

Act 87 of the Third Special Session of 1989.

Act 87

Hb1112

By: Representatives Lipton, Capps, Arrington, Newman, Collier, George, Stephens, Ramsey, Pollan, Wingfield and Glover

For An Act To Be Entitled

"AN ACT TO AMEND SUBSECTIONS (a) AND (e) OF ARKANSAS CODE 5-64-505 REGARDING THE FORFEITURE OF PROPERTY UNDER THE UNIFORM CONTROLLED SUBSTANCES ACT TO INCLUDE PROFITS AS PROPERTY SUBJECT TO FORFEITURE AND TO REPEAL THE CURRENT METHODS OF DISTRIBUTION OF THE REAL AND PERSONAL PROPERTY SEIZED; TO ADD A NEW SUBSECTION (j) TO ARKANSAS CODE 5-64-505 TO PROVIDE PROVISIONS FOR THE SAFEKEEPING OF SEIZED PROPERTY; TO ADD A NEW SUBSECTION (k) TO ARKANSAS CODE 5-64-505 TO PROVIDE FOR A MORE EQUITABLE DISTRIBUTION OF PROPERTY FORFEITED UNDER THE UNIFORM CONTROLLED SUBSTANCES ACT; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection (a) of Arkansas Code 5-64-505, as amended by Section 1 of Act 252 of 1989, is hereby amended to read as follows:

"(a) The following are subject to forfeiture:

(1) All controlled substances and counterfeit substances which have been manufactured, distributed, dispensed, or acquired in violation of subchapters 1-6 of this chapter;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or counterfeit substance in violation of subchapters 1-6 of this chapter;

(3) All property which is used, or intended for use, as a container for property described in subsection (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subsection (1) or (2), but:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of subchapters 1-6 of this chapter;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent and without the knowledge or consent of anyone having possession, care, or control of the conveyance with the owner's permission;

(iii) A conveyance is not subject to forfeiture for a violation of 5-64-401(c); and

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of subchapters 1-6 of this chapter.

(6) Everything of value furnished or intended to be furnished, in

exchange for a controlled substance or counterfeit substance in violation of subchapters 1-6 of this chapter, all proceeds and profits traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of subchapters 1-6 of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

REBUTTABLE PRESUMPTIONS. All moneys, coin, and currency found in close proximity to forfeitable controlled substances, to counterfeit substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture, or distribution of controlled substances or counterfeit substances are presumed to be forfeitable under this paragraph. The burden of proof is upon claimants of the property to rebut these presumptions.

(7) Real property may be forfeited under subchapters 1-6 of this chapter if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by subchapters 1-6 of this chapter, except that:

(i) No real property is subject to forfeiture under subchapters 1-6 of this chapter by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(ii) Real property is not subject to forfeiture for a violation of 5-64-401(c); and

(iii) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the unlawful act or omission.

(iv) Upon conviction, when the circuit court having jurisdiction over the real property seized finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order consistent with subsection (k) of this section.

(v) When any court orders a forfeiture of real property pursuant to subchapters 1-6 of this chapter, the order shall be filed of record on the day issued and shall have prospective effect only.

(vi) A forfeiture of real property ordered under the provisions of subchapters 1-6 of this chapter shall not affect the title of a bona fide purchaser who purchased the property prior to the issuance of the order, and such order shall have no force or effect on the title of the bona fide purchaser.

(vii) Any lis pendens filed in connection with any action pending under the provisions of subchapters 1-6 of this chapter which might result in the forfeiture of real property shall be operative only from the time filed and shall have no retroactive effect."

SECTION 2. Subsection (e) of Arkansas Code 5-64-505, as amended by Section 2 of Act 252 of 1989, is hereby amended to read as follows:

"(e) When the circuit court having jurisdiction over the property seized finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under subchapters 1-6 of this chapter, the court shall enter an order consistent with subsection (k) of this section."

