

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/3/99 S3/9/99 S3/18/99

A Bill

SENATE BILL 555

5 By: Senators Dowd, Hill
6 By: Representative Luker
7
8

For An Act To Be Entitled

9
10 "AN ACT TO AMEND ARKANSAS CODE 5-64-505 PERTAINING TO
11 THE FORFEITURE OF PROPERTY UNDER THE UNIFORM
12 CONTROLLED SUBSTANCES ACT; TO REPEAL ARKANSAS CODE 5-
13 64-509; AND FOR OTHER PURPOSES."

Subtitle

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15
16 "PERTAINING TO THE FORFEITURE OF PROPERTY
17 UNDER THE UNIFORM CONTROLLED SUBSTANCES
18 ACT; TO REPEAL ARKANSAS CODE 5-64-509."
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Legislative intent. As stated in the comment to section 505
24 of the Uniform Controlled Substances Act, "Effective law enforcement demands
25 that there be a means of confiscating the vehicles and instrumentalities used
26 by drug traffickers in committing violations under this act. The reasoning is
27 to prevent their use in the commission of subsequent offenses involving
28 transportation or concealment of controlled substances and to deprive the drug
29 trafficker of needed mobility." The General Assembly recognizes the
30 importance of asset forfeiture as a means to confront drug trafficking.
31 However, the General Assembly also recognizes that under the system that
32 existed prior to the enactment of this act, the lack of uniformity and
33 accountability in forfeiture procedures across the state has undermined
34 confidence in the system. As the United States Supreme Court has stated,
35 "Forfeiture provisions are powerful weapons in the war on crime; like any such
36 weapons, their impact can be devastating when used unjustly." In order to

1 alleviate the problems resulting from the lack of uniformity and
 2 accountability, the General Assembly has determined that time limits for
 3 initiating forfeiture proceedings and stricter controls over forfeited
 4 property will help alleviate such problems while strengthening forfeiture as a
 5 vital weapon against drug trafficking. Specifically, it is the intent of § 5-
 6 64-505(a) that there be no forfeitures based solely upon a misdemeanor
 7 possession of a controlled substance. However, if the prosecuting attorney
 8 can prove that other evidence exists to establish a basis for forfeiture, the
 9 property may be forfeited. It is the intent of § 5-64-505(d) to reduce the
 10 conflict between state and federal authorities over seizures executed by state
 11 law enforcement officers. It is the intent of § 5-64-505(h) to allow law
 12 enforcement agencies and drug task forces to maintain forfeited property for
 13 official use, provided that the final order disposing of such property defines
 14 the legal entity that is responsible for such property. Section 5-64-
 15 505(i)(1)(D) governs those situations in which a seizure results in the
 16 forfeiture of money and or property in excess of two hundred fifty thousand
 17 dollars (\$250,000). It is the specific intent of the General Assembly that
 18 forfeiture proceedings not be structured in such a way as to defeat the
 19 General Assembly's intent that money or property in excess of two hundred
 20 fifty thousand dollars (\$250,000) be transferred to the Special State Assets
 21 Forfeiture Fund. It is determined that such fund can best be used to combat
 22 drug trafficking statewide.

23
 24 SECTION 2. Arkansas Code 5-64-505 is amended to read as follows:

25 "5-64-505. Property subject to forfeiture – Procedure – Disposition of
 26 property.

27 (a) Items subject to forfeiture. The following are subject to
 28 forfeiture upon the initiation of a civil proceeding filed by the prosecuting
 29 attorney and when so ordered by the circuit court in accordance with this
 30 section, provided that no property shall be subject to forfeiture based solely
 31 upon a misdemeanor possession of a Schedule III, IV, V, or VI controlled
 32 substance:

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

36 (2) All raw materials, products, and equipment of any kind which

1 are used, or intended for use, in manufacturing, compounding, processing,
2 delivering, importing, or exporting any controlled substance or counterfeit
3 substance in violation of ~~subchapters 1-6 of~~ this chapter;

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

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

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

15 ~~(ii)(B)~~ (B) No conveyance is subject to forfeiture under this
16 section by reason of any act or omission established by the owner thereof to
17 have been committed or omitted without his knowledge or consent, ~~and without~~
18 ~~the knowledge or consent of anyone having possession, care, or control of the~~
19 ~~conveyance with the owner's permission;~~ Upon such showing by the owner or
20 interest holder, the conveyance may nevertheless be forfeited if the
21 prosecuting attorney establishes that the owner or interest holder either knew
22 or should reasonably have known that the conveyance would be used to transport
23 or in any manner to facilitate the transportation, for the purpose of sale or
24 receipt, of property described in subsection (a)(1) or (2);

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

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

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

33 (6) Everything of value furnished or intended to be furnished in
34 exchange for a controlled substance or counterfeit substance in violation of
35 ~~subchapters 1-6 of~~ this chapter, all proceeds and profits traceable to such an
36 exchange, and all moneys, negotiable instruments, and securities used, or

1 intended to be used, to facilitate any violation of ~~subchapters 1-6 of~~ this
2 chapter; except that no property shall be forfeited under this paragraph, to
3 the extent of the interest of an owner by reason of any act or omission
4 established by him, by a preponderance of the evidence, to have been committed
5 or omitted without his knowledge or consent.

