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4

As Engrossed: S3/16/17

# A Bill

SENATE BILL 727

5 By: Senators Collins-Smith, A. Clark, Rice, B. King  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING THE CIVIL FORFEITURE OF ASSETS  
9 INVOLVED IN CERTAIN CRIMINAL OFFENSES; AND FOR OTHER  
10 PURPOSES.  
11

## Subtitle

12 CONCERNING THE CIVIL FORFEITURE OF ASSETS  
13 INVOLVED IN CERTAIN CRIMINAL OFFENSES.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 *SECTION 1. Arkansas Code § 5-5-204(a)(1)(A), concerning the forfeiture*  
21 *of conveyances used in the commission of a criminal offense, is amended to*  
22 *read as follows:*

23 *(a)(1)(A) Upon conviction and after a pretrial hearing requested under*  
24 *§ 5-5-205 and a hearing trial on the matter, when the circuit court having*  
25 *jurisdiction over the conveyance seized finds by a preponderance of the*  
26 *evidence that a ground for a forfeiture exists under this subchapter, the*  
27 *circuit court may enter an order to sell the conveyance.*  
28

29 *SECTION 2. Arkansas Code Title 5, Chapter 5, Subchapter 2, is amended*  
30 *to add an additional section to read as follows:*

31 *5-5-205. Right to a pretrial hearing on validity of seizure.*

32 *(a)(1) Following the seizure of property under this subchapter, a*  
33 *defendant or a third party claiming an interest in the property has a right*  
34 *to a pretrial hearing to determine the validity of the seizure.*

35 *(2) The claimant may claim at any time the right to possession*  
36 *of the property by filing a motion establishing the validity of the*



1 claimant's interest in the property and requesting the circuit court to issue  
2 a writ of replevin.

3 (3) The circuit court shall hear the motion no more than thirty  
4 (30) days after the motion is filed.

5 (4) The state shall file an answer showing probable cause for  
6 the seizure of the property and any motions at least ten (10) days before the  
7 pretrial hearing.

8 (b) The circuit court shall grant the motion under subdivision (a)(2)  
9 of this section if it finds that:

10 (1) It is likely the final judgment will be that the state must  
11 return the property to the claimant;

12 (2) The property is not reasonably required to be held for  
13 investigatory reasons; or

14 (3)(A) The property is the only reasonable means for a defendant  
15 to pay for legal representation in the forfeiture or criminal proceeding.

16 (B) The circuit court may order the return of funds or  
17 property sufficient to obtain legal counsel but less than the total amount  
18 seized and may require an accounting.

19 (c) In lieu of ordering the issuance of the writ of replevin under  
20 this section, the circuit court may order the state to give security or  
21 written assurance for satisfaction of any judgment, including damages, that  
22 may be rendered in the action or order other relief as may be just.

23  
24 SECTION 3. Arkansas Code § 5-5-303 is amended to read as follows:

25 5-5-303. Petition for forfeiture – Order.

26 (a)(1) The prosecuting attorney of the judicial district within whose  
27 jurisdiction there is property that is sought to be forfeited ~~pursuant to~~  
28 under § 5-5-302 shall promptly proceed against the property by filing in the  
29 circuit court having jurisdiction of the property a petition for an order to  
30 show cause why the circuit court should not order forfeiture of the property.

31 (2) The petition shall be verified and shall set forth:

32 (A) A statement that the action is brought ~~pursuant to~~  
33 under § 5-5-302;

34 (B) The law enforcement agency bringing the action;

35 (C) A description of the property sought to be forfeited;

36 (D) A statement that on or about a date certain the

1 *property was used or intended to be used in a criminal act ~~constituting that~~*  
2 *resulted in a finding of guilt for theft of livestock or that a criminal act*  
3 *~~constituting~~ resulted in a finding of guilt for theft of livestock that took*  
4 *place in, upon, or by means of the property;*

5 *(E) A statement detailing the facts in support of*  
6 *~~subsection (a)~~ subdivision (a)(1) of this section; and*

7 *(F) A list of all persons known to the law enforcement*  
8 *agency, after diligent search and inquiry, who may claim an ownership*  
9 *interest in the property by title or registration or by virtue of a lien*  
10 *allegedly perfected in the manner prescribed by law.*

