

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

A Bill

SENATE BILL 472

For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR CRIMINAL PENALTIES FOR CRIMINAL USE
9 OF PROPERTY AND/OR LAUNDERING CRIMINAL PROCEEDS; AND TO
10 ESTABLISH PROCEDURES OBTAINING RECORDS AND REPORTS
11 NECESSARY FOR THE INVESTIGATION AND PROSECUTION OF
12 CRIMINAL USE OF PROPERTY AND/OR LAUNDERING CRIMINAL
13 PROCEEDS; AND FOR OTHER PURPOSES."

Subtitle

16 "AN ACT TO BE KNOWN AS THE _ARKANSAS CRIMINAL USE OF
17 PROPERTY AND/OR LAUNDERING CRIMINAL PROCEEDS ACT._"

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

21 SECTION 1. CITATION.

22 This act shall be known and may be cited as the "Arkansas Criminal Use
23 of Property and/or Laundering Criminal Proceeds Act."

25 SECTION 2. GENERAL LEGISLATIVE FINDINGS, DECLARATIONS AND INTENT.

26 (a) The General Assembly of the State of Arkansas finds that the State
27 of Arkansas is experiencing an increase in crime committed by criminal gangs,
28 organizations or enterprises. These criminal gangs, organizations or
29 enterprises support themselves by engaging in criminal activity for profit,
30 most commonly through the distribution of controlled substances and theft of
31 property.

32 (b) The General Assembly of the State of Arkansas further finds that
33 with increasing frequency criminals are using sophisticated means of
34 concealing criminal proceeds and in most cases moving criminal proceeds out of
35 Arkansas. In order to reap the rewards of their criminal conduct, criminals

1 must conceal the source of the criminal proceeds and the identity of the
2 individuals who worked to obtain the criminal proceeds. They convert the
3 criminal proceeds to property or assets that appear to have come from a
4 legitimate source. Often they must maintain the property or assets in another
5 person_s name. This also helps them to avoid detection, identification, and
6 seizure. While individual criminals launder their criminal proceeds, this is
7 particularly common among members and associates of criminal gangs,
8 organizations and enterprises. There is strong evidence that this increased
9 sophistication is due largely to contact with other criminal gangs,
10 organizations or enterprises from other states.

11 (c) The General Assembly of the State of Arkansas further finds that we
12 cannot afford to allow millions of dollars in untaxed criminal proceeds to be
13 taken from the state_s economy each year.

14 (d) The intent of the General Assembly of the State of Arkansas is to
15 enact penalties that will deter and punish the criminal use of property and/or
16 the laundering of criminal proceeds, and facilitate the investigation thereof.

17

18 SECTION 3. DEFINITIONS.

19 (a) "Predicate criminal offense" means any violation of Arkansas law
20 which is a crime of violence or pecuniary gain.

21 (b) "Crime of violence" means any violation of Arkansas law where a
22 person purposely or knowingly causes, or threatens to cause, death or physical
23 injury to another person or persons, specifically including rape.

24 (c) "Crime of pecuniary gain" means any violation of Arkansas law that
25 results, or was intended to result, in the defendant receiving income,
26 benefit, property, money, or anything of value.

27 (d) "Contraband" means any property, funds, or monetary instruments
28 which are criminal proceeds or which were otherwise used with the knowledge
29 and consent of the owner to facilitate a violation of this statute as well as
30 all related records and any other article possessed under circumstances
31 prohibited by law.

32 (e) "Conducts" means initiating, concluding, or participating in
33 initiating, or concluding a transaction.

34 (f) "Transaction" means any acquisition or disposition of property by
35 whatever means including a purchase, sale, trade, investment, payment, loan,

1 pledge, gift, transfer, delivery, deposit, withdrawal, transfer between
2 accounts, exchange of currency, extension of credit, purchase or sale of any
3 stock bond, certificate of deposit, or other monetary instrument, or any other
4 payment, transfer or delivery buy, through, or to a financial institution, by
5 whatever means effected. This is not an exclusive list.

6 (g) "Criminal proceeds" means any and everything of value furnished or
7 intended to be furnished, in exchange for criminal conduct or contraband
8 received in violation of state or federal law and property or profits
9 traceable to such an exchange.

10 (h) "Monetary instruments" means any coin or currency of the United
11 States or of any other country, travelers_ checks, personal checks, bank
12 checks, money orders, investment securities in bearer form or otherwise in
13 such form that title thereto passes upon delivery, and negotiable instruments
14 in bearer form or otherwise in such form that title thereto passes upon
15 delivery.

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17 SECTION 4. CRIMINAL USE OF PROPERTY AND/OR LAUNDERING CRIMINAL
18 PROCEEDS.

