

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 1913

By: Representative Lowery

For An Act To Be Entitled

AN ACT TO ESTABLISH A FORFEITURE PROCEDURE FOR
TOBACCO PRODUCTS; TO ESTABLISH A TOBACCO CONTROL
FUND; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH A FORFEITURE PROCEDURE FOR
TOBACCO PRODUCTS AND TO ESTABLISH A
TOBACCO CONTROL FUND.

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

SECTION 1. Arkansas Code § 26-57-247 is amended to read as follows:

26-57-247. Seizure, forfeiture, and disposition of ~~improperly handled~~
tobacco products and other property.

(a) ~~Any cigarettes~~ Cigarettes to which stamps have not been affixed as
provided ~~in this subchapter~~ by law are subject to seizure and shall be held
as evidence for prosecution.

(b) The Director of the Arkansas Tobacco Control Board may seize and
hold for disposition of the courts or the Arkansas Tobacco Control Board all
tobacco products found in the possession of ~~any~~ a person dealing in, or a
consumer of, tobacco products ~~which have not been handled according to this~~
~~subchapter~~ if:

(1) Prima facie evidence exists that the full amount of excise
tax due on the tobacco products has not been paid to the Director of the
Department of Finance and Administration;

(2) Tobacco products are in the possession of a wholesaler who
does not possess a current Arkansas wholesale cigarette or tobacco permit;



1 (3) A retail establishment does not possess a current Arkansas
2 retail cigarette and tobacco permit; or

3 (4) The tobacco products have been offered for sale to the
4 public at another location without a current Arkansas retail cigarette and
5 tobacco permit.

6 (c) Property, including money, used to facilitate a criminal violation
7 of the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq. or the
8 Unfair Cigarette Sales Act, § 4-7-701 et seq. may be seized and forfeited to
9 the state.

10 (d)(1) A prosecuting attorney may institute a civil action against a
11 person who is convicted of a criminal violation under the Arkansas Tobacco
12 Products Tax Act of 1977, § 26-57-201 et seq. or the Unfair Cigarette Sales
13 Act, § 4-7-701 et seq. to obtain a judgment for:

14 (A) Damages in an amount equal to the value of the
15 property, funds, or a monetary instrument involved in the violation;

16 (B) The proceeds acquired by a person involved in the
17 enterprise or by reason of conduct in furtherance of the violation; and

18 (C) Costs incurred by the board in the investigation and
19 prosecution of both criminal and civil proceedings.

20 (2) The standard of proof in an action brought under subsection
21 (d)(1) if this section is preponderance of the evidence.

22 (e) The following are subject to forfeiture under this section upon
23 order by a circuit court:

24 (1) Tobacco products distributed, dispensed, or acquired in
25 violation of this subchapter;

26 (2) Raw materials, products, or equipment used or intended for
27 use in manufacturing, compounding, processing, delivering, importing, or
28 exporting a tobacco product in violation of this subchapter;

29 (3) Property that is used or intended for use as a container for
30 property described in subdivision (e)(1) or (2) of this section;

31 (4)(A) Except as provided in subdivision (e)(4)(B) of this
32 section, a conveyance, including an aircraft, vehicle, or vessel, that is
33 used, or intended to be used, to transport or in any manner to facilitate the
34 transportation for the purpose of sale or receipt of property described in
35 subdivision (e)(1) or (2) of this section.

36 (B)(i) A conveyance used by a person as a common carrier

1 in the transaction of business as a common carrier is not subject to
2 forfeiture under this section unless it appears that the owner or other
3 person in charge of the conveyance is a consenting party or privy to a
4 violation of this subchapter;

5 (ii) A conveyance is not subject to forfeiture under
6 this section by reason of an act or omission established by the owner of the
7 conveyance to have been committed or omitted without his or her knowledge or
8 consent.

9 (C) Upon a showing described in subdivision (e)(4)(B)(i)
10 of this section by the owner or interest holder of a conveyance, the
11 conveyance may nevertheless be forfeited if the prosecuting attorney
12 establishes that the owner or interest holder either knew or should
13 reasonably have known that the conveyance would be used to transport or in
14 any manner to facilitate the transportation for the purpose of sale or
15 receipt, of property described in subdivision (e)(1) or (2) of this section.

