

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

A Bill

SENATE BILL 94

4
5 By: Senators Dowd, Hill
6 By: Representative Luker

For An Act To Be Entitled

7
8
9 "AN ACT TO AMEND ARKANSAS CODE 5-64-505 PERTAINING TO
10 THE FORFEITURE OF PROPERTY UNDER THE UNI FORM
11 CONTROLLED SUBSTANCES ACT; TO REPEAL ARKANSAS CODE 5-
12 64-509; AND FOR OTHER PURPOSES."

Subtitle

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14
15 "TO AMEND ARKANSAS CODE 5-64-505
16 PERTAINING TO THE FORFEITURE OF PROPERTY
17 UNDER THE UNI FORM CONTROLLED SUBSTANCES
18 ACT; TO REPEAL ARKANSAS CODE 5-64-509."

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

21
22 SECTION 1. Arkansas Code 5-64-505 is amended to read as follows:

23 "5-64-505. Property subject to forfeiture - Procedure - Disposition of
24 property.

25 (a) The following, when involved in a felony violation of the Uni form
26 Controlled Substances Act, are subject to forfeiture upon the initiation of a
27 civil proceeding filed by the prosecuting attorney and when so ordered by the
28 circuit court entered in accordance with this section:

29 (1) All controlled substances and counterfeit substances which
30 have been manufactured, distributed, dispensed, or acquired in violation of
31 subchapters 1-6 of this chapter;

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

36 (3) All property which is used, or intended for use, as a

1 container for property described in subdivision (a)(1) or (2);

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

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

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

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

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

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

24 (6) Everything of value furnished or intended to be furnished, in
25 exchange for a controlled substance or counterfeit substance in violation of
26 subchapters 1-6 of this chapter, all proceeds and profits traceable to such an
27 exchange, and all moneys, negotiable instruments, and securities used, or
28 intended to be used, to facilitate any violation of subchapters 1-6 of this
29 chapter; except that no property shall be forfeited under this paragraph, to
30 the extent of the interest of an owner, by reason of any act or omission
31 established by him to have been committed or omitted without his knowledge or
32 consent.

33 REBUTTABLE PRESUMPTIONS. All moneys, coin, and currency found in close
34 proximity to forfeitable controlled substances, to counterfeit substances, to
35 forfeitable drug manufacturing or distributing paraphernalia, or to
36 forfeitable records of the importation, manufacture, or distribution of

1 controlled substances or counterfeit substances are presumed to be forfeitable
2 under this paragraph. The burden of proof is upon claimants of the property to
3 rebut these presumptions.

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

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

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

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

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

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

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

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

35 (b) Property subject to forfeiture under subchapters 1-6 of this
36 chapter may be seized by any law enforcement agent upon process issued by any

1 circuit court having jurisdiction over the property on petition filed by the
2 prosecuting attorney of the judicial circuit. Seizure without process may be
3 made if:

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

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

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

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

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

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

23 (1) Place the property under seal;

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

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

27 (e) When the circuit court having jurisdiction over the property seized
28 finds upon a hearing by a preponderance of the evidence that grounds for a
29 forfeiture exist under subchapters 1-6 of this chapter, the court shall enter
30 an order consistent with subsection (k) of this section. Within three (3)
31 business days after the issuance of the order, the circuit clerk shall
32 transmit to the Administrative Office of the Courts a copy of the court order,
33 the confiscation report, and any other documentation detailing the disposition
34 of the seized property. The Administrative Office of the Courts shall
35 maintain this information as segregated files.

36 (f) Controlled substances listed in Schedule I that are possessed,

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

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

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

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

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

22 (i) Remove the property to a place designated by the
23 circuit court;

24 (ii) Place the property under constructive seizure posting
25 notice of pending forfeiture on it, by giving notice of pending forfeiture to
26 its owners and interest holders, or by filing notice of pending forfeiture in
27 any appropriate public record relating to the property;

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

31 (iv) Provide for another agency or custodian, including an
32 owner, secured party, mortgagee, or lienholder, to take custody of the
33 property and service, maintain, and operate it as reasonably necessary to
34 maintain its value in any appropriate location within the jurisdiction of the
35 court; or

36 (v) Require the law enforcement agency to take custody of

1 the property and remove it to an appropriate location for disposition in
2 accordance with law.

