

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: S3/16/17 S3/23/17*

2 91st General Assembly

A Bill

3 Regular Session, 2017

SENATE BILL 727

4

5 By: Senators Collins-Smith, A. Clark, Rice, B. King

6

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For An Act To Be Entitled

8

AN ACT CONCERNING THE CIVIL FORFEITURE OF ASSETS

9

INVOLVED IN CERTAIN CRIMINAL OFFENSES; AND FOR OTHER

10

PURPOSES.

11

12

13

Subtitle

14

CONCERNING THE CIVIL FORFEITURE OF ASSETS

15

INVOLVED IN CERTAIN CRIMINAL OFFENSES.

16

17

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

19

20 *SECTION 1. Arkansas Code § 5-5-204(a)(1)(A), concerning the forfeiture*
21 *of conveyances used in the commission of a criminal offense, is amended to*
22 *read as follows:*

23 *(a)(1)(A) Upon conviction and after a pretrial hearing requested under*
24 *§ 5-5-205 and a ~~hearing~~ trial or finding of guilt on the matter, when the*
25 *circuit court having jurisdiction over the conveyance seized finds by a*
26 *preponderance of the evidence that a ground for a forfeiture exists under*
27 *this subchapter, the circuit court may enter an order to sell the conveyance.*

28

29 *SECTION 2. Arkansas Code Title 5, Chapter 5, Subchapter 2, is amended*
30 *to add an additional section to read as follows:*

31 *5-5-205. Right to a pretrial hearing on validity of seizure.*

32 *(a)(1) Following the seizure of property under this subchapter, a*
33 *defendant or a third party claiming an interest in the property has a right*
34 *to a pretrial hearing to determine the validity of the seizure.*

35 *(2) The claimant may claim at any time the right to possession*
36 *of the property by filing a motion establishing the validity of the*



1 claimant's interest in the property and requesting the circuit court to issue
2 a writ of replevin.

3 (3) The circuit court shall hear the motion no more than thirty
4 (30) days after the motion is filed.

5 (4) The state shall file an answer showing probable cause for
6 the seizure of the property and any motions at least ten (10) days before the
7 pretrial hearing.

8 (b) The circuit court shall grant the motion under subdivision (a)(2)
9 of this section if it finds that:

10 (1) It is likely the final judgment will be that the state must
11 return the property to the claimant;

12 (2) The property is not reasonably required to be held for
13 investigatory or evidentiary reasons; or

14 (3)(A) The property is the only practicable means for a
15 defendant to pay for legal representation in the forfeiture or criminal
16 proceeding and the use of the property to pay for legal representation is
17 found by the court to be reasonable.

18 (B) The circuit court may order the return of funds or
19 property sufficient to obtain legal counsel but less than the total amount
20 seized and may require an accounting.

21 (c) In lieu of ordering the issuance of the writ of replevin under
22 this section, the circuit court may order the state to give security or
23 written assurance for satisfaction of any judgment, including damages, that
24 may be rendered in the action or order other relief as may be just.

25
26 SECTION 3. Arkansas Code § 5-5-303 is amended to read as follows:

27 5-5-303. Petition for forfeiture – Order.

28 (a)(1) The prosecuting attorney of the judicial district within whose
29 jurisdiction there is property that is sought to be forfeited ~~pursuant to~~
30 under § 5-5-302 shall promptly proceed against the property by filing in the
31 circuit court having jurisdiction of the property a petition for an order to
32 show cause why the circuit court should not order forfeiture of the property.

33 (2) The petition shall be verified and shall set forth:

34 (A) A statement that the action is brought ~~pursuant to~~
35 under § 5-5-302;

36 (B) The law enforcement agency bringing the action;

1 (C) A description of the property sought to be forfeited;

2 (D) A statement that on or about a date certain the

3 property was used or intended to be used in a criminal act ~~constituting that~~

4 resulted in a finding of guilt for theft of livestock or that a criminal act

5 ~~constituting~~ resulted in a finding of guilt for theft of livestock that took

6 place in, upon, or by means of the property;

7 (E) A statement detailing the facts in support of

8 ~~subsection (a)~~ subdivision (a)(1) of this section; and

9 (F) A list of all persons known to the law enforcement

10 agency, after diligent search and inquiry, who may claim an ownership

11 interest in the property by title or registration or by virtue of a lien

12 allegedly perfected in the manner prescribed by law.