16 (D) A conveyance encumbered by a bona fide security
17 interest is subject to the interest of the secured party if the secured party
18 neither had knowledge of nor consented to an act or omission in violation of
19 this subchapter;

20 (5) A book, record, or research product or material, including a
21 formula, microfilm, tape, or data that is used or intended for use in
22 violation of this subchapter;

23 (6)(A) Except as provided in subdivision (e)(6)(B) of this
24 section, a thing of value, including:

25 (i) Firearms, furnished or intended to be furnished
26 in exchange for a tobacco product in violation of this subchapter;

27 (ii) Proceeds or profits traceable to an exchange
28 described in subdivision (e)(6)(A)(ii) of this section; and

29 (iii) Money, negotiable instruments, or security
30 used or intended to be used to facilitate a violation of this subchapter.

31 (B) Property shall not be forfeited under subdivision
32 (e)(6)(A) of this section to the extent of the interest of an owner by reason
33 of an act or omission established by him or her by a preponderance of the
34 evidence to have been committed or omitted without his or her knowledge or
35 consent;

36 (7)(A) Money, coins, or currency found in close proximity to a

1 forfeitable tobacco product or a forfeitable record of an importation of a
2 tobacco product is presumed to be forfeitable under this section.

3 (B) The burden of proof is upon a claimant of the money,
4 coins, or currency to rebut the presumption in subdivision (e)(7)(A) of this
5 section by a preponderance of the evidence; and

6 (8)(A) Except as provided in subdivision (e)(8)(B) of this
7 section, real property if it substantially assisted in, facilitated in an
8 manner, or was used or intended for use in the commission of any act
9 prohibited by this subchapter.

10 (B)(i) Real property is not subject to forfeiture under
11 this section by reason of an act or omission established by the owner of the
12 real property by a preponderance of the evidence to have been committed or
13 omitted without his or her knowledge or consent.

14 (ii) 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 an act or omission in
17 violation of this subchapter.

18 (iii) If the circuit court finds by a preponderance
19 of the evidence that grounds for a forfeiture exist under this section, the
20 court shall enter an order requiring the forfeiture of the real property.

21 (C) Upon an order of forfeiture of real property, the
22 order shall be filed on the day issued and shall have prospective effect.

23 (D) A forfeiture of real property does not affect the
24 title of a bona fide purchaser who purchased the real property before to the
25 issuance of the order, and the order has no force or effect on the title of
26 the bona fide purchaser.

27 (E) A lis pendens filed in connection with an action
28 pending under this section that may result in the forfeiture of real property
29 is effective only from the time filed and has no retroactive effect.

30 (f) A tobacco product that is possessed, transferred, sold, or offered
31 for sale in violation of this subchapter may be seized and immediately
32 forfeited to the state.

33 (g)(1) Property subject to forfeiture under this subchapter may be
34 seized by a law enforcement agent upon process issued by a circuit court
35 having jurisdiction over the property on petition filed by the prosecuting
36 attorney of the judicial circuit.

1 (2) Seizure without process may be made if:

2 (A) The seizure is incident to an arrest or a search under
3 a search warrant or an inspection under an administrative inspection warrant;

4 (B) The property subject to seizure has been the subject
5 of a prior judgment in favor of the state in a criminal injunction or
6 forfeiture proceeding based upon this subchapter;

7 (C) The seizing law enforcement agency has probable cause
8 to believe that the property is directly or indirectly dangerous to health or
9 safety; or

10 (D) The seizing law enforcement agency has probable cause
11 to believe that the property was used or is intended to be used in violation
12 of this subchapter.

13 (h)(1) A state or local law enforcement agency shall not transfer
14 property seized by the state or local agency under this section to a federal
15 entity for forfeiture under federal law unless the circuit court having
16 jurisdiction over the property enters an order, upon petition by the
17 prosecuting attorney, authorizing the property to be transferred to the
18 federal entity.