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

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

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

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

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

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

14 (3)(A) When property is seized for forfeiture by a law enforcement
15 agency, the officer seizing the property shall prepare and issue a
16 confiscation report at the time of seizure. The confiscation report shall be
17 prepared at least in duplicate and signed by the officer making the seizure.
18 At the time of seizure, one copy shall be given to the party from whom the
19 property is seized. The original confiscation report shall be filed with the
20 seizing law enforcement agency within forty-eight (48) hours after seizure.
21 The original confiscation reports shall be maintained in a separate file.

22 (B) The confiscation report shall contain the following information:

23 (i) A detailed description of the property including serial
24 number and model numbers;

25 (ii) The date of seizure;

26 (iii) The name and address from whom the property was
27 seized;

28 (iv) The reason for the seizure;

29 (v) Where the property is being held;

30 (vi) The seizing officer's name; and

31 (vii) A signed statement by the law enforcement officer
32 seizing the property that the report is true and complete.

33 (C) The confiscation report shall be distributed by the seizing law
34 enforcement agency as follows:

35 (i) One copy shall be filed with the prosecuting attorney
36 within three (3) working days after the agency receives the report;

1 (ii) One copy shall be retained by the seizing officer for
 2 personal files;

3 (iii) One copy shall be forwarded to the Administrative
 4 Office of the Courts within three (3) working days after the agency receives
 5 the report.

6 (D) The Administrative Office of the Courts shall maintain confiscation
 7 reports in segregated files.

8 (4)(A) In all cases of seizure of property, the law enforcement
 9 officer making the seizure shall provide for the appropriate safekeeping of
 10 the property seized.

11 (B) Within twenty-four (24) hours after receiving the original
 12 confiscation report, the law enforcement agency shall enter the information
 13 contained on the confiscation report into the seized property ledger. Each
 14 item of information shall be maintained in separate columns on the ledger, and
 15 the ledger shall provide a column for noting the disposition of the property.
 16 As soon as the property is disposed of by the agency, the disposition shall be
 17 noted in the ledger.

18 (5) The confiscation report shall be filed by the prosecuting
 19 attorney with the circuit clerk when any civil or criminal action is filed
 20 regarding the offense resulting in the seizure of the property.

21 (6) In all cases of transfer of property, a transfer receipt
 22 shall be prepared by the transferring agency. The transfer receipt shall list
 23 a detailed and complete description of the property being transferred. The
 24 transfer receipt shall also state to whom the property is being transferred
 25 and the source or authorization for the transfer. The transfer receipt shall
 26 be signed by both the transferor and the transferee. Both transferor and
 27 transferee shall maintain a copy of the transfer receipt.

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

30 (i) To permit the law enforcement agency or prosecuting attorney for
 31 ~~the state~~ to retain the property for official use except that all aircraft
 32 shall be transferred to the Arkansas Drug Director;

33 (ii) To sell that which is not required by law to be destroyed and
 34 which is not harmful to the public. Such property shall be sold at a public
 35 sale to the highest bidder, and if not sold at public sale, the court may
 36 permit a private sale. ~~The~~ Twenty percent (20%) of the proceeds of any sale

1 and any moneys forfeited or obtained by judgment or settlement under
2 subchapters 1-6 of this chapter shall be deposited into the State Treasury as
3 special revenues to be credited to the Crime Lab Equipment Fund and the
4 remainder shall be deposited in the special asset forfeiture fund of the
5 prosecuting attorney for the state.

6 (B) Drug task forces are not eligible to receive forfeited property
7 under this section or §5-64-509.