SECTION 4. Arkansas Code Annotated 5-64-505 is hereby amended by adding the following new subsections:

"(j)(1) If property is seized for forfeiture under this act, the seizing agency which seized the property may, subject to any need to retain the

property as evidence:

- (i) remove the property to a place designated by the circuit court;
- (ii) place the property under constructive seizure posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property;
- (iii) remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, or is not needed for evidentiary purposes, deposit it in an interest-bearing account;
- (iv) provide for another agency or custodian, including an owner, secured party, mortgagee or lienholder, to take custody of the property and service, maintain and operate it as reasonably necessary to maintain its value in any appropriate location within the jurisdiction of the court; or
- (v) require the law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

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

(3) As soon as practicable after seizure for forfeiture, the seizing agency shall conduct an inventory and estimate the value of the property seized. The seizing agency shall maintain a log book which lists the following:

- (i) a description of the property,
- (ii) the estimated value,
- (iii) the location of the property, and
- (iv) the disposition of the property.

(k)(1) Whenever property is forfeited under this act, the circuit court shall enter an order:

(i) to permit the law enforcement agency or attorney for the state to retain the property for official use except that all aircraft shall be transferred to the State Drug Director;

(ii) to sell that which is not required by law to be destroyed and which is not harmful to the public. Such property shall be sold at a public sale to the highest bidder, and if not sold at public sale, the court may permit a private sale. The proceeds of any sale and any monies forfeited or obtained by judgment or settlement under this act shall be deposited in the Special Asset Forfeiture Fund of the attorney for the state.

(2) The attorney for the state shall administer expenditures from the fund. The fund is subject to audit by the Division of Legislative Audit. Monies in the fund must be distributed in the following order:

- (i) for satisfaction of any bona fide security interest or lien;
- (ii) for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs; and
- (iii) any balance under two hundred fifty thousand dollars (\$250,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any of the activity that led to the seizure or forfeiture of the property or deposit of monies under this act;
- (iv) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Department of the Arkansas State Police to be transferred to the State Treasury for deposit in the Special State Assets Forfeiture Fund for distribution as provided in subsection (1).

(3) All controlled substances shall be forwarded to the Drug Enforcement Administration or Department of Health for disposition or destruction.

(4)(i) There is created on the books of law enforcement agencies and attorneys for the state a Drug Control Fund. The Drug Control Fund shall consist of all monies obtained under subsection (1) and other revenues as may be provided by law or ordinance. Monies from the fund may not supplant other local, state or federal funds. Monies in this fund are appropriated on a continuing basis and are not subject to Revenue Stabilization Law, 19-5-101, et seq. Monies in this fund must only be used for law enforcement and prosecutorial purposes. The fund is subject to audit by the Division of Legislative Audit.

(ii) The law enforcement agencies and attorneys for the state shall submit to the State Drug Director on or before January 1 and July 1 of each year a report detailing all monies received and expenditures made from the Drug Control Fund during the preceding six (6) month period.

(1)(1) There is created and established on the books of the State Treasurer, the State Auditor and the Chief Fiscal Officer of the State a fund to be known as the Special State Assets Forfeiture Fund.

(2) The Special State Assets Forfeiture Fund shall consist of revenues obtained under subsection (2)(iv) of subsection (k) and any other revenues as may be provided by law. All monies obtained under subsection (2)(iv) of subsection (k) shall be deposited in this fund. Monies from the fund may not supplant other local, state or federal funds.

(3) This fund shall not be subject to the provisions of the Revenue Stabilization Law, 19-5-101, et seq., or subject to the provisions of 19-5-203(b)(2)(A), the Special Revenue Fund Account.

(4) The Arkansas Drug Director shall establish through rules and regulations a procedure for proper investment and disposition of monies deposited in the Special State Assets Forfeiture Fund in accordance with the intent and purposes of this act."

SECTION 5. PENDING PROCEEDINGS.

(a) Civil seizures or forfeitures and injunctive proceedings commenced before the effective date of this act are not affected by this act.

(b) This section applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings, and investigations which occur following its effective date.

SECTION 6. CONTINUATION OF RULES. Any orders and rules adopted under any law affected by this act and in effect on the effective date of this act and not in conflict with this act continue in effect until modified, superseded, or repealed.

SECTION 7. SEVERABILITY. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications, and to this end the provisions of this chapter are severable.

APPROVED: November 17, 1989
