

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 939 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/24/09

A Bill

HOUSE BILL 1913

5 By: Representatives Lowery, Harrelson
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO ESTABLISH A FORFEITURE PROCEDURE FOR
10 TOBACCO PRODUCTS; TO ESTABLISH A TOBACCO CONTROL
11 FUND; AND FOR OTHER PURPOSES.
12

13 **Subtitle**

14 TO ESTABLISH A FORFEITURE PROCEDURE FOR
15 TOBACCO PRODUCTS AND TO ESTABLISH A
16 TOBACCO CONTROL FUND.
17
18

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

21 SECTION 1. Arkansas Code § 26-57-247 is amended to read as follows:

22 26-57-247. Seizure, forfeiture, and disposition of ~~improperly handled~~
23 tobacco products and other property.

24 (a) ~~Any cigarettes~~ Cigarettes to which stamps have not been affixed as
25 provided ~~in this subchapter~~ by law are subject to seizure and shall be held
26 as evidence for prosecution.

27 (b) The Director of the Arkansas Tobacco Control Board may seize and
28 hold for disposition of the courts or the Arkansas Tobacco Control Board all
29 tobacco products found in the possession of ~~any~~ a person dealing in, or a
30 consumer of, tobacco products ~~which have not been handled according to this~~
31 subchapter if:

32 (1) Prima facie evidence exists that the full amount of excise
33 tax due on the tobacco products has not been paid to the Director of the
34 Department of Finance and Administration;

35 (2) Tobacco products are in the possession of a wholesaler who



1 does not possess a current Arkansas wholesale cigarette or tobacco permit;

2 (3) A retail establishment does not possess a current Arkansas
3 retail cigarette and tobacco permit; or

4 (4) The tobacco products have been offered for sale to the
5 public at another location without a current Arkansas retail cigarette and
6 tobacco permit.

7 (c) Property, including money, used to facilitate a criminal violation
8 of the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq. or the
9 Unfair Cigarette Sales Act, § 4-7-701 et seq. may be seized and forfeited to
10 the state.

11 (d)(1) A prosecuting attorney may institute a civil action against a
12 person who is convicted of a criminal violation under the Arkansas Tobacco
13 Products Tax Act of 1977, § 26-57-201 et seq. or the Unfair Cigarette Sales
14 Act, § 4-7-701 et seq. to obtain a judgment for:

15 (A) Damages in an amount equal to the value of the
16 property, funds, or a monetary instrument involved in the violation;

17 (B) The proceeds acquired by a person involved in the
18 enterprise or by reason of conduct in furtherance of the violation; and

19 (C) Costs incurred by the board in the investigation and
20 prosecution of both criminal and civil proceedings.

21 (2) The standard of proof in an action brought under subsection
22 (d)(1) if this section is preponderance of the evidence.

23 (e) The following are subject to forfeiture under this section upon
24 order by a circuit court:

25 (1) Tobacco products distributed, dispensed, or acquired in
26 violation of this subchapter;

27 (2) Raw materials, products, or equipment used or intended for
28 use in manufacturing, compounding, processing, delivering, importing, or
29 exporting a tobacco product in violation of this subchapter;

30 (3) Property that is used or intended for use as a container for
31 property described in subdivision (e)(1) or (2) of this section;

32 (4)(A) Except as provided in subdivision (e)(4)(B) of this
33 section, a conveyance, including an aircraft, vehicle, or vessel, that is
34 used, or intended to be used, to transport or in any manner to facilitate the
35 transportation for the purpose of sale or receipt of property described in
36 subdivision (e)(1) or (2) of this section.

1 (B)(i) A conveyance used by a person as a common carrier
2 in the transaction of business as a common carrier is not subject to
3 forfeiture under this section unless it appears that the owner or other
4 person in charge of the conveyance is a consenting party or privy to a
5 violation of this subchapter;

6 (ii) A conveyance is not subject to forfeiture under
7 this section by reason of an act or omission established by the owner of the
8 conveyance to have been committed or omitted without his or her knowledge or
9 consent.

10 (C) Upon a showing described in subdivision (e)(4)(B)(i)
11 of this section by the owner or interest holder of a conveyance, the
12 conveyance may nevertheless be forfeited if the prosecuting attorney
13 establishes that the owner or interest holder either knew or should
14 reasonably have known that the conveyance would be used to transport or in
15 any manner to facilitate the transportation for the purpose of sale or
16 receipt, of property described in subdivision (e)(1) or (2) of this section.

