

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Everett

A Bill

SENATE BILL 679

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 5-64-505(a) TO PROVIDE
9 FOR THE FORFEITURE OF PROPERTY UPON A PLEA OF GUILTY OR A
10 CONVICTION FOR FELONY OFFENSES OF THE UNIFORM CONTROLLED
11 SUBSTANCES ACT; AND FOR OTHER PURPOSES."

Subtitle

14 "TO PROVIDE FOR THE FORFEITURE OF
15 PROPERTY UPON A PLEA OF GUILTY OR A
16 CONVICTION FOR FELONY OFFENSES UNDER
17 ARKANSAS' ILLEGAL DRUG LAWS."

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

21 SECTION 1. Arkansas Code § 5-64-505(a) is amended to read as follows:

22 "(a) *Except as provided in subdivision (a)(6) of this section,*
23 *property described in the following subsections are subject to forfeiture,*
24 *upon a finding by a preponderance of the evidence that the property to be*
25 *forfeited was possessed, actually or constructively, during the course of*
26 *felonious conduct, and used to further that conduct, by a person adjudicated*
27 *guilty, or who pleads guilty or nolo contendere, to a felony offense under*
28 *subchapters 1-6 of this chapter or to a felony inchoate offense, involving a*
29 *violation of subchapters 1-6 of this chapter, or who fails to appear, as*
30 *defined in Arkansas Code § 5-54-120, before the circuit court on the felony*
31 *charge for a period of thirty (30) days after the date he was lawfully*
32 *required to do so or who, as the owner of the property, may waive the*
33 *requirement of a felony conviction:*

34 (1) All controlled substances and counterfeit substances which
35 have been manufactured, distributed, dispensed, or acquired in violation of

1 subchapters 1-6 of this chapter;

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

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

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

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

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

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

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

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

30 (6) Everything of value furnished or intended to be furnished,
31 in exchange for a controlled substance or counterfeit substance in violation
32 of subchapters 1-6 of this chapter, all proceeds and profits traceable to
33 such an exchange, and all moneys, negotiable instruments, and securities
34 used, or intended to be used, to facilitate any violation of subchapters 1-6
35 of this chapter; except that no property shall be forfeited under this

1 paragraph, to the extent of the interest of an owner, by reason of any act or
2 omission established by him to have been committed or omitted without his
3 knowledge or consent. *Provided further that, although conviction is not*
4 *required to forfeit 'proceeds' or 'profits' under this chapter, acquittal of*
5 *the owner on charges brought as a result of the conduct from which the*
6 *proceeds or profits are alleged to derive shall bar forfeiture of those*
7 *alleged proceeds or profits.*

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

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

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

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

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

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

34 (v) When any court orders a forfeiture of real property
35 pursuant to subchapters 1-6 of this chapter, the order shall be filed of

1 record on the day issued and shall have prospective effect only.

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

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

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

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16 SECTION 3. If any provisions of this act or the application thereof to
17 any person or circumstance is held invalid, the invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provisions or application, and to this end the provisions of this
20 act are declared to be severable.

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22 SECTION 4. All laws and parts of laws in conflict with this act are
23 hereby repealed.

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/s/Everett

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