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

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

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

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

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

27 (iv)(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 ~~(k)~~ (h) of
31 this section.

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

35 (vi)(F) A forfeiture of real property ordered under the
36 provisions of ~~subchapters 1-6 of~~ this chapter shall not affect the title of a

1 bona fide purchaser who purchased the property prior to the issuance of the
2 order, and such order shall have no force or effect on the title of the bona
3 fide purchaser.

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

8 (b) Seizure and summary forfeiture of contraband. The following items
9 shall be deemed contraband and may be seized and summarily forfeited to the
10 state:

11 (1) Controlled substances listed in Schedule I that are
12 possessed, transferred, sold, or offered for sale in violation of this chapter
13 and controlled substances listed in Schedule I which are seized or come into
14 the possession of the state, the owners of which are unknown.

15 (2) Species of plants from which controlled substances in
16 Schedules I, II, and VI may be derived which have been planted or cultivated
17 in violation of this chapter, or of which the owners or cultivators are
18 unknown, or which are wild growths. The failure, upon demand by the seizing
19 law enforcement agency, of the person in occupancy or in control of land or
20 premises upon which the species of plants are growing or being stored, to
21 produce an appropriate registration, or proof that he is the holder thereof,
22 constitutes authority for the seizure and forfeiture of the plants.

23 (3) All drug paraphernalia and counterfeit substances except in
24 the possession or control of a practitioner in the course of professional
25 practice and/or research.

26 ~~(b)~~ (c) Seizure of property. Property subject to forfeiture under
27 ~~subchapters 1-6~~ of this chapter may be seized by any law enforcement agent
28 upon process issued by any circuit court having jurisdiction over the property
29 on petition filed by the prosecuting attorney of the judicial circuit.

30 Seizure without process may be made if:

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

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

36 (3) The ~~director~~ seizing law enforcement agency has probable

1 cause to believe that the property is directly or indirectly dangerous to
2 health or safety; or

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

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

9 (d) Transfer of property seized by state or local agency to federal
10 agency. No state or local law enforcement agency may transfer any property
11 seized by the state or local agency to any federal entity for forfeiture under
12 federal law unless the circuit court having jurisdiction over the property
13 enters an order, upon petition by the prosecuting attorney, authorizing the
14 property to be transferred to such federal entity. Such transfer shall not be
15 approved unless it reasonably appears that the activity giving rise to the
16 investigation or seizure involves more than one state or the nature of the
17 investigation or seizure would be better pursued under federal law.

18 ~~(d) (e)(1) Custody of property pending disposition. Property taken or~~
19 ~~detained seized for forfeiture under this section shall not be subject to~~
20 ~~replevin, but is deemed to be in the custody of the director or seizing law~~
21 ~~enforcement agency subject only to the orders and decrees of the circuit court~~
22 ~~having jurisdiction over the property seized. When property is seized under~~
23 ~~subchapters 1-6 of this chapter, the director or seizing law enforcement~~
24 ~~agency may, subject to any need to retain the property as evidence:~~

25 ~~(1) Place the property under seal;~~

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

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

29 (A) Remove the property to a place designated by the
30 circuit court;

31 (B) Place the property under constructive seizure posting
32 notice of pending forfeiture on it, by giving notice of pending forfeiture to
33 its owners and interest holders, or by filing notice of pending forfeiture in
34 any appropriate public record relating to the property;

35 (C) Remove the property to a storage area for safekeeping
36 or, if the property is a negotiable instrument or money, or is not needed for

1 evidentiary purposes, deposit it in an interest-bearing account; or

2 (D) Provide for another agency or custodian, including an
3 owner, secured party, mortgagee, or lienholder, to take custody of the
4 property and service, maintain, and operate it as reasonably necessary to
5 maintain its value in any appropriate location within the jurisdiction of the
6 court.

7 (2) In all cases of transfer of property, a transfer receipt shall
8 be prepared by the transferring agency. The transfer receipt shall list a
9 detailed and complete description of the property being transferred. The
10 transfer receipt shall also state to whom the property is being transferred
11 and the source or authorization for the transfer. The transfer receipt shall
12 be signed by both the transferor and the transferee. Both transferor and
13 transferee shall maintain a copy of the transfer receipt.

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

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

21 (f) Inventory of property seized - Referral to prosecuting attorney.

22 (1) Any property seized by state or local law enforcement officers
23 who are detached to, deputized or commissioned by, or working in conjunction
24 with a federal agency shall remain subject to the provisions of this section.

