

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1068

By: Representative Givens

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE OF 1987 ANNOTATED §5-64-505 TO DESIGNATE PROPERTY SUBJECT TO FORFEITURE FOR VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code of 1987 Annotated §5-64-505 is hereby amended to read as follows:

"5-64-505. Property subject to forfeiture - Procedure - Disposition of property.

(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 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 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) 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.

(iii) 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 to:

(A) Permit the law enforcement agency or the prosecuting attorney for the judicial circuit in which the real property was seized to retain the real property for official use; or

(B) Permit the law enforcement agency to sell the real property at a public or private sale. In the event of a sale, the court shall provide by order that the proceeds be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of investigation, seizure, maintenance of custody, advertising, and court costs. All proceeds from the sale of forfeited real property under this section in excess of proper expenses shall be distributed as follows:

(I) Forty percent (40%) to be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund;

(II) Forty percent (40%) to the law enforcement agency which perfected the arrest, provided that if a federal agency perfected the arrest this forty percent (40%) shall be distributed to the county sheriff's office of the county responsible for the prosecution;

(III) Twenty percent (20%) to the county sheriff's office of the county responsible for the prosecution.

(iv) 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.

(v) 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.

(vi) 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.

(b) Property subject to forfeiture under subchapters 1-6 of this chapter may be seized by any law enforcement agent upon process issued by any circuit court having jurisdiction over the property on petition filed by the prosecuting attorney of the judicial circuit. Seizure without process may be made if:

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

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon subchapters 1-6 of this chapter;

(3) The director has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The director or any law enforcement agent has probable cause to believe that the property was used or is intended to be used in violation of subchapters 1-6 of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsections (d) and (e) of this section shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or seizing law enforcement agency subject only to the orders and decrees of the circuit court having jurisdiction over the property seized. When property is seized under subchapters 1-6 of this chapter, the director or seizing law enforcement agency may:

(1) Place the property under seal;

(2) Remove the property to a place designated by it; or

(3) Require the director to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(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 appropriate order. The court may:

(1) Permit the proper law enforcement agency or the prosecuting attorney for the judicial district in which the property was seized to retain the property for official use;

(2) Permit the proper law enforcement agency to sell at public or

private sale that which is not required by law to be destroyed and which is not harmful to the public. In the event of a sale, the court shall provide by appropriate order that the proceeds be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of investigation, seizure, maintenance of custody, advertising, and court costs. All proceeds from the sale of forfeited property in excess of proper expenses shall be paid into the county general fund of the county where the property was seized.

(3) Require the director to take custody of the property and remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of subchapters 1-6 of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I, II, and VI may be derived which have been planted or cultivated in violation of subchapters 1-6 of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the director, or his authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) All drug paraphernalia and counterfeit substances except in the possession or control of a practitioner in the course of professional practice and/or research shall be subject to civil seizure and forfeiture."

SECTION 2. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. All laws and parts of laws in conflict with this act are hereby repealed.