19 (a) A person commits the offense of criminal use of property and/or
20 laundering criminal proceeds when he knowingly:

21 (1) Conducts, or attempts to conduct, a transaction involving
22 criminal proceeds which were derived from any predicate criminal offense, or
23 which were represented to be criminal proceeds from any predicate criminal
24 offense, with the intent to:

25 (A) conceal the location, source, ownership, or control of the
26 criminal proceeds; or

27 (B) avoid a reporting requirement under state or federal law; or

28 (C) acquire any interest in the criminal proceeds, or

29 (2) Uses, or makes available for use, any property, in which he
30 has any ownership or lawful possessory interest, to facilitate a predicate
31 criminal offense.

32 (b) Any person who is guilty of criminal use of property and/or
33 laundering criminal proceeds commits a Class C felony and upon conviction the
34 *prosecuting attorney may institute a civil action against any person who*
35 *violates this section to obtain a judgement against all persons who violate*

1 this section, jointly and severally, for damages in an amount equal to
2 property, funds, or monetary instruments involved in the violations as well as
3 the proceeds acquired by all persons involved in the enterprise or by reason
4 of conduct in furtherance of the violation, together with costs incurred for
5 resources and personnel used in the investigation and prosecution of both
6 criminal and civil proceedings. The standard of proof in actions brought
7 under the section is a preponderance of the evidence. The procedures for
8 forfeiture and distribution in the asset forfeiture law, Sec. 5-64-505, shall
9 apply. Defendants in civil actions brought under this subsection shall be
10 entitled to trial by jury.

11 (c) An attorney who represents a criminal defendant or person whom he
12 reasonably believes may become a criminal defendant, may not be prosecuted for
13 receiving payment for services rendered to a person whom he represents in a
14 criminal proceeding or in dealing with matters that might reasonably become
15 the subject of criminal proceeding. Should a court deny a motion to dismiss,
16 a licensed attorney may maintain this as a defense at trial.

17 Furthermore, no such payments may be seized from the attorney if they
18 were received for services rendered pursuant to prosecution under this statute,
19 unless a court of competent jurisdiction determines after a hearing, that
20 seizure of said property is necessary for prosecution of any criminal matter
21 and is not protected by any applicable privilege.

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23 SECTION 5. CRIMINAL USE OF PROPERTY AND/OR LAUNDERING CRIMINAL PROCEEDS
24 - INVESTIGATIVE POWERS.

25 (a) The prosecuting attorney may file an ex-parte petition supported by
26 affidavit or recorded sworn testimony before any judicial officer, of
27 competent jurisdiction, seeking any records or reports required to be made by
28 law.

29 (b) The judicial officer may order the custodian to deliver to the
30 prosecuting attorney any record or report which is required to be made by
31 Arkansas law, including tax records and reports, if the court finds reasonable
32 cause to believe that the records or reports requested are needed for a
33 legitimate investigative or prosecutorial purpose, and that the investigation
34 or prosecution involves a violation of any predicate criminal offense as
35 defined herein.

1 (c) The judicial officer may order the custodian to deliver to the
2 prosecuting attorney any records and reports which are required to be made by
3 federal law, if federal law does not specifically prohibit their disclosure to
4 a state prosecutor and if the court finds reasonable cause to believe that the
5 records or reports requested are needed for a legitimate investigative or
6 prosecutorial purpose, and that the investigation or prosecution involves a
7 violation of this section or any predicate criminal offense.

8 (d) Nothing herein requires a court order where any record or report
9 may currently be obtained pursuant to the prosecutor_s subpoena power. *The*
10 *prosecutor may, however, use the procedure and burden established herein to*
11 *obtain any other record or report, notwithstanding, whether the law requires*
12 *the record or report to be made or a court order for disclosure.*

13 (e) Any records and reports disclosed under the provisions of this
14 section may be introduced as evidence if the records or reports are otherwise
15 admissible under the applicable rules of evidence.

16 (f) *The individual whose records are obtained must be notified by the*
17 *prosecuting attorney ninety (90) days after the order is issued unless a court*
18 *finds the investigation is continuing and enters an order deferring said*
19 *notice requirement until ninety (90) days after the investigation is completed*
20 *or until prosecution has been initiated and a motion for discovery granted.*

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22 SECTION 6. All provisions of this act of a general and permanent
23 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
24 Code Revision Commission shall incorporate the same in the Code.

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26 SECTION 7 . If any provision of *Arkansas Criminal Use of Property*
27 *and/or Laundering Criminal Proceeds Act* or the application thereof to any
28 person or circumstance is held invalid, such invalidity shall not affect other
29 provisions or applications of the act which can be given effect without the
30 invalid provision or application, and to this end the provisions of this act
31 are declared to be severable.

32

33 SECTION 8. All laws and parts of laws in conflict with this act are
34 hereby repealed. However, there is no intent by enactment of this act to
35 repeal existing state law governing substantive criminal offenses, including

1 those mentioned herein, or enhancement of penalties relating to those
2 offenses, and this act is designed to provide alternative remedies to those
3 which exist under current state law.

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/s/ Senator Gordon