8 (C) Property may not be retained for more than two (2) years under
9 subdivision (k)(1)(A)(i) unless the time period is extended by the circuit
10 court but the extension shall not exceed one (1) year. At the end of the
11 period of retention, the property shall be sold as provided in subdivision
12 (k)(1)(A)(ii) and the proceeds distributed as provided in (k)(2).

13 (D)(i) If the Division of Legislative Audit determines that (1) a law
14 enforcement agency has failed to complete and file the confiscation reports or
15 the seized property ledger as required by this section, or (2) that a law
16 enforcement agency, office of prosecuting attorney, or other public entity has
17 not properly accounted for any seized property, the Division of Legislative
18 Audit shall notify the appropriate circuit court that the entity is thereafter
19 ineligible to receive any forfeited funds or other forfeited property. The
20 court shall not thereafter issue any orders distributing seized property to
21 that entity until the appropriate officials of the entity have appeared before
22 the Legislative Joint Auditing Committee and the Committee adopts a motion
23 authorizing subsequent transfers of forfeited property to the entity.

24 (ii) While an entity is ineligible to receive forfeited property,
25 the court shall order any money which would have been distributed to that
26 entity to be transmitted to the State Treasurer for deposit into the Crime Lab
27 Equipment Fund and if the property is other than cash, the court shall order
28 it converted to cash pursuant to subdivision (k)(1)(A)(ii) and the proceeds
29 transmitted to the State Treasurer for deposit into the Crime Lab Equipment
30 Fund.

31 (iii) Moneys deposited into the Crime Lab Equipment Fund pursuant
32 to subdivision (k)(1)(D)(ii) are not subject to recovery or retrieval by the
33 ineligible entity.

34 (2) The prosecuting attorney for the state shall administer
35 expenditures from the special asset forfeiture fund. The fund is subject to
36 audit by the Division of Legislative Audit. Moneys in the fund must be

1 distributed in the following order:

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

3 (ii) For payment of all proper expenses of the proceedings for
4 forfeiture and sale, including expenses of seizure, maintenance of custody,
5 advertising, and court costs; and

6 (iii) Any balance under two hundred fifty thousand dollars
7 (\$250,000) shall be distributed proportionally so as to reflect generally the
8 contribution of the appropriate local or state law enforcement or
9 prosecutorial agency's participation in any of the activities that led to the
10 seizure or forfeiture of the property or deposit of moneys under subchapters
11 1-6 of this chapter;

12 (iv) Any balance over two hundred fifty thousand dollars
13 (\$250,000) shall be forwarded to the Department of the Arkansas State Police
14 to be transferred to the State Treasury for deposit in the Special State
15 Assets Forfeiture Fund for distribution as provided in subsection (l).

16 (3) All controlled substances shall be forwarded to the Drug
17 Enforcement Administration or Department of Health for disposition or
18 destruction.

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

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

32 (l)(1) There is created and established on the books of the State
33 Treasurer, the State Auditor, and the Chief Fiscal Officer of the State a fund
34 to be known as the Special State Assets Forfeiture Fund.

35 (2) The Special State Assets Forfeiture Fund shall consist of
36 revenues obtained under subdivision (k)(2)(iv) and any other revenues as may

1 be provided by law. All moneys obtained under subdivision (k)(2)(iv) shall be
2 deposited in this fund. Moneys from the fund may not supplant other local,
3 state, or federal funds.

4 (3) This fund shall not be subject to the provisions of the
5 Revenue Stabilization Law, § 19-5-101 et seq., or subject to the provisions of
6 § 19-5-203(b)(2)(A), the Special Revenue Fund Account.

7 (4) The State Drug Director shall establish through rules and
8 regulations a procedure for proper investment and disposition of moneys
9 deposited in the special asset forfeiture fund in accordance with the intent
10 and purposes of subchapters 1-6 of this chapter.

11 (m) Forfeitures under this section may be based on in rem or in
12 personam jurisdiction. In personam jurisdiction may be based on the person's
13 presence in the state, or on his conduct in the state, as set out in § 16-4-
14 101(c).