13 (b)(1) Upon receipt of a petition complying with the requirements of

14 subsection (a) of this section, the circuit ~~judge of the~~ court having

15 jurisdiction shall issue an order to show cause setting forth a statement

16 that this subchapter is the controlling law.

17 (2) ~~In addition, the order~~ The order issued under subdivision

18 (b)(1) of this section shall set schedule a date pretrial hearing at least

19 forty-one (41) days from the date of first publication of the order pursuant

20 ~~to~~ required under subsection (c) of this section for any person claiming an

21 interest in the property to file such pleadings as the person desires as to

22 why the circuit court should not order the forfeiture of the property to use,

23 sale, or other disposition by the law enforcement agency seeking forfeiture

24 of the property.

25 (3) The circuit court shall further order that any person who

26 does not appear on that date is deemed to have defaulted and waived any claim

27 to the property.

28 (c)(1) The prosecuting attorney shall give notice of the forfeiture

29 proceedings by:

30 (A) Causing to be published a copy of the order to show

31 cause two (2) times each week for two (2) consecutive weeks in a newspaper

32 having general circulation in the county where the property is located; and

33 (B) Sending a copy of the petition and order to show cause

34 by certified mail, return receipt requested, to any person having ownership

35 of or a security interest in the property or in the manner provided in Rule 4

36 of the Arkansas Rules of Civil Procedure, if:

1 (i) *The property is of a type for which title or*
2 *registration is required by law;*

3 (ii) *The owner of the property is known in fact to*
4 *the law enforcement agency at the time of seizure; or*

5 (iii) *The property is subject to a security interest*
6 *perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.*

7 (2) *The law enforcement agency is obligated only to make*
8 *diligent search and inquiry as to the owner of the property and if, after*
9 *diligent search and inquiry, the law enforcement agency is unable to*
10 *ascertain the owner, the requirement of actual notice by mail with respect to*
11 *a person having a perfected security interest in the property is not*
12 *applicable.*

13 (d)(1) A defendant or a third party claiming an interest in the
14 property has a right to notice of and to participate in the pretrial hearing
15 set by the court under subdivision (b)(2) of this section to determine the
16 validity of the seizure.

17 (2) The claimant may claim at any time the right to possession
18 of the property by filing a motion establishing the validity of the
19 claimant's interest in the property and requesting the circuit court to issue
20 a writ of replevin.

21 (3) The circuit court shall hear the motion at the pretrial
22 hearing required under subdivision (b)(2) of this section.

23 (4) The state shall file an answer showing probable cause for
24 the seizure of the property and any motions at least ten (10) days before the
25 pretrial hearing.

26 (5) The circuit court shall grant the motion under subdivision
27 (d)(2) of this section if it finds that:

28 (A) It is likely the final judgment will be that the state
29 must return the property to the claimant;

30 (B) The property is not reasonably required to be held for
31 investigatory or evidentiary reasons; or

32 (C)(i) The property is the only practicable means for a
33 defendant to pay for legal representation in the forfeiture or criminal
34 proceeding and the use of the property to pay for legal representation is
35 found by the court to be reasonable.

36 (ii) The circuit court may order the return of funds

1 or property sufficient to obtain legal counsel but less than the total amount
2 seized and may require an accounting.

3 (6) In lieu of ordering the issuance of the writ of replevin,
4 the circuit court may order the state to give security or written assurance
5 for satisfaction of any judgment, including damages, that may be rendered in
6 the action, or order other relief as may be just.

7 ~~(d)~~(e) At the ~~hearing~~ trial on the matter, the petitioner has the
8 burden to establish that the property is subject to forfeiture as provided in
9 § 5-5-302.

10 ~~(e)~~(f) The final order of forfeiture by the circuit court perfects in
11 the law enforcement agency right, title, and interest in and to the property
12 and relates back to the date of the seizure.

13 ~~(f)~~(g) Physical seizure of property is not necessary in order to
14 allege in a petition under this section that property is forfeitable.