19 (2) The transfer shall not be approved unless it reasonably
20 appears that the activity giving rise to the investigation or seizure
21 involves more than one (1) state or the nature of the investigation or
22 seizure would be better pursued under federal law.

23 (i)(1) Property seized for forfeiture under this section is not
24 subject to replevin, but is deemed to be in the custody of the seizing law
25 enforcement agency subject only to an order or decree of the circuit court
26 having jurisdiction over the property seized.

27 (2) Subject to a need to retain the property as evidence, when
28 property is seized under this subchapter, the seizing law enforcement agency
29 may:

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

32 (B) Place the property under constructive seizure, posting
33 notice of pending forfeiture on it by:

34 (i) Giving notice of pending forfeiture to its
35 owners and interest holders; or

36 (ii) Filing notice of pending forfeiture in an

1 appropriate public record relating to the property;

2 (C) Remove the property to a storage area for safekeeping
3 or, if the property is a negotiable instrument or money or is not needed for
4 evidentiary purposes, deposit it in an interest-bearing account; or

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

10 (3)(A) In case of transfer of property, a transfer receipt shall
11 be prepared by the transferring agency.

12 (B)The transfer receipt shall:

13 (i) List a detailed and complete description of the
14 property being transferred;

15 (ii) State to whom the property is being transferred
16 and the source or authorization for the transfer; and

17 (iii) Be signed by both the transferor and the
18 transferee.

19 (C) Both transferor and transferee shall maintain a copy
20 of the transfer receipt.

21 (4) A person who acts as custodian of property under this
22 section is not liable to any person on account of an act done in a reasonable
23 manner in compliance with an order under this subchapter.

24 (j)(1) Property seized by a state or local law enforcement officer
25 under this section who is detached to, deputized or commissioned by, or
26 working in conjunction with a federal agency remains subject to this section.

27 (2)(A) If property is seized for forfeiture by a law enforcement
28 agency under this section, the seizing law enforcement officer shall prepare
29 and sign a confiscation report.

30 (B)(i) The party from whom the property is seized shall
31 also sign the confiscation report if present and shall immediately receive a
32 copy of the confiscation report.

33 (ii) If the party refuses to sign the confiscation
34 report, the confiscation report shall be signed by one (1) additional law
35 enforcement officer, stating that the party refused to sign the confiscation
36 report.

1 (C) The original confiscation report shall be:

2 (i) Filed with the seizing law enforcement agency
3 within forty-eight (48) hours after the seizure; and

4 (ii) Maintained in a separate file.

5 (D) One (1) copy of the confiscation report shall be
6 retained by the seizing law enforcement officer.

7 (3) The confiscation report shall contain the following
8 information:

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

12 (B) The date of seizure;

13 (C) The name and address of the party from whom the
14 property was seized;

15 (D) The reason for the seizure;

16 (E) The location where the property will be held;

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

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

20 (4) Within three (3) business days after receiving the
21 confiscation report, the seizing law enforcement agency shall forward a copy
22 of the confiscation report to the prosecuting attorney for the district where
23 the property was seized and to the Director of Arkansas Tobacco Control
24 Board.

25 (5)(A) The Division of Legislative Audit shall notify the
26 Director of Arkansas Tobacco Control Board and a circuit court in the county
27 of a law enforcement agency, prosecuting attorney, or other public entity
28 that the law enforcement agency, prosecuting attorney, or public entity is
29 ineligible to receive forfeited funds, forfeited property, or grants from the
30 council, if the division of Legislative Audit determines by its own
31 investigation or upon written notice from the Director of Arkansas Tobacco
32 Control Board that:

33 (i) The law enforcement agency failed to complete
34 and file the confiscation reports as required by this section;

35 (ii) The law enforcement agency, prosecuting
36 attorney, or public entity has not properly accounted for the seized

1 property; or

2 (iii) The prosecuting attorney has failed to comply
3 with the notification requirement set forth in subdivision (j)(4) of this
4 section.