17 (D) A conveyance encumbered by a bona fide security
18 interest is subject to the interest of the secured party if the secured party
19 neither had knowledge of nor consented to an act or omission in violation of
20 this subchapter;

21 (5) A book, record, or research product or material, including a
22 formula, microfilm, tape, or data that is used or intended for use in
23 violation of this subchapter;

24 (6)(A) Except as provided in subdivision (e)(6)(B) of this
25 section, a thing of value, including:

26 (i) Firearms, furnished or intended to be furnished
27 in exchange for a tobacco product in violation of this subchapter;

28 (ii) Proceeds or profits traceable to an exchange
29 described in subdivision (e)(6)(A)(ii) of this section; and

30 (iii) Money, negotiable instruments, or security
31 used or intended to be used to facilitate a violation of this subchapter.

32 (B) Property shall not be forfeited under subdivision
33 (e)(6)(A) of this section to the extent of the interest of an owner by reason
34 of an act or omission established by him or her by a preponderance of the
35 evidence to have been committed or omitted without his or her knowledge or
36 consent;

1 (7)(A) Money, coins, or currency found in close proximity to a
2 forfeitable tobacco product or a forfeitable record of an importation of a
3 tobacco product is presumed to be forfeitable under this section.

4 (B) The burden of proof is upon a claimant of the money,
5 coins, or currency to rebut the presumption in subdivision (e)(7)(A) of this
6 section by a preponderance of the evidence; and

7 (8)(A) Except as provided in subdivision (e)(8)(B) of this
8 section, real property if it substantially assisted in, facilitated in an
9 manner, or was used or intended for use in the commission of any act
10 prohibited by this subchapter.

11 (B)(i) Real property is not subject to forfeiture under
12 this section by reason of an act or omission established by the owner of the
13 real property by a preponderance of the evidence to have been committed or
14 omitted without his or her knowledge or consent.

15 (ii) A forfeiture of real property encumbered by a
16 mortgage or other lien is subject to the interest of the secured party if the
17 secured party neither had knowledge of nor consented to an act or omission in
18 violation of this subchapter.

19 (iii) If the circuit court finds by a preponderance
20 of the evidence that grounds for a forfeiture exist under this section, the
21 court shall enter an order requiring the forfeiture of the real property.

22 (C) Upon an order of forfeiture of real property, the
23 order shall be filed on the day issued and shall have prospective effect.

24 (D) A forfeiture of real property does not affect the
25 title of a bona fide purchaser who purchased the real property before to the
26 issuance of the order, and the order has no force or effect on the title of
27 the bona fide purchaser.

28 (E) A lis pendens filed in connection with an action
29 pending under this section that may result in the forfeiture of real property
30 is effective only from the time filed and has no retroactive effect.

31 (f) A tobacco product that is possessed, transferred, sold, or offered
32 for sale in violation of this subchapter may be seized and immediately
33 forfeited to the state.

34 (g)(1) Property subject to forfeiture under this subchapter may be
35 seized by a law enforcement agent upon process issued by a circuit court
36 having jurisdiction over the property on petition filed by the prosecuting

1 attorney of the judicial circuit.

2 (2) Seizure without process may be made if:

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

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

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

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

14 (h)(1) A state or local law enforcement agency shall not transfer
15 property seized by the state or local agency under this section to a federal
16 entity for forfeiture under federal law unless the circuit court having
17 jurisdiction over the property enters an order, upon petition by the
18 prosecuting attorney, authorizing the property to be transferred to the
19 federal entity.

20 (2) The transfer shall not be approved unless it reasonably
21 appears that the activity giving rise to the investigation or seizure
22 involves more than one (1) state or the nature of the investigation or
23 seizure would be better pursued under federal law.

24 (i)(1) Property seized for forfeiture under this section is not
25 subject to replevin, but is deemed to be in the custody of the seizing law
26 enforcement agency subject only to an order or decree of the circuit court
27 having jurisdiction over the property seized.