15 ~~(g)~~(h) Upon filing the petition, the prosecuting attorney for the
16 judicial district may also seek such protective order as is necessary to
17 prevent the transfer, encumbrance, or other disposal of any property named in
18 the petition.

19
20 SECTION 4. The introductory language of Arkansas Code § 5-64-505(a),
21 concerning items subject to forfeiture upon the initiation of a civil
22 proceeding filed by the prosecuting attorney, is amended to read as follows:

23 (a) Items Subject to Forfeiture. The following are subject to
24 forfeiture upon the initiation of a civil proceeding filed by the prosecuting
25 attorney and when so ordered by the circuit court in accordance with this
26 section after an offense charged resulted in a plea of guilty or nolo
27 contendere or a finding of guilty by the circuit court, however, no property
28 is subject to forfeiture based solely upon a misdemeanor possession of a
29 Schedule III, Schedule IV, Schedule V, or Schedule VI controlled substance:
30

31 SECTION 5. Arkansas Code § 5-64-505(c), concerning seizure of property
32 that is subject to forfeiture, is amended to read as follows:

33 (c)(1) Seizure of Property. Property subject to forfeiture under this
34 chapter may be seized by any law enforcement agent upon process issued by any
35 circuit court having jurisdiction over the property on petition filed by the
36 prosecuting attorney of the judicial circuit. Seizure without process may be

1 made if:

2 ~~(1)(A)~~ *The seizure is incident to an arrest or a search*
3 *under a search warrant or an inspection under an administrative inspection*
4 *warrant;*

5 ~~(2)(B)~~ *The property subject to seizure has been the*
6 *subject of a prior judgment in favor of the state in a criminal injunction or*
7 *forfeiture proceeding based upon this chapter;*

8 ~~(3)(C)~~ *The seizing law enforcement agency has probable*
9 *cause to believe that the property is directly or indirectly dangerous to*
10 *health or safety; or*

11 ~~(4)(D)~~ *The seizing law enforcement agency has probable*
12 *cause to believe that the property was used or is intended to be used in*
13 *violation of this chapter.*

14 (2)(A) Following the seizure of property under this chapter, a
15 defendant or a third party claiming an interest in the property has a right
16 to a pretrial hearing to determine the validity of the seizure.

17 (B) The claimant may claim at any time before sixty (60)
18 days before trial of the related criminal offense the right to possession of
19 the property by filing a motion establishing the validity of the claimant's
20 interest in the property and requesting the circuit court to issue a writ of
21 replevin.

22 (C) The circuit court shall hear the motion no more than
23 thirty (30) days after the motion is filed.

24 (D) The state shall file an answer showing probable cause
25 for the seizure of the property and any motions at least ten (10) days before
26 the pretrial hearing.

27 (E) The circuit court shall grant the motion under
28 subdivision (c)(2)(B) of this section if it finds that:

29 (i) It is likely the final judgment will be that the
30 state must return the property to the claimant;

31 (ii) The property is not reasonably required to be
32 held for investigatory or evidentiary reasons; or

33 (iii)(a) The property is the only practicable means
34 for a defendant to pay for legal representation in the forfeiture or criminal
35 proceeding and the use of the property to pay for legal representation is
36 found by the court to be reasonable.

1 (b) The circuit court may order the return of
2 funds or property sufficient to obtain legal counsel but less than the total
3 amount seized and may require an accounting.

4 (F) In lieu of ordering the issuance of the writ of
5 replevin, the circuit court may order the state to give security or written
6 assurance for satisfaction of any judgment, including damages, that may be
7 rendered in the action, or order other relief as may be just.

8
9 SECTION 6. Arkansas Code § 5-64-505(e)(1), concerning custody of
10 property seized for forfeiture, is amended to read as follows:

11 (1) Property ~~seized for forfeiture under this section is not~~
12 ~~subject to replevin, but~~ is deemed to be in the custody of the seizing law
13 enforcement agency subject only to an order or decree of the circuit court
14 having jurisdiction over the property seized.

15
16 SECTION 7. Arkansas Code § 5-64-505(h)(1), concerning the final
17 disposition of a court proceeding involving a forfeiture of property, is
18 amended to read as follows:

19 (1) When the circuit court having jurisdiction over the
20 seized property finds upon a hearing by ~~a preponderance of the~~ clear and
21 convincing evidence that grounds for a forfeiture exist under this chapter,
22 the circuit court shall enter an order:

23
24 SECTION 8. Arkansas Code § 5-64-806 is amended to read as follows:
25 5-64-806. Seizure and forfeiture.