5 (B) After the notice, the circuit court shall not issue an
6 order distributing seized property to that law enforcement agency,
7 prosecuting attorney, or public entity, nor shall a grant be awarded by the
8 council to that law enforcement agency, prosecuting attorney, or public
9 entity until:

10 (i) The appropriate officials of the law enforcement
11 agency, prosecuting attorney, or public entity have appeared before the
12 Legislative Joint Auditing Committee; and

13 (ii) The Legislative Joint Auditing Committee has
14 adopted a motion authorizing subsequent transfers of forfeited property to
15 the law enforcement agency, prosecuting attorney, or public entity.

16 (C)(i) If a law enforcement agency, prosecuting attorney,
17 or other public entity is ineligible to receive forfeited property, the
18 circuit court shall order money that would have been distributed to that law
19 enforcement agency, prosecuting attorney, or public entity to be transmitted
20 to the Treasurer of State for deposit into the Special State Assets
21 Forfeiture Fund.

22 (ii) If the property is not cash, the circuit court
23 shall order the property converted to cash under this section and the
24 proceeds transmitted to the Treasurer of State for deposit into the Special
25 State Assets Forfeiture Fund.

26 (D) Moneys deposited into the Special State Assets
27 Forfeiture Fund are not subject to recovery or retrieval by an ineligible law
28 enforcement agency, prosecuting attorney, or other public entity.

29 (6) The Director of Arkansas Tobacco Control Board shall
30 establish by rule, a standardized confiscation report form to be used by all
31 law enforcement agencies with specific instructions and guidelines concerning
32 the nature and dollar value of all property, including firearms, to be
33 included in the confiscation report and forwarded to the office of the local
34 prosecuting attorney and the Director of Arkansas Tobacco Control Board under
35 this subsection.

36 (k)(1)(A) The prosecuting attorney shall initiate forfeiture

1 proceedings by filing a complaint with the circuit clerk of the county where
2 the property was seized and by serving the complaint on all known owners and
3 interest holders of the seized property in accordance with the Arkansas Rules
4 of Civil Procedure.

5 (B) The complaint may be based on in rem or in personam
6 jurisdiction but shall not be filed to avoid the distribution requirements
7 set forth in subdivision (1)(1) of this section.

8 (C) The prosecuting attorney shall mail a copy of the
9 complaint to the Director of Arkansas Tobacco Control Board within five (5)
10 calendar days after filing the complaint.

11 (2)(A) The complaint shall include a copy of the confiscation
12 report and shall be filed within sixty (60) days after receiving a copy of
13 the confiscation report from the seizing law enforcement agency.

14 (B) In a case involving real property, the complaint shall
15 be filed within sixty (60) days of the defendant's conviction on the charge
16 giving rise to the forfeiture.

17 (3)(A) The prosecuting attorney may file the complaint after the
18 expiration of the time only if the complaint is accompanied by a statement of
19 good cause for the late filing.

20 (B) However, the complaint shall not be filed more than
21 one hundred twenty (120) days after either the date of the seizure or, in a
22 case involving real property, the date of the defendant's conviction.

23 (C)(i) If the circuit court determines that good cause has
24 not been established, the circuit court shall order that the seized property
25 be returned to the owner or interest holder.

26 (ii) In addition, items seized but not subject to
27 forfeiture under this section or subject to disposition under law or the
28 Arkansas Rules of Criminal Procedure may be ordered returned to the owner or
29 interest holder.

30 (iii) If the owner or interest holder cannot be
31 determined, the court may order disposition of the property.

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

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

1 establish the petitioner's interest;

2 (B) A certification by the owner or interest holder
3 stating that he or she has read the document and that has not been filed for
4 an improper purpose;

5 (C) A statement setting forth any defense to forfeiture;
6 and

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

9 (5)(A) If the owner or interest holder fails to file an answer,
10 the prosecuting attorney may move for default judgment under the Arkansas
11 Rules of Civil Procedure.

12 (B)(i) If a timely answer has been filed, the prosecuting
13 attorney has the burden of proving by a preponderance of the evidence that
14 the seized property should be forfeited.

