

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas *As Engrossed: S3/1/01, S3/20/01 S3/26/01*

2 83rd General Assembly

A Bill

3 Regular Session, 2001

SENATE BILL 533

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5 By: Senator Everett

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For An Act To Be Entitled

9 AN ACT TO REQUIRE AN ITEMIZED ACCOUNTING OF
10 EXPENSES PAID FOR PROCEEDINGS FOR FORFEITURE AND
11 SALE OF PROPERTY; AND FOR OTHER PURPOSES.

12

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Subtitle

14 TO REQUIRE AN ITEMIZED ACCOUNTING OF
15 EXPENSES PAID FOR PROCEEDINGS FOR
16 FORFEITURE AND SALE OF PROPERTY.

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

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21 SECTION 1. Arkansas Code 5-64-505(g)(1) concerning the initiation of
22 forfeiture proceedings, is amended to read as follows:

23 (g) Initiation of forfeiture proceedings - Notice to claimants -
24 Judicial proceedings.

25 (1)(A) The prosecuting attorney shall initiate forfeiture
26 proceedings by filing a complaint with the circuit clerk of the county in
27 which the property was seized and by serving such complaint on all known
28 owners and interest holders of the seized property in accordance with the
29 Arkansas Rules of Civil Procedure.

30 (B) The complaint may be based on in rem or in personam
31 jurisdiction but shall not be filed in such a way as to avoid the distribution
32 requirements set forth in subdivision (i)(1).

33 (C) The prosecuting attorney shall mail a copy of the
34 complaint to the Arkansas Drug Director within five (5) calendar days after
35 filing the complaint.

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1 SECTION 2. Arkansas Code 5-64-505(i), concerning the disposition of
2 moneys received as a result of forfeiture, is amended to read as follows:

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

9 (1) Asset Forfeiture Fund.

10 (A) The proceeds of any sale and any moneys forfeited or
11 obtained by judgment or settlement under this chapter shall be deposited in
12 the asset forfeiture fund of the prosecuting attorney and shall be subject to
13 the following provisions:

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

19 (ii) Subsequent to the notification set forth in
20 subdivision (i)(1)(A)(i), twenty percent (20%) of the proceeds of any
21 additional sale and any additional moneys forfeited or obtained by judgment or
22 settlement under this chapter in the same calendar year shall be deposited
23 into the State Treasury as special revenues to be credited to the Crime Lab
24 Equipment Fund and the remainder shall be deposited in the asset forfeiture
25 fund of the prosecuting attorney;

26 (iii) Failure by the prosecuting attorney to comply
27 with the notification requirement set forth in subdivision (i)(1)(A)(i) shall
28 render the prosecuting attorney and any entity eligible to receive forfeited
29 moneys or property from the prosecuting attorney ineligible to receive such
30 moneys or property, except as provided in subdivision (f)(5)(A);

31 (iv) Twenty percent (20%) of any moneys in excess of
32 twenty thousand dollars (\$20,000) that have been retained but not reported as
33 required by subdivision (i)(1)(A)(i) shall be subject to recovery for deposit
34 into the Crime Lab Equipment Fund.

35 (B) The prosecuting attorney shall administer expenditures
36 from the fund which shall be subject to audit by the Division of Legislative

1 Audit. Moneys distributed from this fund must only be used for law enforcement
2 and prosecutorial purposes. Moneys in the fund must be distributed in the
3 following order:

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

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

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

15 (iv) Any balance over two hundred fifty thousand
16 dollars (\$250,000) shall be forwarded to the Arkansas Drug Director to be
17 transferred to the State Treasury for deposit in the Special State Assets
18 Forfeiture Fund for distribution as provided in subdivision (i)(3) of this
19 section.

20 (C)(i) For forfeitures in an amount greater than two
21 hundred and fifty thousand dollars (\$250,000) from which expenses are paid for
22 the proceedings for forfeiture and sale, under subdivision (i)(1)(B)(ii), an
23 itemized accounting of the expenses shall be delivered to the Arkansas Drug
24 Director within ten (10) calendar days after the distribution of the funds.