28 (2) Subject to a need to retain the property as evidence, when
29 property is seized under this subchapter, the seizing law enforcement agency
30 may:

31 (A) Remove the property to a place designated by the
32 circuit court;

33 (B) Place the property under constructive seizure, posting
34 notice of pending forfeiture on it by:

35 (i) Giving notice of pending forfeiture to its
36 owners and interest holders; or

1 (ii) Filing notice of pending forfeiture in an
2 appropriate public record relating to the property;

3 (C) Remove the property to a storage area for safekeeping
4 or, if the property is a negotiable instrument or money or is not needed for
5 evidentiary purposes, deposit it in an interest-bearing account; or

6 (D) Provide for another agency or custodian, including an
7 owner, secured party, mortgagee, or lienholder, to take custody of the
8 property and service, maintain, and operate it as reasonably necessary to
9 maintain its value in an appropriate location within the jurisdiction of the
10 court.

11 (3)(A) In case of transfer of property, a transfer receipt shall
12 be prepared by the transferring agency.

13 (B)The transfer receipt shall:

14 (i) List a detailed and complete description of the
15 property being transferred;

16 (ii) State to whom the property is being transferred
17 and the source or authorization for the transfer; and

18 (iii) Be signed by both the transferor and the
19 transferee.

20 (C) Both transferor and transferee shall maintain a copy
21 of the transfer receipt.

22 (4) A person who acts as custodian of property under this
23 section is not liable to any person on account of an act done in a reasonable
24 manner in compliance with an order under this subchapter.

25 (j)(1) Property seized by a state or local law enforcement officer
26 under this section who is detached to, deputized or commissioned by, or
27 working in conjunction with a federal agency remains subject to this section.

28 (2)(A) If property is seized for forfeiture by a law enforcement
29 agency under this section, the seizing law enforcement officer shall prepare
30 and sign a confiscation report.

31 (B)(i) The party from whom the property is seized shall
32 also sign the confiscation report if present and shall immediately receive a
33 copy of the confiscation report.

34 (ii) If the party refuses to sign the confiscation
35 report, the confiscation report shall be signed by one (1) additional law
36 enforcement officer, stating that the party refused to sign the confiscation

1 report.

2 (C) The original confiscation report shall be:

3 (i) Filed with the seizing law enforcement agency
4 within forty-eight (48) hours after the seizure; and

5 (ii) Maintained in a separate file.

6 (D) One (1) copy of the confiscation report shall be
7 retained by the seizing law enforcement officer.

8 (3) The confiscation report shall contain the following
9 information:

10 (A) A detailed description of the property seized
11 including serial or model numbers and odometer or hour reading of vehicles or
12 equipment;

13 (B) The date of seizure;

14 (C) The name and address of the party from whom the
15 property was seized;

16 (D) The reason for the seizure;

17 (E) The location where the property will be held;

18 (F) The seizing law enforcement officer's name; and

19 (G) A signed statement by the seizing law enforcement
20 officer stating that the confiscation report is true and complete.

21 (4) Within three (3) business days after receiving the
22 confiscation report, the seizing law enforcement agency shall forward a copy
23 of the confiscation report to the prosecuting attorney for the district where
24 the property was seized and to the Director of Arkansas Tobacco Control
25 Board.

26 (5)(A) The Division of Legislative Audit shall notify the
27 Director of Arkansas Tobacco Control Board and a circuit court in the county
28 of a law enforcement agency, prosecuting attorney, or other public entity
29 that the law enforcement agency, prosecuting attorney, or public entity is
30 ineligible to receive forfeited funds, forfeited property, or grants from the
31 council, if the division of Legislative Audit determines by its own
32 investigation or upon written notice from the Director of Arkansas Tobacco
33 Control Board that:

34 (i) The law enforcement agency failed to complete
35 and file the confiscation reports as required by this section;

36 (ii) The law enforcement agency, prosecuting

1 attorney, or public entity has not properly accounted for the seized
2 property; or

3 (iii) The prosecuting attorney has failed to comply
4 with the notification requirement set forth in subdivision (j)(4) of this
5 section.

6 (B) After the notice, the circuit court shall not issue an
7 order distributing seized property to that law enforcement agency,
8 prosecuting attorney, or public entity, nor shall a grant be awarded by the
9 council to that law enforcement agency, prosecuting attorney, or public
10 entity until:

11 (i) The appropriate officials of the law enforcement
12 agency, prosecuting attorney, or public entity have appeared before the
13 Legislative Joint Auditing Committee; and

14 (ii) The Legislative Joint Auditing Committee has
15 adopted a motion authorizing subsequent transfers of forfeited property to
16 the law enforcement agency, prosecuting attorney, or public entity.