15 (ii) After the prosecuting attorney has presented
16 proof, an owner or interest holder of the property seized is allowed to
17 present evidence showing why the seized property should not be forfeited.

18 (iii) If the circuit court determines that grounds
19 for forfeiting the seized property exist and that a defense to forfeiture has
20 not been established by the owner or interest holder, the circuit court shall
21 enter an order under this section. However, if the circuit court determines
22 either that the prosecuting attorney has failed to establish that grounds for
23 forfeiting the seized property exist or that the owner or interest holder has
24 established a defense to forfeiture, the court shall order that the seized
25 property be immediately returned to the owner or interest holder.

26 (1)(1) If the circuit court having jurisdiction over the seized
27 property finds upon a hearing by a preponderance of the evidence that grounds
28 for a forfeiture exist under this subchapter, the circuit court shall enter
29 an order:

30 (A) To permit the law enforcement agency or prosecuting
31 attorney to retain the seized property for law enforcement or prosecutorial
32 purposes, subject to the following provisions:

33 (i)(a) Seized property may not be retained for
34 official use for more than three (3) years, unless the circuit court finds
35 that the seized property has been used for law enforcement or prosecutorial
36 purposes and authorizes continued use for those purposes on an annual basis.

1 **(b) At the end of the retention period, the**
2 **seized property shall be sold and eighty percent (80%) of the proceeds shall**
3 **be deposited into the tobacco control fund of the retaining law enforcement**
4 **agency or prosecuting attorney, and twenty percent (20%) of the proceeds**
5 **shall be deposited into the State Treasury as special revenues to be credited**
6 **to the Special State Assets Forfeiture Fund.**

7 **(c) The retaining law enforcement agency or**
8 **prosecuting attorney may sell the retained seized property during the time**
9 **allowed for retention. However, the proceeds of the sale shall be**
10 **distributed as set forth in subdivision (1)(1)(A)(i)(b) of this section;**

11 **(ii) If the circuit court determines that retained**
12 **seized property has been used for personal use or by non-law enforcement**
13 **personnel for non-law enforcement purposes, the circuit court shall order the**
14 **seized property to be sold under § 5-5-101(e) and (f), and the proceeds shall**
15 **be deposited into the State Treasury as special revenues to be credited to**
16 **the Special State Assets Forfeiture Fund;**

17 **(iii)(a) A law enforcement agency may use forfeited**
18 **property or money if the circuit court's order specifies that the forfeited**
19 **property or money is forfeited to the prosecuting attorney, sheriff, chief of**
20 **police, Department of Arkansas State Police, Director of Arkansas Tobacco**
21 **Control Board, or Arkansas Highway Police Division of the Arkansas State**
22 **Highway and Transportation Department.**

23 **(b) After the order, the prosecuting attorney,**
24 **sheriff, chief of police, Department of Arkansas State Police, Director of**
25 **Arkansas Tobacco Control Board, or Arkansas Highway Police Division of the**
26 **Arkansas State Highway and Transportation Department shall maintain an**
27 **inventory of the forfeited property or money, be accountable for the**
28 **forfeited property or money, and be subject to subdivision (j)(5) of this**
29 **section with respect to the forfeited property or money;**

30 **(iv)(a) An aircraft is forfeited to the office of**
31 **the Director of Arkansas Tobacco Control Board and may be used only for**
32 **tobacco smuggling interdiction efforts within the discretion of the Director**
33 **of Arkansas Tobacco Control Board.**

34 **(b) However, if the Director of Arkansas**
35 **Tobacco Control Board determines that the aircraft should be sold, the sale**
36 **shall be conducted under § 5-5-101(e) and (f), and the proceeds shall be**

deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund;

(v) A firearm not retained for official use shall be disposed of in accordance with state and federal law; and

(vi) A tobacco product shall be destroyed pursuant to a court order;

(B)(i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (1)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney under § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property under this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days after the entry of the order, the circuit clerk shall forward to the Director of Arkansas Tobacco Control Board copies of the confiscation report, the circuit court's order, and other documentation detailing the disposition of the seized property.

