

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 493 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

SENATE BILL 859

5 By: Senator Luker
6
7

For An Act To Be Entitled

9 AN ACT CONCERNING PROPERTY SUBJECT TO FORFEITURE
10 UNDER THE UNIFORM CONTROLLED SUBSTANCES ACT; AND
11 FOR OTHER PURPOSES.
12

Subtitle

13 AN ACT CONCERNING PROPERTY SUBJECT TO
14 FORFEITURE UNDER THE UNIFORM CONTROLLED
15 SUBSTANCES ACT.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 5-64-505(a), concerning property subject to
22 forfeiture, 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, however no property is subject to forfeiture based solely upon a
27 misdemeanor possession of a Schedule III, Schedule IV, Schedule V, or
28 Schedule VI controlled substance:

29 (1) Any controlled substance or counterfeit substance that has
30 been manufactured, distributed, dispensed, or acquired in violation of this
31 chapter;

32 (2) Any raw material, product, or equipment of any kind that is
33 used, or intended for use, in manufacturing, compounding, processing,
34 delivering, importing, or exporting any controlled substance or counterfeit
35 substance in violation of this chapter;



1 (3) Any property that is used, or intended for use, as a
2 container for property described in subdivision (a)(1) or (2) of this
3 section;

4 (4)(A) Any conveyance, including an aircraft, vehicle, or
5 vessel, that is used, or intended for use, to transport, or in any manner to
6 facilitate the transportation, for the purpose of sale or receipt of property
7 described in subdivision (a)(1) or (2) of this section, however:

8 (A) No conveyance used by any person as a common carrier
9 in the transaction of business as a common carrier is subject to forfeiture
10 under this section unless it appears that the owner or other person in charge
11 of the conveyance is a consenting party or privy to a violation of this
12 chapter;

13 (B)(i) No conveyance is subject to forfeiture under this
14 section by reason of any act or omission established by the owner of the
15 conveyance to have been committed or omitted without his or her knowledge or
16 consent.

17 (ii) Upon a showing described in subdivision
18 (a)(4)(B)(i) of this section by the owner or interest holder, the conveyance
19 may nevertheless be forfeited if the prosecuting attorney establishes that
20 the owner or interest holder either knew or should reasonably have known that
21 the conveyance would be used to transport or in any manner to facilitate the
22 transportation, for the purpose of sale or receipt, of property described in
23 subdivision (a)(1) or (2) of this section;

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

26 (D) A forfeiture of a conveyance encumbered by a bona fide
27 security interest is subject to the interest of the secured party if the
28 secured party neither had knowledge of nor consented to the act or omission;

29 (5) Any book, record, or research product or material, including
30 a formula, microfilm, tape, or data that is used, or intended for use, in
31 violation of this chapter;

32 (6)(A) Anything of value, including firearms, furnished or
33 intended to be furnished in exchange for a controlled substance or
34 counterfeit substance in violation of this chapter, any proceeds or profits
35 traceable to the exchange, and any money, negotiable instrument, or security
36 used, or intended to be used, to facilitate any violation of this chapter.

1 (B) However, no property shall be forfeited under this
2 subdivision (a)(6) to the extent of the interest of an owner by reason of any
3 act or omission established by him or her, by a preponderance of the
4 evidence, to have been committed or omitted without his or her knowledge or
5 consent;

6 (7) Rebuttable presumptions.

7 (A) Any money, coin, ~~or~~ currency, or firearms found in
8 close proximity to a forfeitable controlled substance, a counterfeit
9 substance, forfeitable drug manufacturing or distributing paraphernalia, or a
10 forfeitable record of an importation, manufacture, or distribution of a
11 controlled substance or counterfeit substance is presumed to be forfeitable
12 under this subdivision (a)(7).

13 (B) The burden of proof is upon a claimant of the property
14 to rebut this presumption by a preponderance of the evidence; and

15 (8) Real property may be forfeited under this chapter if it
16 substantially assisted in, facilitated in any manner, or was used or intended
17 for use in the commission of any act prohibited by this chapter, however:

18 (A) No real property is subject to forfeiture under this
19 chapter by reason of any act or omission established by the owner of the real
20 property by a preponderance of the evidence to have been committed or omitted
21 without his or her knowledge or consent;

22 (B) Real property is not subject to forfeiture for a
23 violation of § 5-64-401(c);

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

27 (D) Upon conviction, when the circuit court having
28 jurisdiction over the real property seized finds upon a hearing by a
29 preponderance of the evidence that grounds for a forfeiture exist under this
30 section, the court shall enter an order consistent with subsection (h) of
31 this section;

32 (E) When any court orders a forfeiture of real property
33 pursuant to this chapter, the order shall be filed of record on the day
34 issued and shall have prospective effect only;

35 (F) A forfeiture of real property ordered under a
36 provision of this chapter does not affect the title of a bona fide purchaser

1 who purchased the real property prior to the issuance of the order, and the
2 order has no force or effect on the title of the bona fide purchaser; and

3 (G) Any lis pendens filed in connection with any action
4 pending under a provision of this chapter that might result in the forfeiture
5 of real property is operative only from the time filed and has no retroactive
6 effect.

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8 SECTION 2. Arkansas Code § 5-64-505(f)(3), concerning an inventory of
9 property seized, is amended to read as follows:

10 (3) The confiscation report shall contain the following
11 information:

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

15 (B) The date of seizure;

16 (C) The name and address from whom the property was
17 seized;

18 (D) The reason for the seizure;

19 (E) Where the property will be held;

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

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

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24 SECTION 3. Arkansas Code § 5-64-505(g)(3), concerning forfeiture
25 proceedings, is amended to read as follows:

26 (3)(A) The prosecuting attorney may file the complaint after the
27 expiration of the time set forth in subdivision (g)(2) of this section only
28 if the complaint is accompanied by a statement of good cause for the late
29 filing.

30 (B) However, in no event shall the complaint be filed more
31 than one hundred twenty (120) days after either the date of the seizure or,
32 in a case involving real property, the date of the defendant's conviction.

33 (C) If the circuit court determines that good cause has
34 not been established, the circuit court shall order that the seized property
35 be returned to the owner or interest holder. In addition, items seized but
36 not subject to forfeiture under this section or subject to disposition

1 pursuant to law or the Arkansas Rules of Criminal Procedure may be ordered
2 returned to the owner or interest holder. If the owner or interest holder
3 cannot be determined, the court may order disposition of the property in
4 accordance with subsection (h) of this section.

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APPROVED: 3/26/2007