15 (n) The following additional provisions shall apply to in personam
16 forfeiture proceedings:

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

19 (i) There is probable cause to believe that the property
20 with respect to which the order is sought is subject to forfeiture under this
21 section; and

22 (ii) Notice of the action would jeopardize the availability
23 of the property for forfeiture.

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

28 (i) There is a probability that the state will prevail on
29 the issue of forfeiture and that failure to enter the order will result in the
30 property being destroyed, conveyed, alienated, encumbered, disposed of,
31 received, removed from the jurisdiction of the court, concealed, or otherwise
32 made unavailable for forfeiture; and

33 (ii) The need to preserve the availability of property
34 through the entry of the requested order outweighs the hardship on any owner
35 or interest holder against whom the order is to be entered.

36 (3) The state has the burden of proof by a preponderance of the

1 evidence to show that the defendant's property is subject to forfeiture.

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

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

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

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

21 (iii) The court may amend the in personam order of
22 forfeiture if the court determines that a claimant has established that he or
23 she has an interest in the property and that that interest is exempt under
24 subdivision (a)(4), (6), or (7) of this section.

25 (o) The court shall order the forfeiture of any other property of a
26 claimant or defendant up to the value of the claimant's or defendant's
27 property found by the court to be subject to forfeiture under subsection (a)
28 of this section if any of the forfeitable property had remained under the
29 control or custody of the claimant or defendant and:

30 (1) Cannot be located;

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

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

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

36 (5) Was commingled with other property that cannot be divided

1 without difficulty; or

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

4
5 SECTION 2. There is hereby created the Crime Lab Equipment Fund on the
6 books of the Auditor of State, Treasurer of State, and Chief Fiscal Officer of
7 the State. The moneys in the fund shall only be used by the State Crime
8 Laboratory for the purchase of equipment.

9
10 SECTION 3. Arkansas Code 5-64-509 is hereby repealed.

11 ~~§ 5-64-509. Uncontested forfeitures.~~

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

13 ~~— (b) Property may be proceeded against by uncontested forfeiture only if~~
14 ~~said property is otherwise subject to forfeiture under § 5-64-505 and if its~~
15 ~~cumulative appraised value is less than one hundred thousand dollars~~
16 ~~(\$100,000). "Appraised value" means the average retail value of the property~~
17 ~~at the time and place of seizure.~~

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

23 ~~— (2) The notice to proceed by uncontested forfeiture shall:~~

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

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

28 ~~— (C) State that, if an owner does not within thirty (30) days from the~~
29 ~~first date of receipt of the letter file with the prosecuting attorney at the~~
30 ~~provided address a notice for judicial referral of 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 receipt of the letter.~~

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

4 ~~— (1) A statement describing the property and showing petitioner's interest~~
5 ~~in the property, with supporting documents to establish such interest; and~~

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

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

14 ~~— (2) The publication shall:~~

15 ~~— (A) Describe the property, including identification, or serial numbers,~~
16 ~~if any;~~

17 ~~— (B) State the appraised value of the property, the date, place, and~~
18 ~~cause of the seizure;~~

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

24 ~~— (D) State that an owner or interest holder may file a notice for~~
25 ~~judicial referral with the prosecuting attorney within thirty (30) days of the~~
26 ~~first date of publication.~~

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

32 ~~— (2) The prosecuting attorney will then execute an order of forfeiture,~~
33 ~~which will include the following:~~

34 ~~— (A) The date of the order;~~

35 ~~— (B) The description of the property, including identification and~~
36 ~~serial numbers, if any;~~

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

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

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

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

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

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

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

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

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

26
27 SECTION 4. All provisions of this Act of a general and permanent nature
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
29 Revision Commission shall incorporate the same in the Code.

30
31 SECTION 5. If any provision of this Act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the Act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 Act are declared to be severable.

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1 SECTION 6. All laws and parts of laws in conflict with this Act are
2 hereby repealed.

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