17 (C)(i) If a law enforcement agency, prosecuting attorney,
18 or other public entity is ineligible to receive forfeited property, the
19 circuit court shall order money that would have been distributed to that law
20 enforcement agency, prosecuting attorney, or public entity to be transmitted
21 to the Treasurer of State for deposit into the Special State Assets
22 Forfeiture Fund.

23 (ii) If the property is not cash, the circuit court
24 shall order the property converted to cash under this section and the
25 proceeds transmitted to the Treasurer of State for deposit into the Special
26 State Assets Forfeiture Fund.

27 (D) Moneys deposited into the Special State Assets
28 Forfeiture Fund are not subject to recovery or retrieval by an ineligible law
29 enforcement agency, prosecuting attorney, or other public entity.

30 (6) The Director of Arkansas Tobacco Control Board shall
31 establish by rule, a standardized confiscation report form to be used by all
32 law enforcement agencies with specific instructions and guidelines concerning
33 the nature and dollar value of all property, including firearms, to be
34 included in the confiscation report and forwarded to the office of the local
35 prosecuting attorney and the Director of Arkansas Tobacco Control Board under
36 this subsection.

1 (k)(1)(A) The prosecuting attorney shall initiate forfeiture
2 proceedings by filing a complaint with the circuit clerk of the county where
3 the property was seized and by serving the complaint on all known owners and
4 interest holders of the seized property in accordance with the Arkansas Rules
5 of Civil Procedure.

6 (B) The complaint may be based on in rem or in personam
7 jurisdiction but shall not be filed to avoid the distribution requirements
8 set forth in subdivision (1)(1) of this section.

9 (C) The prosecuting attorney shall mail a copy of the
10 complaint to the Director of Arkansas Tobacco Control Board within five (5)
11 calendar days after filing the complaint.

12 (2)(A) The complaint shall include a copy of the confiscation
13 report and shall be filed within sixty (60) days after receiving a copy of
14 the confiscation report from the seizing law enforcement agency.

15 (B) In a case involving real property, the complaint shall
16 be filed within sixty (60) days of the defendant's conviction on the charge
17 giving rise to the forfeiture.

18 (3)(A) The prosecuting attorney may file the complaint after the
19 expiration of the time only if the complaint is accompanied by a statement of
20 good cause for the late filing.

21 (B) However, the complaint shall not be filed more than
22 one hundred twenty (120) days after either the date of the seizure or, in a
23 case involving real property, the date of the defendant's conviction.

24 (C)(i) If the circuit court determines that good cause has
25 not been established, the circuit court shall order that the seized property
26 be returned to the owner or interest holder.

27 (ii) In addition, items seized but not subject to
28 forfeiture under this section or subject to disposition under law or the
29 Arkansas Rules of Criminal Procedure may be ordered returned to the owner or
30 interest holder.

31 (iii) If the owner or interest holder cannot be
32 determined, the court may order disposition of the property.

33 (4) Within the time set forth in the Arkansas Rules of Civil
34 Procedure, the owner or interest holder of the seized property shall file
35 with the circuit clerk a verified answer to the complaint that shall include:

36 (A) A statement describing the seized property and the

1 owner's interest or interest holder's interest in the seized property, with
2 supporting documents to establish the owner's interest or interest holder's
3 interest;

4 (B) A certification by the owner or interest holder
5 stating that he or she has read the document and that has not been filed for
6 an improper purpose;

7 (C) A statement setting forth any defense to forfeiture;
8 and

9 (D) The address at which the owner or interest holder will
10 accept mail.

11 (5)(A) If the owner or interest holder fails to file an answer,
12 the prosecuting attorney may move for default judgment under the Arkansas
13 Rules of Civil Procedure.

14 (B)(i) If a timely answer has been filed, the prosecuting
15 attorney has the burden of proving by a preponderance of the evidence that
16 the seized property should be forfeited.

17 (ii) After the prosecuting attorney has presented
18 proof, an owner or interest holder of the property seized is allowed to
19 present evidence showing why the seized property should not be forfeited.