25 (2) When property is seized for forfeiture by a law enforcement
26 agency, the seizing officer shall prepare and sign a confiscation report. The
27 party from whom the property is seized shall also sign the report if present
28 and shall immediately receive a copy of it. If the party refuses to sign the
29 report, the report shall be signed by one (1) additional law enforcement
30 officer, stating that the party refused to sign the report. The original
31 report shall be filed with the seizing law enforcement agency within forty-
32 eight (48) hours after the seizure and shall be maintained in a separate file.
33 One (1) copy of the report shall be retained by the seizing officer.

34 (3) The confiscation report shall contain the following
35 information:

36 (A) A detailed description of the property seized including

1 any serial or model numbers;

2 (B) The date of seizure;

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

4 (D) The reason for the seizure;

5 (E) Where the property will be held;

6 (F) The seizing officer's name; and

7 (G) A signed statement by the seizing officer stating that
8 the report is true and complete.

9 (4) Within three (3) business days of receiving the confiscation
10 report, the seizing agency shall forward a copy of the report to the
11 prosecuting attorney for the district in which the property was seized and to
12 the Arkansas Drug Director.

13 (5)(A) If the Division of Legislative Audit determines, by its own
14 investigation or upon written notice from the Arkansas Drug Director, that (i)
15 a law enforcement agency has failed to complete and file the confiscation
16 reports as required by this section, (ii) that a law enforcement agency,
17 prosecuting attorney, or other public entity has not properly accounted for
18 any seized property, or (iii) that a prosecuting attorney has failed to comply
19 with the notification requirement set forth in subsection (i)(1), the Division
20 of Legislative Audit shall notify the circuit court in the county of such
21 entity and the Arkansas Alcohol and Drug Abuse Coordinating Council that the
22 entity is thereafter ineligible to receive any forfeited funds, forfeited
23 property, or any grants from the council. The court shall thereafter not
24 issue any orders distributing seized property to that entity nor shall any
25 grants be awarded by the council to that entity until the appropriate
26 officials of the entity have appeared before the Legislative Joint Auditing
27 Committee and the committee has adopted a motion authorizing subsequent
28 transfers of forfeited property to the entity.

29 (B) While an entity is ineligible to receive forfeited
30 property, the court shall order any money that would have been distributed to
31 that entity to be transmitted to the Treasurer of State for deposit into the
32 Crime Lab Equipment Fund, and if the property is other than cash, the court
33 shall order it converted to cash pursuant to subdivision (h)(1)(B), and the
34 proceeds transmitted to the Treasurer of State for deposit into the Crime Lab
35 Equipment Fund.

36 (C) Monies deposited into the Crime Lab Equipment Fund

1 pursuant to subdivision (f)(5)(B) are not subject to recovery or retrieval by
2 the ineligible entity.

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

9 (g) Initiation of forfeiture proceedings - notice to claimants -
10 judicial proceedings.

11 (1) The prosecuting attorney shall initiate forfeiture
12 proceedings by filing a complaint with the circuit clerk of the county in
13 which the property was seized and by serving such complaint on all known
14 owners and interest holders of the seized property in accordance with the
15 Arkansas Rules of Civil Procedure. The complaint may be based on in rem or in
16 personam jurisdiction but shall not be filed in such a way as to avoid the
17 distribution requirements set forth in subdivision (i)(1).

18 (2) The complaint shall include a copy of the confiscation report
19 and shall be filed within sixty (60) days after receiving a copy of the
20 confiscation report from the seizing law enforcement agency. In cases
21 involving real property, the complaint shall be filed within sixty (60) days
22 of the defendant's conviction on the charge giving rise to the forfeiture.

23 (3) The prosecuting attorney may file the complaint after the
24 expiration of the time set forth in subdivision (g)(2) only if the complaint
25 is accompanied by a statement of good cause for the late filing. However, in
26 no event shall the complaint be filed more than one hundred twenty (120) days
27 after either the date of the seizure or, in cases involving real property, the
28 date of the defendant's conviction. If the court determines that good cause
29 has not been established, the court shall order that the seized property be
30 returned to the owner or interest holder.

31 (4) Within the time set forth in the Arkansas Rules of Civil
32 Procedure, the owner or interest holder of the seized property shall file
33 with the circuit clerk a verified answer to the complaint which shall include:

34 (A) A statement describing the property and the
35 petitioner's interest in the property, with supporting documents to establish
36 such interest;

1 (B) A certification by the owner or interest holder stating
2 that he has read the document and that it is not filed for any improper
3 purpose;

4 (C) A statement setting forth any defenses to forfeiture;
5 and

6 (D) The address at which the owner or interest holder will
7 accept mail.

8 (5)(A) If the owner or interest holder fails to file an answer as
9 required by subdivision (g)(4), the prosecuting attorney may move for default
10 judgment pursuant to the Arkansas Rules of Civil Procedure.

