

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  
2 86th General Assembly  
3 Regular Session, 2007

# A Bill

SENATE BILL 859

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5 By: Senator Luker  
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## For An Act To Be Entitled

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9 AN ACT CONCERNING PROPERTY SUBJECT TO FORFEITURE  
10 UNDER THE UNIFORM CONTROLLED SUBSTANCES ACT; AND  
11 FOR OTHER PURPOSES.  
12

## Subtitle

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14 AN ACT CONCERNING PROPERTY SUBJECT TO  
15 FORFEITURE UNDER THE UNIFORM CONTROLLED  
16 SUBSTANCES ACT.  
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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(a), concerning property subject to  
22 forfeiture, is amended to read as follows:

23 (a) Items subject to forfeiture. The following are subject to  
24 forfeiture upon the initiation of a civil proceeding filed by the prosecuting  
25 attorney and when so ordered by the circuit court in accordance with this  
26 section, however no property is subject to forfeiture based solely upon a  
27 misdemeanor possession of a Schedule III, Schedule IV, Schedule V, or  
28 Schedule VI controlled substance:

29 (1) Any controlled substance or counterfeit substance that has  
30 been manufactured, distributed, dispensed, or acquired in violation of this  
31 chapter;

32 (2) Any raw material, product, or equipment of any kind that is  
33 used, or intended for use, in manufacturing, compounding, processing,  
34 delivering, importing, or exporting any controlled substance or counterfeit  
35 substance in violation of this chapter;

36 (3) Any property that is used, or intended for use, as a



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

3 (4)(A) Any conveyance, including an aircraft, vehicle, or  
4 vessel, that is used, or intended for use, to transport, or in any manner to  
5 facilitate the transportation, for the purpose of sale or receipt of property  
6 described in subdivision (a)(1) or (2) of this section, however:

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

12 (B)(i) No conveyance is subject to forfeiture under this  
13 section by reason of any act or omission established by the owner of the  
14 conveyance to have been committed or omitted without his or her knowledge or  
15 consent.

16 (ii) Upon a showing described in subdivision  
17 (a)(4)(B)(i) of this section by the owner or interest holder, the conveyance  
18 may nevertheless be forfeited if the prosecuting attorney establishes that  
19 the owner or interest holder either knew or should reasonably have known that  
20 the conveyance would be used to transport or in any manner to facilitate the  
21 transportation, for the purpose of sale or receipt, of property described in  
22 subdivision (a)(1) or (2) of this section;

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

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

28 (5) Any book, record, or research product or material, including  
29 a formula, microfilm, tape, or data that is used, or intended for use, in  
30 violation of this chapter;

31 (6)(A) Anything of value, including firearms, furnished or  
32 intended to be furnished in exchange for a controlled substance or  
33 counterfeit substance in violation of this chapter, any proceeds or profits  
34 traceable to the exchange, and any money, negotiable instrument, or security  
35 used, or intended to be used, to facilitate any violation of this chapter.

36 (B) However, no property shall be forfeited under this

1 subdivision (a)(6) to the extent of the interest of an owner by reason of any  
2 act or omission established by him or her, by a preponderance of the  
3 evidence, to have been committed or omitted without his or her knowledge or  
4 consent;

5 (7) Rebuttable presumptions.

6 (A) Any money, coin, ~~or~~ currency, or firearms found in  
7 close proximity to a forfeitable controlled substance, a counterfeit  
8 substance, forfeitable drug manufacturing or distributing paraphernalia, or a  
9 forfeitable record of an importation, manufacture, or distribution of a  
10 controlled substance or counterfeit substance is presumed to be forfeitable  
11 under this subdivision (a)(7).

12 (B) The burden of proof is upon a claimant of the property  
13 to rebut this presumption by a preponderance of the evidence; and

14 (8) Real property may be forfeited under this chapter if it  
15 substantially assisted in, facilitated in any manner, or was used or intended  
16 for use in the commission of any act prohibited by this chapter, however:

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

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

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

26 (D) Upon conviction, when the circuit court having  
27 jurisdiction over the real property seized finds upon a hearing by a  
28 preponderance of the evidence that grounds for a forfeiture exist under this  
29 section, the court shall enter an order consistent with subsection (h) of  
30 this section;

31 (E) When any court orders a forfeiture of real property  
32 pursuant to this chapter, the order shall be filed of record on the day  
33 issued and shall have prospective effect only;

34 (F) A forfeiture of real property ordered under a  
35 provision of this chapter does not affect the title of a bona fide purchaser  
36 who purchased the real property prior to the issuance of the order, and the

1 order has no force or effect on the title of the bona fide purchaser; and

2 (G) Any lis pendens filed in connection with any action  
3 pending under a provision of this chapter that might result in the forfeiture  
4 of real property is operative only from the time filed and has no retroactive  
5 effect.

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7 SECTION 2. Arkansas Code § 5-64-505(f)(3), concerning an inventory of  
8 property seized, is amended to read as follows:

9 (3) The confiscation report shall contain the following  
10 information:

11 (A) A detailed description of the property seized  
12 including any serial or model numbers and odometer or hour reading of  
13 vehicles or equipment;

14 (B) The date of seizure;

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

17 (D) The reason for the seizure;

18 (E) Where the property will be held;

19 (F) The seizing law enforcement officer's name; and

20 (G) A signed statement by the seizing law enforcement  
21 officer stating that the confiscation report is true and complete.

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23 SECTION 3. Arkansas Code § 5-64-505(g)(3), concerning forfeiture  
24 proceedings, is amended to read as follows:

25 (3)(A) The prosecuting attorney may file the complaint after the  
26 expiration of the time set forth in subdivision (g)(2) of this section only  
27 if the complaint is accompanied by a statement of good cause for the late  
28 filing.

29 (B) However, in no event shall the complaint be filed more  
30 than one hundred twenty (120) days after either the date of the seizure or,  
31 in a case involving real property, the date of the defendant's conviction.

32 (C) If the circuit court determines that good cause has  
33 not been established, the circuit court shall order that the seized property  
34 be returned to the owner or interest holder. In addition, items seized but  
35 not subject to forfeiture under this section or subject to disposition  
36 pursuant to law or the Arkansas Rules of Criminal Procedure may be ordered

1 returned to the owner or interest holder. If the owner or interest holder  
2 cannot be determined, the court may order disposition of the property in  
3 accordance with subsection (h) of this section.

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