20 (iii) If the circuit court determines that grounds
21 for forfeiting the seized property exist and that a defense to forfeiture has
22 not been established by the owner or interest holder, the circuit court shall
23 enter an order under this section. However, if the circuit court determines
24 either that the prosecuting attorney has failed to establish that grounds for
25 forfeiting the seized property exist or that the owner or interest holder has
26 established a defense to forfeiture, the court shall order that the seized
27 property be immediately returned to the owner or interest holder.

28 (1)(1) If the circuit court having jurisdiction over the seized
29 property finds upon a hearing by a preponderance of the evidence that grounds
30 for a forfeiture exist under this subchapter, the circuit court shall enter
31 an order:

32 (A) To permit the law enforcement agency or prosecuting
33 attorney to retain the seized property for law enforcement or prosecutorial
34 purposes, subject to the following provisions:

35 (i)(a) Seized property may not be retained for
36 official use for more than three (3) years, unless the circuit court finds

1 that the seized property has been used for law enforcement or prosecutorial
2 purposes and authorizes continued use for those purposes on an annual basis.

3 (b) At the end of the retention period, the
4 seized property shall be sold and eighty percent (80%) of the proceeds shall
5 be deposited into the tobacco control fund of the retaining law enforcement
6 agency or prosecuting attorney, and twenty percent (20%) of the proceeds
7 shall be deposited into the State Treasury as special revenues to be credited
8 to the Special State Assets Forfeiture Fund.

9 (c) The retaining law enforcement agency or
10 prosecuting attorney may sell the retained seized property during the time
11 allowed for retention. However, the proceeds of the sale shall be
12 distributed as set forth in subdivision (1)(1)(A)(i)(b) of this section;

13 (ii) If the circuit court determines that retained
14 seized property has been used for personal use or by non-law enforcement
15 personnel for non-law enforcement purposes, the circuit court shall order the
16 seized property to be sold under § 5-5-101(e) and (f), and the proceeds shall
17 be deposited into the State Treasury as special revenues to be credited to
18 the Special State Assets Forfeiture Fund;

19 (iii)(a) A law enforcement agency may use forfeited
20 property or money if the circuit court's order specifies that the forfeited
21 property or money is forfeited to the prosecuting attorney, sheriff, chief of
22 police, Department of Arkansas State Police, Director of Arkansas Tobacco
23 Control Board, or Arkansas Highway Police Division of the Arkansas State
24 Highway and Transportation Department.

25 (b) After the order, the prosecuting attorney,
26 sheriff, chief of police, Department of Arkansas State Police, Director of
27 Arkansas Tobacco Control Board, or Arkansas Highway Police Division of the
28 Arkansas State Highway and Transportation Department shall maintain an
29 inventory of the forfeited property or money, be accountable for the
30 forfeited property or money, and be subject to subdivision (j)(5) of this
31 section with respect to the forfeited property or money;

32 (iv)(a) An aircraft is forfeited to the office of
33 the Director of Arkansas Tobacco Control Board and may be used only for
34 tobacco smuggling interdiction efforts within the discretion of the Director
35 of Arkansas Tobacco Control Board.

36 (b) However, if the Director of Arkansas

1 Tobacco Control Board determines that the aircraft should be sold, the sale
2 shall be conducted under § 5-5-101(e) and (f), and the proceeds shall be
3 deposited into the State Treasury as special revenues to be credited to the
4 Special State Assets Forfeiture Fund;

5 (v) A firearm not retained for official use shall be
6 disposed of in accordance with state and federal law; and

7 (vi) A tobacco product shall be destroyed pursuant
8 to a court order;

9 (B)(i) To sell seized property that is not required by law
10 to be destroyed and that is not harmful to the public.

11 (ii) Seized property described in subdivision
12 (1)(1)(B)(i) of this section shall be sold at a public sale by the retaining
13 law enforcement agency or prosecuting attorney under § 5-5-101(e) and (f); or

14 (C) To transfer a motor vehicle to a school district for
15 use in a driver education course.

16 (2) Disposition of forfeited property under this subsection is
17 subject to the need to retain the forfeited property as evidence in any
18 related proceeding.

19 (3) Within three (3) business days after the entry of the order,
20 the circuit clerk shall forward to the Director of Arkansas Tobacco Control
21 Board copies of the confiscation report, the circuit court's order, and other
22 documentation detailing the disposition of the seized property.

23 (m)(1)(A) Subject to subdivision (j)(5) of this section, the proceeds
24 of sales conducted under this section and moneys forfeited or obtained by
25 judgment or settlement under this chapter shall be deposited and distributed
26 in the manner provided in this subsection.