11 (B) If a timely answer has been filed, the prosecuting
12 attorney shall have the burden of proving by a preponderance of the evidence
13 that the seized property should be forfeited. After the prosecuting attorney
14 has presented such proof, any owner or interest holder of the property seized
15 shall be allowed to present evidence why such property should not be
16 forfeited. If the court determines that grounds for forfeiting the property
17 exist and that no defense to forfeiture has been established by the owner or
18 interest holder, the court shall enter an order pursuant to subsection (h).
19 However, if the court determines either that the prosecuting attorney has
20 failed to establish that such grounds exist or that the owner or interest
21 holder has established a defense to forfeiture, the court shall order that the
22 property be immediately returned to the owner or interest holder.

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

28 (h) Final disposition. (1) When the circuit court having jurisdiction
29 over the property seized finds upon a hearing by a preponderance of the
30 evidence that grounds for a forfeiture exist under this chapter, the court
31 shall enter an order:

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

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

4 ~~(j)(1) If property is seized for forfeiture under subchapters 1-6 of~~
5 ~~this chapter, the seizing agency which seized the property may, subject to any~~
6 ~~need to retain the property as evidence:~~

7 ~~(i) Remove the property to a place designated by the circuit~~
8 ~~court;~~

9 ~~(ii) Place the property under constructive seizure posting notice~~
10 ~~of pending forfeiture on it, by giving notice of pending forfeiture to~~
11 ~~its owners and interest holders, or by filing notice of pending~~
12 ~~forfeiture in any appropriate public record relating to the property;~~

13 ~~(iii) Remove the property to a storage area for safekeeping or,~~
14 ~~if the property is a negotiable instrument or money, or is not needed~~
15 ~~for evidentiary purposes, deposit it in an interest-bearing account;~~

16 ~~(iv) Provide for another agency or custodian, including an owner,~~
17 ~~secured party, mortgagee, or lienholder, to take custody of the property~~
18 ~~and service, maintain, and operate it as reasonably necessary to~~
19 ~~maintain its value in any appropriate location within jurisdiction of~~
20 ~~the court; or~~

21 ~~(v) Require the law enforcement agency to take custody of the~~
22 ~~property and remove it to an appropriate location for disposition in~~
23 ~~accordance with law.~~

24 ~~(2) A person who acts as custodian of property under this section is~~
25 ~~not liable to any person on account of acts done in compliance with an order~~
26 ~~under subchapters 1-6 of this chapter in a reasonable manner.~~

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

31 ~~(i) A description of the property;~~

32 ~~(ii) The estimated value;~~

33 ~~(iii) The location of the property; and~~

34 ~~(iv) The disposition of the property.~~

35 ~~(k)(1) Whenever property is forfeited under subchapters 1-6 of this~~
36 ~~chapter, the circuit court shall enter an order:~~

1 ~~(i)~~ (A) To permit the law enforcement agency or prosecuting attorney
2 ~~for the state to retain the property for official use except that all aircraft~~
3 ~~shall be transferred to the Arkansas Drug Director~~ law enforcement or
4 prosecutorial purposes, subject to the following provisions:

5 (i) Property may not be retained for official use for more
6 than two (2) years, unless the circuit court finds that the property has been
7 used for law enforcement or prosecutorial purposes and authorizes continued
8 use for such purposes on an annual basis. At the end of the period of
9 retention, the property shall be sold as provided in subdivision (h)(1)(B),
10 and eighty percent (80%) of the proceeds shall be deposited in the drug
11 control fund of the retaining agency and twenty percent (20%) of the proceeds
12 shall be deposited into the State Treasury as special revenues to be credited
13 to the Crime Lab Equipment Fund. Nothing shall prohibit the retaining agency
14 from selling the retained property at any time during the time allowed for
15 retention, provided that the proceeds of such sale shall be distributed as set
16 forth in this paragraph;

17 (ii) If the circuit court determines that retained property
18 has been used for personal use or by non-law enforcement personnel for non-law
19 enforcement purposes, the court shall order the property to be sold pursuant
20 to the provisions of Arkansas Code § 5-5-101(e) and (f), and the proceeds
21 shall be deposited into the State Treasury as special revenues to be credited
22 to the Crime Lab Equipment Fund;

23 (iii) Drug task forces may use forfeited property or money,
24 provided that the court's order specifies that the money or property is
25 forfeited to the prosecuting attorney, sheriff, chief of police, or Arkansas
26 State Police, or Arkansas Highway Police. The prosecuting attorney, sheriff,
27 chief of police, or Arkansas State Police, or Arkansas Highway Police
28 shall thereafter maintain an inventory of such property, shall be accountable
29 for such property, and shall be subject to the provisions of subsection (f)(5)
30 with respect to such property;

31 (iv) All aircraft shall be forfeited to the Office of the
32 Arkansas Drug Director and may only be used for drug eradication or drug
33 interdiction efforts, within the discretion of the Arkansas Drug Director.
34 However, if the Arkansas Alcohol and Drug Abuse Coordinating Council
35 determines that the aircraft should be sold, such sale shall be conducted
36 pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds of such

1 sale shall be deposited in the Special State Assets Forfeiture Fund;