11 *(b)(1) Upon receipt of a petition complying with the requirements of*  
12 *subsection (a) of this section, the circuit ~~judge of the~~ court having*  
13 *jurisdiction shall issue an order to show cause setting forth a statement*  
14 *that this subchapter is the controlling law.*

15 *(2) ~~In addition, the order~~ The order issued under subdivision*  
16 *(b)(1) of this section shall set schedule a date pretrial hearing at least*  
17 *forty-one (41) days from the date of first publication of the order ~~pursuant~~*  
18 *~~to~~ required under subsection (c) of this section for any person claiming an*  
19 *interest in the property to file such pleadings as the person desires as to*  
20 *why the circuit court should not order the forfeiture of the property to use,*  
21 *sale, or other disposition by the law enforcement agency seeking forfeiture*  
22 *of the property.*

23 *(3) The circuit court shall further order that any person who*  
24 *does not appear on that date is deemed to have defaulted and waived any claim*  
25 *to the property.*

26 *(c)(1) The prosecuting attorney shall give notice of the forfeiture*  
27 *proceedings by:*

28 *(A) Causing to be published a copy of the order to show*  
29 *cause two (2) times each week for two (2) consecutive weeks in a newspaper*  
30 *having general circulation in the county where the property is located; and*

31 *(B) Sending a copy of the petition and order to show cause*  
32 *by certified mail, return receipt requested, to any person having ownership*  
33 *of or a security interest in the property or in the manner provided in Rule 4*  
34 *of the Arkansas Rules of Civil Procedure, if:*

35 *(i) The property is of a type for which title or*  
36 *registration is required by law;*

1 (ii) The owner of the property is known in fact to  
2 the law enforcement agency at the time of seizure; or

3 (iii) The property is subject to a security interest  
4 perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

5 (2) The law enforcement agency is obligated only to make  
6 diligent search and inquiry as to the owner of the property and if, after  
7 diligent search and inquiry, the law enforcement agency is unable to  
8 ascertain the owner, the requirement of actual notice by mail with respect to  
9 a person having a perfected security interest in the property is not  
10 applicable.

11 (d)(1) A defendant or a third party claiming an interest in the  
12 property has a right to notice of and to participate in the pretrial hearing  
13 set by the court under subdivision (b)(2) of this section to determine the  
14 validity of the seizure.

15 (2) The claimant may claim at any time the right to possession  
16 of the property by filing a motion establishing the validity of the  
17 claimant's interest in the property and requesting the circuit court to issue  
18 a writ of replevin.

19 (3) The circuit court shall hear the motion at the pretrial  
20 hearing required under subdivision (b)(2) of this section.

21 (4) The state shall file an answer showing probable cause for  
22 the seizure of the property and any motions at least ten (10) days before the  
23 pretrial hearing.

24 (5) The circuit court shall grant the motion under subdivision  
25 (d)(2) of this section if it finds that:

26 (A) It is likely the final judgment will be that the state  
27 must return the property to the claimant;

28 (B) The property is not reasonably required to be held for  
29 investigatory reasons; or

30 (C)(i) The property is the only reasonable means for a  
31 defendant to pay for legal representation in the forfeiture or criminal  
32 proceeding.

33 (ii) The circuit court may order the return of funds  
34 or property sufficient to obtain legal counsel but less than the total amount  
35 seized and may require an accounting.

36 (6) In lieu of ordering the issuance of the writ of replevin,

1 the circuit court may order the state to give security or written assurance  
2 for satisfaction of any judgment, including damages, that may be rendered in  
3 the action, or order other relief as may be just.

4 ~~(d)~~(e) At the ~~hearing~~ trial on the matter, the petitioner has the  
5 burden to establish that the property is subject to forfeiture as provided in  
6 § 5-5-302.

7 ~~(e)~~(f) The final order of forfeiture by the circuit court perfects in  
8 the law enforcement agency right, title, and interest in and to the property  
9 and relates back to the date of the seizure.

10 ~~(f)~~(g) Physical seizure of property is not necessary in order to  
11 allege in a petition under this section that property is forfeitable.

12 ~~(g)~~(h) Upon filing the petition, the prosecuting attorney for the  
13 judicial district may also seek such protective order as is necessary to  
14 prevent the transfer, encumbrance, or other disposal of any property named in  
15 the petition.