25 (ii) The itemized accounting shall include the
26 expenses paid, to whom paid, and for what purposes the expenses were paid.

27 (2) Drug Control Fund.

28 (A) There is created on the books of law enforcement
29 agencies and prosecuting attorneys a Drug Control Fund. The Drug Control Fund
30 shall consist of all moneys obtained under subdivision (i)(1) and other
31 revenues as may be provided by law or ordinance. Moneys from the fund may not
32 supplant other local, state or federal funds. Moneys in this fund are
33 appropriated on a continuing basis and are not subject to the Revenue
34 Stabilization Law, § 19-5-101 et seq. Moneys in this fund must only be used
35 for law enforcement and prosecutorial purposes. The fund is subject to audit
36 by the Division of Legislative Audit.

1 (B) The law enforcement agencies and prosecuting attorneys
2 shall submit to the Arkansas Drug Director on or before January 1 and July 1
3 of each year a report detailing all moneys received and expenditures made from
4 the Drug Control Fund during the preceding six-month period.

5 (3) Special State Assets Forfeiture Fund.

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

9 (B) The Special State Assets Forfeiture Fund shall consist
10 of revenues obtained under subdivision (i)(1)(B)(iv) and any other revenues as
11 may be provided by law. Moneys from the fund may not supplant other local,
12 state, or federal funds.

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

16 (D) The Arkansas Drug Director shall establish through
17 rules and regulations a procedure for proper investment, use, and disposition
18 of moneys deposited in the special asset forfeiture fund in accordance with
19 the intent and purposes of subchapters 1-6 of this chapter. Moneys in this
20 fund shall be distributed by the Arkansas Alcohol and Drug Abuse Coordinating
21 Council and shall ~~only be distributed for law enforcement and prosecutorial~~
22 ~~purposes related to drug interdiction and eradication efforts~~ be distributed
23 for drug interdiction, eradication, education, rehabilitation, *the State Crime*
24 *Laboratory*, and drug courts.

25 (4) Federal forfeitures.

26 (A) All moneys received by prosecuting attorneys and law
27 enforcement agencies from federal forfeitures shall be deposited and
28 maintained in a separate account, provided that any balance over two hundred
29 fifty thousand dollars (\$250,000) shall be distributed as set forth in
30 subdivision (i)(4)(B). No other moneys may be maintained in such account
31 except for any interest income generated by such account. Moneys in this
32 account must only be used for law enforcement and prosecutorial purposes
33 consistent with governing federal law. Such accounts shall be subject to audit
34 by the Division of Legislative Audit.

35 (B) Any balance over two hundred fifty thousand dollars
36 (\$250,000) shall be forwarded to the Arkansas Drug Director to be transferred

1 to the State Treasury for deposit in the Special State Assets Forfeiture Fund
2 where it shall be maintained separately and distributed consistent with
3 governing federal law.

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5 SECTION 3. Arkansas Code 20-64-1001 is amended to read as follows:
6 20-64-1001. Drug director.

7 (a) There is created within the Office of the Governor a position of
8 Arkansas Drug Director, who shall serve at the pleasure of the Governor.

9 (b) The director shall serve as the coordinator for development of an
10 organizational framework to ensure that alcohol and drug programs and policies
11 are well planned and coordinated.

12 (c) The director shall, in cooperation with the Department of Finance
13 and Administration, perform financial monitoring of each drug task force of
14 the state to ensure that grant funds are being expended according to law, and
15 to ensure that the drug task force's financial record system is adequate to
16 provide a clear, timely and accurate accounting of all asset forfeitures,
17 revenues and expenditures.

18 (d)(1) The director shall maintain an office at which all records
19 required by law to be kept by the Drug Director shall be maintained.

20 (2) The director is authorized to establish and enforce rules and
21 regulations, regarding the management of the Special State Assets Forfeiture
22 Fund created in § 5-64-505, and the maintenance and inspection of drug task
23 force records concerning asset forfeitures, revenues, expenditures and grant
24 funds.

25 (3) The director is authorized to hire employees to assist in
26 these functions.

27 /s/ Everett
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