2 (v) All firearms not retained for official use shall be
3 disposed of in accordance with state and federal law;

4 (vi) All controlled substances, plants, drug paraphernalia,
5 and counterfeit substances shall be destroyed pursuant to court order;

6 ~~(ii) (B) To sell that which is not required by law to~~
7 ~~be destroyed and which is not harmful to the public. Such property shall be~~
8 ~~sold at a public sale to the highest bidder, by the retaining agency, pursuant~~
9 ~~to the provisions of § 5-5-101(e) and (f); and if not sold at public sale, the~~
10 ~~court may permit a private sale. The proceeds of any sale and any moneys~~
11 ~~forfeited or obtained by judgment or settlement under subchapters 1-6 of this~~
12 ~~chapter shall be deposited in the special asset forfeiture fund of the~~
13 ~~attorney for the state.~~

14 (2) Disposition of forfeited property pursuant to this subsection
15 shall be subject to the need to retain the property as evidence in any related
16 proceedings;

17 (3) Within three (3) business days of the entry of the order, the
18 circuit clerk shall forward to the Arkansas Drug Director copies of the
19 confiscation report, the court's order, and any other documentation detailing
20 the disposition of the seized property.

21 (i) Disposition of moneys received. Subject to the provisions of
22 subsection (f)(5), the proceeds of sales conducted pursuant to subsection
23 (h)(1)(B) and all moneys forfeited or obtained by judgment or settlement
24 pursuant to this chapter shall be deposited and distributed in the manner set
25 forth in this subsection. Moneys received from federal forfeitures shall be
26 deposited and distributed pursuant to subdivision (4) of this subsection.

27 (1) Asset Forfeiture Fund. (A) The proceeds of any sale and any
28 moneys forfeited or obtained by judgment or settlement under this chapter
29 shall be deposited in the asset forfeiture fund of the prosecuting attorney
30 and shall be subject to the following provisions:

31 (i) If, during a calendar year, the aggregate amount of moneys
32 deposited in the asset forfeiture fund exceeds twenty thousand dollars
33 (\$20,000) per county, the prosecuting attorney shall, within fourteen (14)
34 days of that time, notify the circuit judges in the judicial district and the
35 Arkansas Drug Director;

36 (ii) Subsequent to the notification set forth in (i), twenty

1 percent (20%) of the proceeds of any additional sale and any additional moneys
2 forfeited or obtained by judgment or settlement under this chapter in the same
3 calendar year shall be deposited into the State Treasury as special revenues
4 to be credited to the Crime Lab Equipment Fund and the remainder shall be
5 deposited in the asset forfeiture fund of the prosecuting attorney;

6 (iii) Failure by the prosecuting attorney to comply with the
7 notification requirement set forth in (i) shall render the prosecuting
8 attorney and any entity eligible to receive forfeited moneys or property from
9 the prosecuting attorney ineligible to receive such moneys or property, except
10 as provided in subsection (f)(5)(A);

11 (iv) Twenty percent (20%) of any moneys in excess of twenty
12 thousand dollars (\$20,000) that have been retained but not reported as
13 required by (i) shall be subject to recovery for deposit into the Crime Lab
14 Equipment Fund.

15 ~~(2)(B)~~ The prosecuting attorney ~~for the state~~ shall administer
16 expenditures from the fund. ~~The fund is~~ which shall be subject to audit by the
17 Division of Legislative Audit. Moneys distributed from this fund must only be
18 used for law enforcement and prosecutorial purposes. Moneys in the fund must
19 be distributed in the following order:

20 (i) For satisfaction of any bona fide security interest or
21 lien;

22 (ii) For payment of all proper expenses of the proceedings
23 for forfeiture and sale, including expenses of seizure, maintenance of
24 custody, advertising, and court costs; ~~and~~

25 (iii) Any balance under two hundred fifty thousand dollars
26 (\$250,000) shall be distributed proportionally so as to reflect generally the
27 contribution of the appropriate local or state law enforcement or
28 prosecutorial agency's participation in any of the activities that led to the
29 seizure or forfeiture of the property or deposit of moneys under ~~subchapter~~
30 ~~1-6~~ of this chapter; and

31 (iv) Any balance over two hundred fifty thousand dollars
32 (\$250,000) shall be forwarded to the ~~Department of the Arkansas State Police~~
33 Arkansas Drug Director to be transferred to the State Treasury for deposit in
34 the Special State Assets Forfeiture Fund for distribution as provided in
35 ~~subsection (1).~~ subdivision (3) of this subsection.

36 ~~(3) All controlled substances shall be forwarded to the Drug~~

1 ~~Enforcement Administration or Department of Health for disposition or~~
2 ~~destruction.~~

3 ~~(4)(i)~~ (2) Drug Control Fund. (A) There is created on the books of law
4 enforcement agencies and prosecuting attorneys for the state a Drug Control
5 Fund. The Drug Control Fund shall consist of all moneys obtained under
6 ~~subsection~~ subdivision (1) and other revenues as may be provided by law or
7 ordinance. Moneys from the fund may not supplant other local, state or
8 federal funds. Moneys in this fund are appropriated on a continuing basis and
9 are not subject to the Revenue Stabilization Law, § 19-5-101 et seq. Moneys
10 in this fund must only be used for law enforcement and prosecutorial purposes.
11 The fund is subject to audit by the Division of Legislative Audit.

