action;
- (3) A description of the property sought to be forfeited;
- (4) A statement that on or about a date certain the property was used or intended to be used in a criminal act constituting theft of livestock or a criminal act constituting theft of livestock took place in, upon or by means of the property;
- (5) A statement detailing the facts in support of subsection (a) of this section; and
- (6) A list of all persons known to the law enforcement agency, after diligent search and inquiry, that may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.

(b) Upon receipt of a petition complying with the requirements of subsection (a) of this section, the circuit judge of the court having jurisdiction shall issue an order to show cause setting forth a statement that this act is the controlling law. In addition, the order shall set a date at least forty-one (41) days from the date of first publication of the order pursuant to subsection (c) of this section for all persons claiming an interest in the property to file such pleadings as they desire as to why the court should not order the forfeiture of such property to use, sale or other disposition by the law enforcement agency seeking forfeiture of the property. The court shall further order that all persons who do not appear on that date are deemed to have defaulted and waive any claim to the subject property.

(c) The prosecuting attorney shall give notice of the forfeiture proceedings by:

- (1) Causing to be published a copy of the order to show cause

1 twice each week for two (2) consecutive weeks in a newspaper having general  
2 circulation in the county where the property is located; and

3           (2) Sending a copy of the petition and order to show cause by  
4 certified mail, return receipt requested, to each person having ownership of  
5 or a security interest in the property or in the manner provided in Arkansas  
6 Rules of Civil Procedure, Rule 4, if:

7                   (A) The property is of a type for which title or  
8 registration is required by law;

9                   (B) The owner of the property is known in fact to the law  
10 enforcement agency at the time of seizure; or

11                   (C) The property is subject to a security interest  
12 perfected in accordance with the uniform commercial code. The law enforcement  
13 agency shall be obligated only to make diligent search and inquiry as to the  
14 owner of the property and if, after diligent search and inquiry, such agency  
15 is unable to ascertain the owner, the requirement of actual notice by mail  
16 with respect to persons having perfected security interest in the property  
17 shall not be applicable.

18           (d) At the hearing on the matter, the petitioner shall have the burden  
19 to establish that the property is subject to forfeiture as provided in Section  
20 2 of this act.

21           (e) The final order of forfeiture by the circuit court shall perfect in  
22 the law enforcement agency right, title and interest in and to such property  
23 and shall relate back to the date of the seizure.

24           (f) Physical seizure of property shall not be necessary in order to  
25 allege in a petition under this section that property is forfeitable. Upon  
26 filing the petition, the prosecuting attorney for the judicial circuit may  
27 also seek such protective orders as necessary to prevent the transfer,  
28 encumbrance or other disposal of any property named in the petition.

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30           SECTION 4. (a) Subject to the provisions of subsection (c) of this  
31 section, if property forfeited pursuant to Section 2 of this act is harmful to  
32 the public health or is required by law to be destroyed, the law enforcement  
33 agency to which the property is forfeited shall:

34                   (1) Require the sheriff of the county to take custody of the  
35 property and remove it to any appropriate location for disposition in

1 accordance with law; or

2 (2) Forward it to the Arkansas State Police for disposition.

3 (b) Subject to the provisions of subsection (c) of this section, if  
4 property forfeited pursuant to Section 2 is not harmful to the public health  
5 and is not required by law to be destroyed, the law enforcement agency to  
6 which the property is forfeited shall:

7 (1) Sell the property in accordance with subsection (d) of this  
8 section; or

9 (2) If the property is not subject to a lien which has been  
10 preserved by the court, retain the property for official use.

11 (c) If the property is a controlled substance, the law enforcement  
12 agency to which the property is forfeited shall transfer it to the Drug  
13 Enforcement Administration or Department of Health for disposition or  
14 destruction.

15 (d) (1) If a law enforcement agency desires to sell property forfeited  
16 to it pursuant to Section 2 of this act, the law enforcement agency shall  
17 first cause notice of the sale to be made by publication at least twice a week  
18 for two (2) consecutive weeks in a newspaper having general circulation in the  
19 county and sending a copy of the notice of the sale by certified mail, return  
20 receipt requested, to each person having ownership of or a security interest  
21 in the property or in the manner provided in Arkansas Rules of Civil  
22 Procedure, Rule 4, if:

23 (A) The property is of a type for which title or  
24 registration is required by law;

25 (B) The owner of the property is known in fact to the law  
26 enforcement agency at the time of seizure; or

27 (C) The property is subject to a security interest  
28 perfected in accordance with the uniform commercial code.

29 (2) The notice of the sale shall include the time, place and  
30 conditions of the sale and a description of the property to be sold.

31 (3) The property shall then be disposed of at public auction to  
32 the highest bidder for cash without appraisal.

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34 SECTION 5. The proceeds of any sale pursuant to Section 4 and any  
35 moneys forfeited pursuant to Section 2 shall be applied:

1 (1) To payment of the balance due on any lien preserved by the court in  
2 the forfeiture proceedings;

3 (2) To payment of the cost incurred by the seizing agency in connection  
4 with the storage, maintenance, security and forfeiture of the property;

5 (3) To payment of the costs incurred by the prosecuting attorney or  
6 attorney for the law enforcement agency approved by the prosecuting attorney  
7 to which the property is forfeited;

8 (4) To payment of costs incurred by the court;

9 (5) The remaining proceeds or moneys shall be disposed of as follows:

10 (A) If the law enforcement agency is a state agency, the entire  
11 amount shall be deposited into the State Treasury in the fund for that agency  
12 for the law enforcement purposes for that agency;

13 (B) If the law enforcement agency is a county sheriff\_s office,  
14 the entire amount shall be deposited in the county treasury and credited to a  
15 special law enforcement fund in the county treasury;

16 (C) If the law enforcement agency is a city or town police  
17 agency, the entire amount shall be deposited in the city or town treasury and  
18 credited to a special law enforcement fund in the city treasury; and

19 (D) Moneys in the special law enforcement forfeiture fund in the  
20 county or city treasury shall be expended only upon appropriation to the  
21 sheriff\_s office or to the police department, by the county quorum court or  
22 governing body of the city, to defray the costs of protracted investigations,  
23 to provide additional technical equipment or expertise, to provide matching  
24 funds to obtain federal grants or for such other law enforcement purposes as  
25 the county quorum court or governing body of the city deems appropriate and  
26 shall not be considered a source of revenue to meet normal operating expenses.

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28 SECTION 6. If more than one law enforcement agency is substantially  
29 involved in effecting a forfeiture pursuant to Section 2, the circuit court  
30 having jurisdiction over the forfeiture proceeding shall equitably distribute  
31 the property among the law enforcement agencies. Any forfeited moneys, or any  
32 proceeds remaining after the sale of the property, shall be equitably  
33 distributed to the county or municipality for deposit in the respective county  
34 or city treasury and credit to the law enforcement fund provided in Section 5.  
35 Any forfeited moneys, or any proceeds remaining after the sale of the

1 property shall be equitably distributed in the manner as provided in Section  
2 5.

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

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8 SECTION 8. If any provisions of this act or the application thereof to  
9 any person or circumstance is held invalid, the invalidity shall not affect  
10 other provisions or applications of the act which can be given effect without  
11 the invalid provisions or application, and to this end the provisions of this  
12 act are declared to be severable.

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14 SECTION 9. All laws and parts of laws in conflict with this act are  
15 hereby repealed.

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