27 (B) Moneys received from a federal forfeiture for a
28 violation of this subchapter shall be deposited and distributed under this
29 section.

30 (2)(A) The proceeds of a sale and moneys forfeited or obtained
31 by judgment or settlement under this subchapter shall be deposited into the
32 asset forfeiture fund of the prosecuting attorney and is subject to the
33 following provisions:

34 (i) If, during a calendar year, the aggregate amount
35 of moneys deposited in the asset forfeiture fund exceeds twenty thousand
36 dollars (\$20,000) per county, the prosecuting attorney within fourteen (14)

1 days after that time, shall notify the circuit judges in the judicial
2 district and the Director of Arkansas Tobacco Control Board;

3 (ii) Subsequent to the notification set forth in
4 this section, twenty percent (20%) of the proceeds of an additional sale and
5 additional moneys forfeited or obtained by judgment or settlement under this
6 subchapter in the same calendar year shall be deposited into the State
7 Treasury as special revenues to be credited to the Special State Assets
8 Forfeiture Fund, and the remainder shall be deposited into the asset
9 forfeiture fund of the prosecuting attorney;

10 (iii) Failure by the prosecuting attorney to comply
11 with the notification requirement set forth in this section renders the
12 prosecuting attorney and an entity eligible to receive forfeited moneys or
13 property from the prosecuting attorney ineligible to receive forfeited moneys
14 or property, except as provided in this section; and

15 (iv) Twenty percent (20%) of moneys in excess of
16 twenty thousand dollars (\$20,000) that have been retained but not reported as
17 required by this section are subject to recovery for deposit into the Special
18 State Assets Forfeiture Fund.

19 (B) The prosecuting attorney shall administer expenditures
20 from the asset forfeiture fund, which is subject to audit by the Division of
21 Legislative Audit. Moneys distributed from the asset forfeiture fund shall be
22 used only for law enforcement and prosecutorial purposes. Moneys in the asset
23 forfeiture fund shall be distributed in the following order:

24 (i) For the satisfaction of a bona fide
25 security interest or lien;

26 (ii) For payment of a proper expense of the
27 proceeding for forfeiture and sale, including expenses of seizure,
28 maintenance of custody, advertising, and court costs;

29 (iii) Any balance under three hundred fifty
30 thousand dollars (\$350,000) shall be distributed proportionally so as to
31 reflect generally the contribution of the appropriate local or state law
32 enforcement or prosecutorial agency's participation in any activity that led
33 to the seizure or forfeiture of the property or deposit of moneys under this
34 subchapter; and

35 (iv) Any balance over three hundred fifty
36 thousand dollars (\$350,000) shall be forwarded to the Director of Arkansas

1 Tobacco Control Board to be transferred to the State Treasury for deposit
2 into the Special State Assets Forfeiture Fund for distribution under this
3 section.

4 (C)(i) For a forfeiture in an amount greater than three
5 hundred fifty thousand dollars (\$350,000) from which expenses are paid for a
6 proceeding for forfeiture and sale under this section, an itemized accounting
7 of the expenses shall be delivered to the Director of Arkansas Tobacco
8 Control Board within ten (10) calendar days after the distribution of the
9 funds.

10 (ii) The itemized accounting shall include the
11 expenses paid, to whom paid, and for what purposes the expenses were paid.

12 (3)(A) Moneys received by a prosecuting attorney or law
13 enforcement agency from a federal forfeiture for a violation of this
14 subchapter shall be deposited and maintained in a separate account.

15 (B) However, a balance over three hundred fifty thousand
16 dollars (\$350,000) shall be distributed as required under this section.

17 (4) Other moneys shall not be maintained in the account except
18 for interest income generated by the account.

19 (5) Moneys in the account shall only be used for law enforcement
20 and prosecutorial purposes consistent with governing federal law.

21 (6) The account is subject to audit by the Division of
22 Legislative Audit.

23 (7) A balance over three hundred fifty thousand dollars
24 (\$350,000) shall be transferred to the State Treasury for deposit into the
25 Special State Assets Forfeiture Fund in which it shall be maintained
26 separately and distributed consistently with governing federal law and upon
27 the advice of the Director of Arkansas Tobacco Control Board.