12 ~~(ii)~~ (B) The law enforcement agencies and prosecuting
13 ~~attorneys for the state~~ shall submit to the ~~State~~ Arkansas Drug Director on or
14 before January 1 and July 1 of each year a report detailing all moneys
15 received and expenditures made from the Drug Control Fund during the preceding
16 six-month period.

17 ~~(1)(1)~~ (3) Special State Assets Forfeiture Fund. (A) There is created
18 and established on the books of the State Treasurer, the State Auditor, and
19 the Chief Fiscal Officer of the State a fund to be known as the Special State
20 Assets Forfeiture Fund.

21 ~~(2)~~ (B) The Special State Assets Forfeiture Fund shall
22 consist of revenues obtained under subdivision ~~(k)(2)(iv)~~ (i)(1)(B)(iv) and
23 any other revenues as may be provided by law. ~~All moneys obtained under~~
24 ~~subdivision (k)(2)(iv) shall be deposited in this fund.~~ Moneys from the fund
25 may not supplant other local, state, or federal funds.

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

30 ~~(4)~~ (D) The ~~State~~ Arkansas Drug Director shall establish
31 through rules and regulations a procedure for proper investment, use, and
32 disposition of moneys deposited in the special asset forfeiture fund in
33 accordance with the intent and purposes of subchapters 1-6 of this chapter.
34 Moneys in this fund shall be distributed by the Arkansas Alcohol and Drug
35 Abuse Coordinating Council and shall only be distributed for law enforcement
36 and prosecutorial purposes related to drug interdiction and eradication

1 efforts.

2 (4) Federal Forfeitures. (A) All moneys received by prosecuting
3 attorneys and law enforcement agencies from federal forfeitures shall be
4 deposited and maintained in a separate account, provided that any balance over
5 two hundred fifty thousand dollars (\$250,000) shall be distributed as set
6 forth in (B). No other moneys may be maintained in such account except for
7 any interest income generated by such account. Moneys in this account must
8 only be used for law enforcement and prosecutorial purposes consistent with
9 governing federal law. Such accounts shall be subject to audit by the
10 Division of Legislative Audit.

11 (B) Any balance over two hundred fifty thousand dollars
12 (\$250,000) shall be forwarded to the Arkansas Drug Director to be transferred
13 to the State Treasury for deposit in the Special State Assets Forfeiture Fund
14 where it shall be maintained separately and distributed consistent with
15 governing federal law.

16 ~~(m) Forfeitures under this section may be based on in rem or in~~
17 ~~personam jurisdiction. In personam jurisdiction may be based on the person's~~
18 ~~presence in the state, or on his conduct in the state, as set out in § 16-4-~~
19 ~~101(c).~~

20 ~~(n) (j) In personam proceedings. In personam jurisdiction may be based~~
21 ~~on the person's presence in the state, or on his conduct in the state, as set~~
22 ~~out in § 16-4-101(c), and is subject to the following additional provisions:~~
23 ~~The following additional provisions shall apply to in personam forfeiture~~
24 ~~proceedings:~~

25 (1) A temporary restraining order under this section may be
26 entered ex parte on application of the state, upon a showing that:

27 ~~(i)(A)~~ There is probable cause to believe that the property
28 with respect to which the order is sought is subject to forfeiture under this
29 section; and

30 ~~(ii)(B)~~ Notice of the action would jeopardize the
31 availability of the property for forfeiture.

32 (2) Notice of the entry of a temporary restraining order and an
33 opportunity for hearing must be afforded to persons known to have an interest
34 in the property. The hearing must be held at the earliest possible date
35 consistent with A.R.C.P. Rule 65 and is limited to the issues of whether:

36 ~~(i)(A)~~ There is a probability that the state will prevail

1 on the issue of forfeiture and that failure to enter the order will result in
2 the property being destroyed, conveyed, alienated, encumbered, disposed of,
3 received, removed from the jurisdiction of the court, concealed, or otherwise
4 made unavailable for forfeiture; and

5 ~~(i)~~(B) The need to preserve the availability of property
6 through the entry of the requested order outweighs the hardship on any owner
7 or interest holder against whom the order is to be entered.

8 (3) The state has the burden of proof by a preponderance of the
9 evidence to show that the defendant's property is subject to forfeiture.