(m)(1)(A) Subject to subdivision (j)(5) of this section, the proceeds of sales conducted under this section and moneys forfeited or obtained by judgment or settlement under this chapter shall be deposited and distributed in the manner provided in this subsection.

(B) Moneys received from a federal forfeiture for a violation of this subchapter shall be deposited and distributed under this section.

(2)(A) The proceeds of a sale and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

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

1 (ii) Subsequent to the notification set forth in
2 this section, twenty percent (20%) of the proceeds of an additional sale and
3 additional moneys forfeited or obtained by judgment or settlement under this
4 subchapter in the same calendar year shall be deposited into the State
5 Treasury as special revenues to be credited to the Special State Assets
6 Forfeiture Fund, and the remainder shall be deposited into the asset
7 forfeiture fund of the prosecuting attorney;

8 (iii) Failure by the prosecuting attorney to comply
9 with the notification requirement set forth in this section renders the
10 prosecuting attorney and an entity eligible to receive forfeited moneys or
11 property from the prosecuting attorney ineligible to receive forfeited moneys
12 or property, except as provided in this section; and

13 (iv) Twenty percent (20%) of moneys in excess of
14 twenty thousand dollars (\$20,000) that have been retained but not reported as
15 required by this section are subject to recovery for deposit into the Special
16 State Assets Forfeiture Fund.

17 (B) The prosecuting attorney shall administer expenditures
18 from the asset forfeiture fund, which is subject to audit by the Division of
19 Legislative Audit. Moneys distributed from the asset forfeiture fund shall be
20 used only for law enforcement and prosecutorial purposes. Moneys in the asset
21 forfeiture fund shall be distributed in the following order:

22 (i) For the satisfaction of a bona fide
23 security interest or lien;

24 (ii) For payment of a proper expense of the
25 proceeding for forfeiture and sale, including expenses of seizure,
26 maintenance of custody, advertising, and court costs;

27 (iii) Any balance under three hundred fifty
28 thousand dollars (\$350,000) shall be distributed proportionally so as to
29 reflect generally the contribution of the appropriate local or state law
30 enforcement or prosecutorial agency's participation in any activity that led
31 to the seizure or forfeiture of the property or deposit of moneys under this
32 subchapter; and

33 (iv) Any balance over three hundred fifty
34 thousand dollars (\$350,000) shall be forwarded to the Director of Arkansas
35 Tobacco Control Board to be transferred to the State Treasury for deposit
36 into the Special State Assets Forfeiture Fund for distribution under this

1 section.

2 (C)(i) For a forfeiture in an amount greater than three
 3 hundred fifty thousand dollars (\$350,000) from which expenses are paid for a
 4 proceeding for forfeiture and sale under this section, an itemized accounting
 5 of the expenses shall be delivered to the Director of Arkansas Tobacco
 6 Control Board within ten (10) calendar days after the distribution of the
 7 funds.

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

10 (3)(A) Moneys received by a prosecuting attorney or law
 11 enforcement agency from a federal forfeiture for a violation of this
 12 subchapter shall be deposited and maintained in a separate account.

13 (B) However, a balance over three hundred fifty thousand
 14 dollars (\$350,000) shall be distributed as required under this section.

15 (4) Other moneys shall not be maintained in the account except
 16 for interest income generated by the account.

17 (5) Moneys in the account shall only be used for law enforcement
 18 and prosecutorial purposes consistent with governing federal law.

19 (6) The account is subject to audit by the Division of
 20 Legislative Audit.

21 (7) A balance over three hundred fifty thousand dollars
 22 (\$350,000) shall be transferred to the State Treasury for deposit into the
 23 Special State Assets Forfeiture Fund in which it shall be maintained
 24 separately and distributed consistently with governing federal law and upon
 25 the advice of the Director of Arkansas Tobacco Control Board.

