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A Bill

SENATE BILL 805

5
6 By: Senator A. Clark

7 Filed with: Senate Committee on State Agencies and Governmental Affairs
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT CONCERNING THE CIVIL FORFEITURE OF ASSETS
11 INVOLVED IN CERTAIN CRIMINAL OFFENSES; AND FOR OTHER
12 PURPOSES.

Subtitle

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14
15 CONCERNING THE CIVIL FORFEITURE OF ASSETS
16 INVOLVED IN CERTAIN CRIMINAL OFFENSES.

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

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

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

30
31 SECTION 2. Arkansas Code Title 5, Chapter 5, Subchapter 2, is amended
32 to add a new section to read as follows:

33 5-5-205. Right to a pretrial hearing on validity of seizure.

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

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

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

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

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

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

14 (2) The property is not reasonably required to be held for
15 investigatory reasons; or

16 (3)(A) The property is the only reasonable means for a defendant
17 to pay for legal representation in the forfeiture or criminal proceeding.

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) 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 reasons; or

32 (C)(i) The property is the only reasonable means for a
33 defendant to pay for legal representation in the forfeiture or criminal
34 proceeding.

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

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

8 ~~(d)~~(e) At the ~~hearing~~ trial on the matter, the petitioner has the
9 burden to establish that the property is subject to forfeiture as provided in
10 § 5-5-302.

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

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

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

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

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

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

34 (c)(1) Seizure of Property. Property subject to forfeiture under this
35 chapter may be seized by any law enforcement agent upon process issued by any
36 circuit court having jurisdiction over the property on petition filed by the

1 prosecuting attorney of the judicial circuit. Seizure without process may be
2 made if:

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

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

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

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

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

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

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

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

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

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

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

34 (iii)(a) The property is the only reasonable means
35 for a defendant to pay for legal representation in the forfeiture or criminal
36 proceeding.

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 is 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) of this section, the circuit court ~~judge~~ having
35 jurisdiction shall issue an order to show cause setting forth a statement
36 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 reasons; or

18 (C)(i) The property is the only reasonable means for a
 19 defendant to pay for legal representation in the forfeiture or criminal
 20 proceeding.

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

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

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

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

34 (1) Any prior criminal conviction or delinquency adjudication of
 35 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:

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

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

5 (C) 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 notice of the sale shall include the time, place, and
8 conditions of the sale and a description of the property to be sold.

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

11 ~~(n)~~(o) The proceeds of any sale and any moneys forfeited shall be
12 applied to the payment of:

13 (1) The balance due on any lien preserved by the circuit court
14 in the forfeiture proceedings;

15 (2) The cost incurred by the seizing law enforcement agency in
16 connection with the storage, maintenance, security, and forfeiture of the
17 property;

18 (3) The costs incurred by the prosecuting attorney or attorney
19 for the law enforcement agency, approved by the prosecuting attorney, to
20 which the property is forfeited; and

21 (4) Costs incurred by the circuit court.

22 ~~(o)~~(p) The remaining proceeds or moneys shall be deposited into a
23 special county fund to be titled the "Juvenile Crime Prevention Fund", and
24 the moneys in the fund shall be used solely for making grants to community-
25 based nonprofit organizations that work with juvenile crime prevention and
26 rehabilitation.

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29 Referred by the Arkansas Senate

30 Prepared by: VJF

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