16  
17 SECTION 4. The introductory language of Arkansas Code § 5-64-505(a),  
18 concerning items subject to forfeiture upon the initiation of a civil  
19 proceeding filed by the prosecuting attorney, is amended to read as follows:

20 (a) Items Subject to Forfeiture. The following are subject to  
21 forfeiture upon the initiation of a civil proceeding filed by the prosecuting  
22 attorney and when so ordered by the circuit court in accordance with this  
23 section after an offense charged resulted in a plea of guilty or nolo  
24 contendere or a finding of guilty by the circuit court, however, no property  
25 is subject to forfeiture based solely upon a misdemeanor possession of a  
26 Schedule III, Schedule IV, Schedule V, or Schedule VI controlled substance:

27  
28 SECTION 5. Arkansas Code § 5-64-505(c), concerning seizure of property  
29 that is subject to forfeiture, is amended to read as follows:

30 (c)(1) Seizure of Property. Property subject to forfeiture under this  
31 chapter may be seized by any law enforcement agent upon process issued by any  
32 circuit court having jurisdiction over the property on petition filed by the  
33 prosecuting attorney of the judicial circuit. Seizure without process may be  
34 made if:

35 ~~(1)~~(A) The seizure is incident to an arrest or a search  
36 under a search warrant or an inspection under an administrative inspection

1 warrant;

2 ~~(2)(B)~~ *The property subject to seizure has been the*  
3 *subject of a prior judgment in favor of the state in a criminal injunction or*  
4 *forfeiture proceeding based upon this chapter;*

5 ~~(3)(C)~~ *The seizing law enforcement agency has probable*  
6 *cause to believe that the property is directly or indirectly dangerous to*  
7 *health or safety; or*

8 ~~(4)(D)~~ *The seizing law enforcement agency has probable*  
9 *cause to believe that the property was used or is intended to be used in*  
10 *violation of this chapter.*

11 (2)(A) Following the seizure of property under this chapter, a  
12 defendant or a third party claiming an interest in the property has a right  
13 to a pretrial hearing to determine the validity of the seizure.

14 (B) The claimant may claim at any time before sixty (60)  
15 days before trial of the related criminal offense the right to possession of  
16 the property by filing a motion establishing the validity of the claimant's  
17 interest in the property and requesting the circuit court to issue a writ of  
18 replevin.

19 (C) The circuit court shall hear the motion no more than  
20 thirty (30) days after the motion is filed.

21 (D) The state shall file an answer showing probable cause  
22 for the seizure of the property and any motions at least ten (10) days before  
23 the pretrial hearing.

24 (E) The circuit court shall grant the motion under  
25 subdivision (c)(2)(B) of this section if it finds that:

26 (i) It is likely the final judgment will be that the  
27 state must return the property to the claimant;

28 (ii) The property is not reasonably required to be  
29 held for investigatory reasons; or

30 (iii)(a) The property is the only reasonable means  
31 for a defendant to pay for legal representation in the forfeiture or criminal  
32 proceeding.

33 (b) The circuit court may order the return of  
34 funds or property sufficient to obtain legal counsel but less than the total  
35 amount seized and may require an accounting.

36 (F) In lieu of ordering the issuance of the writ of

1 replevin, the circuit court may order the state to give security or written  
2 assurance for satisfaction of any judgment, including damages, that may be  
3 rendered in the action, or order other relief as may be just.  
4

5 SECTION 6. Arkansas Code § 5-64-505(e)(1), concerning custody of  
6 property seized for forfeiture, is amended to read as follows:

7 (1) Property ~~seized for forfeiture under this section is not~~  
8 ~~subject to replevin, but~~ is deemed to be in the custody of the seizing law  
9 enforcement agency subject only to an order or decree of the circuit court  
10 having jurisdiction over the property seized.  
11

12 SECTION 7. Arkansas Code § 5-64-505(h)(1), concerning the final  
13 disposition of a court proceeding involving a forfeiture of property, is  
14 amended to read as follows:

15 (1) When the circuit court having jurisdiction over the  
16 seized property finds upon a hearing by ~~a preponderance of the~~ clear and  
17 convincing evidence that grounds for a forfeiture exist under this chapter,  
18 the circuit court shall enter an order:  
19

20 SECTION 8. Arkansas Code § 5-64-806 is amended to read as follows:

21 5-64-806. Seizure and forfeiture.