28 (n) In personam jurisdiction may be based on a person's presence in
29 the state or on his or her conduct in the state, as set out in § 16-4-101(c),
30 and is subject to the following additional provisions:

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

33 (A) There is probable cause to believe that the property
34 with respect to which the order is sought is subject to forfeiture under this
35 section; and

36 (B) Notice of the action would jeopardize the availability

1 of the property for forfeiture;

2 (2)(A) Notice of the entry of a temporary restraining order and
3 an opportunity for hearing shall be afforded to a person known to have an
4 interest in the property.

5 (B) The hearing shall be held at the earliest possible
6 date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is
7 limited to the issues of whether:

8 (i) There is a probability that the state will
9 prevail on the issue of forfeiture and that failure to enter the temporary
10 restraining order will result in the property's being destroyed, conveyed,
11 alienated, encumbered, disposed of, received, removed from the jurisdiction
12 of the circuit court, concealed, or otherwise made unavailable for
13 forfeiture; and

14 (ii) The need to preserve the availability of
15 property through the entry of the requested temporary restraining order
16 outweighs the hardship on an owner or interest holder against whom the
17 temporary restraining order is to be entered;

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

20 (4)(A) On a determination of liability of a person for conduct
21 giving rise to forfeiture under this section, the circuit court shall enter a
22 judgment of forfeiture of the property subject to forfeiture as alleged in
23 the complaint and may authorize the prosecuting attorney or a law enforcement
24 officer to seize property subject to forfeiture under this section not
25 previously seized or not then under seizure.

26 (B) The order of forfeiture shall be consistent with
27 subsection (1) of this section.

28 (C) In connection with the judgment, on application of the
29 state, the circuit court may enter an appropriate order to protect the
30 interest of the state in property ordered forfeited; and

31 (5) Subsequent to the finding of liability and order of
32 forfeiture, the following procedures apply:

33 (A) The attorney for the state shall give notice of
34 pending forfeiture in the manner provided in Rule 4 of the Arkansas Rules of
35 Civil Procedure to owner or interest holder who has not previously been given
36 notice;

1 (B) An owner of or interest holder in property that has
2 been ordered forfeited and whose claim is not precluded may file a claim
3 within thirty (30) days after initial notice of pending forfeiture or after
4 notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is
5 earlier; and

6 (C) The circuit court may amend the in personam order of
7 forfeiture if the circuit court determines that a claimant has established
8 that he or she has an interest in the property and that the interest is
9 exempt under this section.

10 (o) The circuit court shall order the forfeiture of other property of
11 a claimant or defendant up to the value of the claimant's or defendant's
12 property found by the circuit court to be subject to forfeiture under this
13 section if any of the forfeitable property had remained under the control or
14 custody of the claimant or defendant and:

15 (1) Cannot be located;

16 (2) Was transferred or conveyed to, sold to, or deposited with a
17 third party;

18 (3) Is beyond the jurisdiction of the circuit court;

19 (4) Was substantially diminished in value while not in the
20 actual physical custody of the seizing law enforcement agency;

21 (5) Was commingled with other property that cannot be divided
22 without difficulty; or

23 (6) Is subject to interest exempted from forfeiture under this
24 subchapter.

25 (p)(1) There is created on the books of law enforcement agencies and
26 prosecuting attorneys a tobacco control fund.

27 (2) The fund shall consist of moneys obtained under § 26-57-247
28 and other revenue as may be provided by law or ordinance.

29 (3) Moneys in the tobacco control fund shall be appropriated on
30 a continuing basis and are not subject to the Revenue Stabilization Law, §
31 19-5-101 et seq.

32 (4)(A) The fund shall be used for law enforcement and
33 prosecutorial purposes.

34 (B) Each prosecuting attorney shall submit to the director
35 on or before June 30 of each year a report detailing moneys received and
36 expenditures made from the Tobacco Control Fund during the preceding twelve-

1 month period.

2 (5) The law enforcement agencies and prosecuting attorneys shall
3 submit to the Director of Arkansas Tobacco Control on or before June 30th of
4 each year a report detailing any moneys received and expenditures made from
5 the tobacco control fund during the preceding twelve-month period.

6 (6) Moneys from the tobacco control fund may not supplant other
7 local, state, or federal funds.

8 (7) The tobacco control fund is subject to audit by the Division
9 of Legislative Audit.

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/s/ Lowery

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APPROVED: 4/6/2009

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