26 Any property, including money, used in violation of a provision of this
27 subchapter and that resulted in a plea of guilty or nolo contendere or a
28 finding of guilty by the court may be seized and forfeited to the state in
29 the manner prescribed under § 5-5-201 et seq.

30
31 SECTION 9. Arkansas Code § 5-73-130 is amended to read as follows:
32 5-73-130. Seizure and forfeiture of firearm – Seizure and forfeiture of
33 motor vehicle – Disposition of property seized.

34 (a) If a person under eighteen (18) years of age is unlawfully in
35 possession of a firearm, the firearm shall be seized and, after an
36 adjudication of delinquency or a conviction, is subject to forfeiture.

1 (b) If a felon or a person under eighteen (18) years of age is
 2 unlawfully in possession of a firearm in a motor vehicle, the motor vehicle
 3 is subject to seizure and, after an adjudication of delinquency or a
 4 conviction, subject to forfeiture.

5 (c) As used in this section, "unlawfully in possession of a firearm"
 6 does not include any act of possession of a firearm that is prohibited only
 7 by:

8 (1) ~~Section 5-73-127, unlawful to possess loaded center-fire~~
 9 ~~weapons in certain areas~~ Possession of loaded center-fire weapons in certain
 10 areas, § 5-73-127; or

11 (2) A regulation of the Arkansas State Game and Fish Commission.

12 (d) The procedures for forfeiture and disposition of the seized
 13 property are as follows:

14 (1) The prosecuting attorney of the judicial district within
 15 whose jurisdiction ~~the~~ property is seized that is sought to be forfeited
 16 shall promptly proceed against the property by filing in the circuit court a
 17 petition for an order to show cause why the circuit court should not order
 18 forfeiture of the property; and

19 (2) The petition shall be verified and shall ~~set forth~~ include:

20 (A) A statement that the action is brought ~~pursuant to~~
 21 under this section;

22 (B) The law enforcement agency bringing the action;

23 (C) A description of the property sought to be forfeited;

24 (D) A statement that on or about a date certain there was
 25 an adjudication of delinquency or a conviction and a finding that the
 26 property seized is subject to forfeiture;

27 (E) A statement detailing the facts in support of
 28 subdivision (d)(1) of this section; and

29 (F) A list of all persons known to the law enforcement
 30 agency, after diligent search and inquiry, who may claim an ownership
 31 interest in the property by title or registration or by virtue of a lien
 32 allegedly perfected in the manner prescribed by law.

33 (e)(1) Upon receipt of a petition complying with the requirements of
 34 ~~subdivision (d)(1)~~ subsection (d) of this section, the circuit court judge
 35 having jurisdiction shall issue an order to show cause setting forth a
 36 statement that this subchapter is the controlling law.

1 (2) ~~In addition, the order~~ The order issued under subdivision
2 (e)(1) of this section shall set schedule a date pretrial hearing at least
3 forty-one (41) days from the date of first publication of the order pursuant
4 to required under subsection (f) of this section for all persons claiming an
5 interest in the property to file such pleadings as they desire as to why the
6 circuit court should not order the forfeiture of the property for use, sale,
7 or other disposition by the law enforcement agency seeking forfeiture of the
8 property.

9 (3) The circuit court shall further order that any person who
10 does not appear on that date is deemed to have defaulted and waived any claim
11 to the subject property.

12 (f)(1) The prosecuting attorney shall give notice of the forfeiture
13 proceedings by:

14 (A) Causing a copy of the order to show cause to be
15 published two (2) times each week for two (2) consecutive weeks in a
16 newspaper having general circulation in the county where the property is
17 located with the last publication being not less than five (5) days before
18 the show cause hearing; and

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

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

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

27 (iii) The property is subject to a security interest
28 perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

29 (2) The law enforcement agency is only obligated to make
30 diligent search and inquiry as to the owner of the property, and if, after
31 diligent search and inquiry, the law enforcement agency is unable to
32 ascertain the owner, the requirement of actual notice by mail with respect to
33 a person having a perfected security interest in the property is not
34 applicable.