10 (4) On a determination of liability of a person for conduct
11 giving rise to forfeiture under this section, the court shall enter a judgment
12 of forfeiture of the property subject to forfeiture as alleged in the
13 complaint and may authorize the prosecuting attorney or any law enforcement
14 officer to seize all property subject to forfeiture pursuant to subsection (a)
15 of this section not previously seized or not then under seizure. The order of
16 forfeiture shall be consistent with subsection ~~(k)~~ (h) of this section. In
17 connection with the judgment, the court, on application of the state, may
18 enter any appropriate order to protect the interest of the state in property
19 ordered forfeited.

20 (5) Subsequent to the finding of liability and order of
21 forfeiture, the following procedures apply:

22 ~~(i)~~(A) The attorney for the state shall give notice of
23 pending forfeiture, in the manner provided in A.R.C.P. Rule 4, to all owners
24 and interest holders who have not previously been given notice;

25 ~~(ii)~~(B) An owner of or interest holder in property that has
26 been ordered forfeited and whose claim is not precluded may file a claim
27 within thirty (30) days after initial notice of pending forfeiture or after
28 notice under A.R.C.P. Rule 4, whichever is earlier;

29 ~~(iii)~~(C) The court may amend the in personam order of
30 forfeiture if the court determines that a claimant has established that he or
31 she has an interest in the property and that that interest is exempt under
32 subdivision (a)(4), (6), or (7) of this section.

33 ~~(e)~~ (k) The court shall order the forfeiture of any other property of a
34 claimant or defendant up to the value of the claimant's or defendant's
35 property found by the court to be subject to forfeiture under subsection (a)
36 of this section if any of the forfeitable property had remained under the

1 control or custody of the claimant or defendant and:

2 (1) Cannot be located;

3 (2) Was transferred or conveyed to, sold to, or deposited with a
4 third party;

5 (3) Is beyond the jurisdiction of the court;

6 (4) Was substantially diminished in value while not in the actual
7 physical custody of the seizing agency;

8 (5) Was commingled with other property that cannot be divided
9 without difficulty; or

10 (6) Is subject to any interest exempted from forfeiture under
11 this subchapter."

12
13 SECTION 3. There is hereby created the Crime Lab Equipment Fund on the
14 books of the Auditor of State, Treasurer of State, and Chief Fiscal Officer of
15 the State. The monies in the fund shall only be used by the State Crime
16 Laboratory for the purchase of equipment.

17
18 SECTION 4. Arkansas Code 5-64-509 is hereby repealed.

19 ~~5-64-509. Uncontested forfeitures.~~

20 ~~_____ (a) This section shall be known as the "Uncontested Forfeiture Act."~~

21 ~~_____ (b) Property may be proceeded against by uncontested forfeiture only if~~
22 ~~said property is otherwise subject to forfeiture under § 5-64-505 and if its~~
23 ~~cumulative appraised value is less than one hundred thousand dollars~~
24 ~~(\$100,000). "Appraised value" means the average retail value of the property~~
25 ~~at the time and place of seizure.~~

26 ~~_____ (c)(1) Within thirty (30) days of the seizure of the property for~~
27 ~~forfeiture, the prosecuting attorney shall mail a notice to proceed by~~
28 ~~uncontested forfeiture by registered or certified mail to all known owners and~~
29 ~~interest holders of the seized property. Reasonable efforts shall be made to~~
30 ~~locate all parties with any interest in the property.~~

31 ~~_____ (2) The notice to proceed by uncontested forfeiture shall:~~

32 ~~_____ (A) Describe the property, including identification, or serial~~
33 ~~numbers, if any;~~

34 ~~_____ (B) State the appraised value of the property, the date, place,~~
35 ~~and cause of the seizure;~~

36 ~~_____ (C) State that, if an owner does not, within thirty (30) days from~~

1 ~~the first date of receipt of the letter, file with the prosecuting attorney at~~
2 ~~the provided address a notice for judicial referral of forfeiture in order to~~
3 ~~terminate the uncontested forfeiture proceeding and cause the referral of the~~
4 ~~case for judicial forfeiture, the property will be forfeited without contest;~~
5 ~~and~~

6 ~~_____ (D) State that an owner or interest holder may file a notice for~~
7 ~~judicial referral with the prosecuting attorney within thirty (30) days of the~~
8 ~~first date of receipt of the letter.~~

9 ~~_____ (d) If the property owner or interest holder wishes to contest, then~~
10 ~~they shall file with the prosecuting attorney a notice for judicial referral~~
11 ~~of a forfeiture containing the following:~~

12 ~~_____ (1) A statement describing the property and showing petitioner's~~
13 ~~interest in the property, with supporting documents to establish such~~
14 ~~interest; and~~

15 ~~_____ (2) A certification by the property owner or interest holder~~
16 ~~stating that he has read the document and that this is not filed for any~~
17 ~~improper reason such as delay or harassment.~~

18 ~~_____ (e)(1) If actual notice, by registered or certified mail, is not~~
19 ~~perfected as required in subsection (d) of this section, uncontested~~
20 ~~forfeiture may occur only after the prosecuting attorney publishes a notice of~~
21 ~~seizure and intent to forfeit in a newspaper of general circulation in the~~
22 ~~area of seizure once a week for three (3) consecutive weeks.~~

