

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

A Bill

ACT 1031 OF 1993
HOUSE BILL 1896

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:

21

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.

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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;

36 (2) The proceeds gained from the commission of theft of

1 livestock;

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

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

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

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

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

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

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

7 (1) A statement that the action is brought pursuant to Section 2
8 of this act;

9 (2) The law enforcement agency bringing the action;

10 (3) A description of the property sought to be forfeited;

11 (4) A statement that on or about a date certain the property was
12 used or intended to be used in a criminal act constituting theft of livestock
13 or a criminal act constituting theft of livestock took place in, upon or by
14 means of the property;

15 (5) A statement detailing the facts in support of subsection (a)
16 of this section; and

17 (6) A list of all persons known to the law enforcement agency,
18 after diligent search and inquiry, that may claim an ownership interest in the
19 property by title or registration or by virtue of a lien allegedly perfected
20 in the manner prescribed by law.

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

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

34 (1) Causing to be published a copy of the order to show cause
35 twice each week for two (2) consecutive weeks in a newspaper having general

1 circulation in the county where the property is located; and

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

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

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

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

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

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

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

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

33 (1) Require the sheriff of the county to take custody of the
34 property and remove it to any appropriate location for disposition in
35 accordance with law; or

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

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

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

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

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

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

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

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

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

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

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

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

35 (1) To payment of the balance due on any lien preserved by the court in

1 the forfeiture proceedings;

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

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

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

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

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

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

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

18 (D) Moneys in the special law enforcement forfeiture fund in the
19 county or city treasury shall be expended only upon appropriation to the
20 sheriff_s office or to the police department, by the county quorum court or
21 governing body of the city, to defray the costs of protracted investigations,
22 to provide additional technical equipment or expertise, to provide matching
23 funds to obtain federal grants or for such other law enforcement purposes as
24 the county quorum court or governing body of the city deems appropriate and
25 shall not be considered a source of revenue to meet normal operating expenses.
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27 SECTION 6. If more than one law enforcement agency is substantially
28 involved in effecting a forfeiture pursuant to Section 2, the circuit court
29 having jurisdiction over the forfeiture proceeding shall equitably distribute
30 the property among the law enforcement agencies. Any forfeited moneys, or any
31 proceeds remaining after the sale of the property, shall be equitably
32 distributed to the county or municipality for deposit in the respective county
33 or city treasury and credit to the law enforcement fund provided in Section 5.
34 Any forfeited moneys, or any proceeds remaining after the sale of the
35 property shall be equitably distributed in the manner as provided in Section

1 5.

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

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

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

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16 APPROVED: 4/12/93

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