35 (g)(1) A defendant or a third party claiming an interest in the
36 property has a right to notice of and to participate in the pretrial hearing

1 set by the court under subdivision (e)(2) of this section to determine the
2 validity of the seizure.

3 (2) The claimant may claim at any time the right to possession
4 of the property by filing a motion establishing the validity of the
5 claimant's interest in the property and requesting the circuit court to issue
6 a writ of replevin.

7 (3) The circuit court shall hear the motion at the pretrial
8 hearing required under subdivision (e)(2) of this section.

9 (4) The state shall file an answer showing probable cause for
10 the seizure of the property and any motions at least ten (10) days before the
11 pretrial hearing.

12 (5) The circuit court shall grant the motion under subdivision
13 (g)(2) of this section if it finds that:

14 (A) It is likely the final judgment will be that the state
15 must return the property to the claimant;

16 (B) The property is not reasonably required to be held for
17 investigatory or evidentiary reasons; or

18 (C)(i) The property is the only practicable means for a
19 defendant to pay for legal representation in the forfeiture or criminal
20 proceeding and the use of the property to pay for legal representation is
21 found by the court to be reasonable.

22 (ii) The circuit court may order the return of funds
23 or property sufficient to obtain legal counsel but less than the total amount
24 seized and may require an accounting.

25 (6) In lieu of ordering the issuance of the writ of replevin,
26 the circuit court may order the state to give security or written assurance
27 for satisfaction of any judgment, including damages, that may be rendered in
28 the action, or order other relief as may be just.

29 ~~(g)(h)~~ At the hearing on the matter ~~trial~~, the petitioner has the
30 burden to establish that the property is subject to forfeiture by a
31 preponderance of the evidence.

32 ~~(h)(i)~~ In determining whether or not a motor vehicle should be ordered
33 forfeited, the circuit court may take into consideration the following
34 factors:

35 (1) Any prior criminal conviction or delinquency adjudication of
36 the felon or ~~juvenile~~ minor;

1 (2) *Whether or not the firearm was used in connection with any*
2 *other criminal act;*

3 (3) *Whether or not the vehicle was used in connection with any*
4 *other criminal act;*

5 (4) *Whether or not the ~~juvenile~~ minor or felon was the lawful*
6 *owner of the vehicle in question;*

7 (5) *If the ~~juvenile~~ minor or felon is not the lawful owner of*
8 *the vehicle in question, whether or not the lawful owner knew of the unlawful*
9 *act being committed that gives rise to the forfeiture penalty; and*

10 (6) *Any other factor the circuit court deems relevant.*

11 ~~(i)~~(j) *The final order of forfeiture by the circuit court shall*
12 *perfect in the law enforcement agency right, title, and interest in and to*
13 *the property and shall relate back to the date of the seizure.*

14 ~~(j)~~(k) *Physical seizure of property is not necessary in order to*
15 *allege in a petition under this section that the property is forfeitable.*

16 ~~(k)~~(l) *Upon filing the petition, the prosecuting attorney for the*
17 *judicial district may also seek such protective orders as are necessary to*
18 *prevent the transfer, encumbrance, or other disposal of any property named in*
19 *the petition.*

20 ~~(l)~~(m) *The law enforcement agency to which the property is forfeited*
21 *shall:*

22 (1) *Destroy any forfeited firearm; and*

23 (2) *Either:*

24 (A) *Sell the motor vehicle in accordance with subsection*
25 ~~(m)~~(n) *of this section; or*

26 (B) *If the motor vehicle is not subject to a lien that has*
27 *been preserved by the circuit court, retain the motor vehicle for official*
28 *use.*

29 ~~(m)~~(l)(n)(1) *If a law enforcement agency desires to sell a forfeited*
30 *motor vehicle, the law enforcement agency shall first cause notice of the*
31 *sale to be made by publication at least two (2) times a week for two (2)*
32 *consecutive weeks in a newspaper having general circulation in the county and*
33 *by sending a copy of the notice of the sale by certified mail, return receipt*
34 *requested, to each person having ownership of or a security interest in the*
35 *property or in the manner provided in Rule 4 of the Arkansas Rules of Civil*
36 *Procedure if:*