23 ~~_____ (2) The publication shall:~~

24 ~~_____ (A) Describe the property, including identification or serial~~
25 ~~numbers, if any;~~

26 ~~_____ (B) State the appraised value of the property, the date, place,~~
27 ~~and cause of the seizure;~~

28 ~~_____ (C) State that, if an owner does not, within thirty (30) days from~~
29 ~~the first date of publication file with the prosecuting attorney at the~~
30 ~~provided address a notice for judicial referral of a forfeiture in order to~~
31 ~~terminate the uncontested forfeiture proceeding and cause the referral of the~~
32 ~~case for judicial forfeiture, the property will be forfeited without contest;~~
33 ~~and~~

34 ~~_____ (D) State that an owner or interest holder may file a notice for~~
35 ~~judicial referral with the prosecuting attorney within thirty (30) days of the~~
36 ~~first date of publication.~~

1 ~~_____ (f)(1) If the prosecuting attorney does not receive a notice of judicial~~
2 ~~referral from the owner of the property or from an interest holder contesting~~
3 ~~ownership interest in said property within thirty (30) days of the first date~~
4 ~~of publication of the notice of seizure and intent to forfeit, the seized~~
5 ~~property will be deemed to be forfeited without contest.~~

6 ~~_____ (2) The prosecuting attorney will then execute an order of forfeiture,~~
7 ~~which will include the following:~~

8 ~~_____ (A) The date of the order;~~

9 ~~_____ (B) The description of the property, including identification and~~
10 ~~serial numbers, if any;~~

11 ~~_____ (C) The appraised value of the property, the date, place, and~~
12 ~~cause of the seizure;~~

13 ~~_____ (D) The name of the newspaper where publication was made, and the~~
14 ~~three (3) dates of publication;~~

15 ~~_____ (E) A statement of reasonable effort made to locate owners and~~
16 ~~interest holders, and the date the notice of seizure was mailed to owners and~~
17 ~~interest holders;~~

18 ~~_____ (F) A statement that the property is declared to be forfeited~~
19 ~~since no notice of judicial referral was received by the prosecuting attorney~~
20 ~~within thirty (30) days from the first date of letter or newspaper~~
21 ~~publication; and~~

22 ~~_____ (G) The signature of the prosecuting attorney.~~

23 ~~_____ (g) The executed order of forfeiture will have the same force and~~
24 ~~effect as a court decree of forfeiture, and may be used by any official or~~
25 ~~private party to obtain title or registration; or to establish, transfer, or~~
26 ~~quiet title to such property. It will be filed with the circuit clerk and~~
27 ~~filed under the name of the owner.~~

28 ~~_____ (h)(1) The disposition of the uncontested property which has been~~
29 ~~forfeited pursuant to the order of forfeiture shall be distributed in the same~~
30 ~~manner as is currently provided for in § 5-64-505 (k).~~

31 ~~_____ (2) The property management provisions of § 5-64-505(j) shall apply to~~
32 ~~any pending uncontested forfeiture.~~

33 ~~_____ (i) Nothing contained herein shall preclude the property owner or the~~
34 ~~interest holder from entering into an agreement whereby the property is~~
35 ~~forfeited and an order of forfeiture is entered without the foregoing notice~~
36 ~~requirements.~~

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SECTION 5. Arkansas Code 16-21-148 is amended to read as follows:

"16-21-148. Deputy prosecutor for civil asset forfeiture actions.

(a) In addition to the deputy prosecuting attorney positions created by § 16-21-113(a)(1) and other Arkansas Code provisions and laws, a prosecuting attorney shall have the power to enter into a contract for personal services with a licensed attorney whose duty it will be to act as a deputy prosecutor to prosecute civil asset forfeiture actions at such hourly amount as is deemed proper by the prosecuting attorney.

(b) This attorney may be paid from funds generated from § 5-64-505~~(k)(4)(i)(2)~~. "

SECTION 6. Arkansas Code 19-5-972 is amended to read as follows:

"19-5-972. Special State Assets Forfeiture Fund.

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

(b) Such fund shall consist of revenues as provided in § 5-64-505~~(k)(2)(iv)(i)(1)(B)(iv)~~ and any other revenues as may be provided by law, there to be administered through rules and regulations established by the State Arkansas Drug Director and distributed by the Arkansas Drug and Alcohol Abuse Coordinating Council in accordance with the intent and purposes of ~~subchapters 1-6 of chapter 64, title 5, of the Arkansas Code.~~"

SECTION 7. Arkansas Code 16-21-147(d) is amended to read as follows:

"(d) All federal forfeitures to a prosecuting attorney's office shall be deposited in ~~the drug control fund~~ a separate account pursuant to § 5-64-505(i)(4). "

SECTION 8. 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 9. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 Act are declared to be severable.

3

4 SECTION 10. All laws and parts of laws in conflict with this Act are
5 hereby repealed.

6

/s/ Dowd

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