26 (n) In personam jurisdiction may be based on a person's presence in
 27 the state or on his or her conduct in the state, as set out in § 16-4-101(c),
 28 and is subject to the following additional provisions:

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

31 (A) There is probable cause to believe that the property
 32 with respect to which the order is sought is subject to forfeiture under this
 33 section; and

34 (B) Notice of the action would jeopardize the availability
 35 of the property for forfeiture;

36 (2)(A) Notice of the entry of a temporary restraining order and

1 an opportunity for hearing shall be afforded to a person known to have an
2 interest in the property.

3 (B) The hearing shall be held at the earliest possible
4 date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is
5 limited to the issues of whether:

6 (i) There is a probability that the state will
7 prevail on the issue of forfeiture and that failure to enter the temporary
8 restraining order will result in the property's being destroyed, conveyed,
9 alienated, encumbered, disposed of, received, removed from the jurisdiction
10 of the circuit court, concealed, or otherwise made unavailable for
11 forfeiture; and

12 (ii) The need to preserve the availability of
13 property through the entry of the requested temporary restraining order
14 outweighs the hardship on an owner or interest holder against whom the
15 temporary restraining order is to be entered;

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

18 (4)(A) On a determination of liability of a person for conduct
19 giving rise to forfeiture under this section, the circuit court shall enter a
20 judgment of forfeiture of the property subject to forfeiture as alleged in
21 the complaint and may authorize the prosecuting attorney or a law enforcement
22 officer to seize property subject to forfeiture under this section not
23 previously seized or not then under seizure.

24 (B) The order of forfeiture shall be consistent with
25 subsection (1) of this section.

26 (C) In connection with the judgment, on application of the
27 state, the circuit court may enter an appropriate order to protect the
28 interest of the state in property ordered forfeited; and

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

31 (A) The attorney for the state shall give notice of
32 pending forfeiture in the manner provided in Rule 4 of the Arkansas Rules of
33 Civil Procedure to owner or interest holder who has not previously been given
34 notice;

35 (B) An owner of or interest holder in property that has
36 been ordered forfeited and whose claim is not precluded may file a claim

1 within thirty (30) days after initial notice of pending forfeiture or after
 2 notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is
 3 earlier; and

4 (C) The circuit court may amend the in personam order of
 5 forfeiture if the circuit court determines that a claimant has established
 6 that he or she has an interest in the property and that the interest is
 7 exempt under this section.

8 (o) The circuit court shall order the forfeiture of other property of
 9 a claimant or defendant up to the value of the claimant's or defendant's
 10 property found by the circuit court to be subject to forfeiture under this
 11 section if any of the forfeitable property had remained under the control or
 12 custody of the claimant or defendant and:

13 (1) Cannot be located;

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

16 (3) Is beyond the jurisdiction of the circuit court;

17 (4) Was substantially diminished in value while not in the
 18 actual physical custody of the seizing law enforcement agency;

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

21 (6) Is subject to interest exempted from forfeiture under this
 22 subchapter.

23 (p)(1) There is created on the books of law enforcement agencies and
 24 prosecuting attorneys a tobacco control fund.

25 (2) The fund shall consist of moneys obtained under § 26-57-247
 26 and other revenue as may be provided by law or ordinance.

27 (3) Moneys in the tobacco control fund shall be appropriated on
 28 a continuing basis and are not subject to the Revenue Stabilization Law, §
 29 19-5-101 et seq.

30 (4)(A) The fund shall be used for law enforcement and
 31 prosecutorial purposes.

32 (B) Each prosecuting attorney shall submit to the director
 33 on or before June 30 of each year a report detailing moneys received and
 34 expenditures made from the Tobacco Control Fund during the preceding twelve-
 35 month period.

36 (5) The law enforcement agencies and prosecuting attorneys shall

1 submit to the Director of Arkansas Tobacco Control on or before June 30th of
2 each year a report detailing any moneys received and expenditures made from
3 the tobacco control fund during the preceding twelve-month period.

4 (6) Moneys from the tobacco control fund may not supplant other
5 local, state, or federal funds.

6 (7) The tobacco control fund is subject to audit by the Division
7 of Legislative Audit.