22 Any property, including money, used in violation of a provision of this  
23 subchapter and that resulted in a plea of guilty or nolo contendere or a  
24 finding of guilty by the court may be seized and forfeited to the state in  
25 the manner prescribed under § 5-5-201 et seq.  
26

27 SECTION 9. Arkansas Code § 5-73-130 is amended to read as follows:

28 5-73-130. Seizure and forfeiture of firearm – Seizure and forfeiture of  
29 motor vehicle – Disposition of property seized.

30 (a) If a person under eighteen (18) years of age is unlawfully in  
31 possession of a firearm, the firearm shall be seized and, after an  
32 adjudication of delinquency or a conviction, is subject to forfeiture.

33 (b) If a felon or a person under eighteen (18) years of age is  
34 unlawfully in possession of a firearm in a motor vehicle, the motor vehicle  
35 is subject to seizure and, after an adjudication of delinquency or a  
36 conviction, subject to forfeiture.

1 (c) As used in this section, "unlawfully in possession of a firearm"  
 2 does not include any act of possession of a firearm that is prohibited only  
 3 by:

4 (1) ~~Section 5-73-127, unlawful to possess loaded center-fire~~  
 5 ~~weapons in certain areas~~ Possession of loaded center-fire weapons in certain  
 6 areas, § 5-73-127; or

7 (2) A regulation of the Arkansas State Game and Fish Commission.

8 (d) The procedures for forfeiture and disposition of the seized  
 9 property are as follows:

10 (1) The prosecuting attorney of the judicial district within  
 11 whose jurisdiction ~~the~~ property is seized that is sought to be forfeited  
 12 shall promptly proceed against the property by filing in the circuit court a  
 13 petition for an order to show cause why the circuit court should not order  
 14 forfeiture of the property; and

15 (2) The petition shall be verified and shall ~~set forth~~ include:

16 (A) A statement that the action is brought ~~pursuant to~~  
 17 under this section;

18 (B) The law enforcement agency bringing the action;

19 (C) A description of the property sought to be forfeited;

20 (D) A statement that on or about a date certain there was  
 21 an adjudication of delinquency or a conviction and a finding that the  
 22 property seized is subject to forfeiture;

23 (E) A statement detailing the facts in support of  
 24 subdivision (d)(1) of this section; and

25 (F) A list of all persons known to the law enforcement  
 26 agency, after diligent search and inquiry, who may claim an ownership  
 27 interest in the property by title or registration or by virtue of a lien  
 28 allegedly perfected in the manner prescribed by law.

29 (e)(1) Upon receipt of a petition complying with the requirements of  
 30 ~~subdivision (d)(1)~~ subsection (d) of this section, the circuit court judge  
 31 having jurisdiction shall issue an order to show cause setting forth a  
 32 statement that this subchapter is the controlling law.

33 (2) ~~In addition, the order~~ The order issued under subdivision  
 34 (e)(1) of this section shall set schedule a date pretrial hearing at least  
 35 forty-one (41) days from the date of first publication of the order pursuant  
 36 to required under subsection (f) of this section for all persons claiming an



1 *interest in the property to file ~~such~~ pleadings as they desire as to why the*  
2 *circuit court should not order the forfeiture of the property for use, sale,*  
3 *or other disposition by the law enforcement agency seeking forfeiture of the*  
4 *property.*

5 *(3) The circuit court shall further order that any person who*  
6 *does not appear on that date is deemed to have defaulted and waived any claim*  
7 *to the subject property.*

8 *(f)(1) The prosecuting attorney shall give notice of the forfeiture*  
9 *proceedings by:*

10 *(A) Causing a copy of the order to show cause to be*  
11 *published two (2) times each week for two (2) consecutive weeks in a*  
12 *newspaper having general circulation in the county where the property is*  
13 *located with the last publication being not less than five (5) days before*  
14 *the show cause hearing; and*

15 *(B) Sending a copy of the petition and order to show cause*  
16 *by certified mail, return receipt requested, to each person having ownership*  
17 *of or a security interest in the property or in the manner provided in Rule 4*  
18 *of the Arkansas Rules of Civil Procedure if:*

19 *(i) The property is of a type for which title or*  
20 *registration is required by law;*

21 *(ii) The owner of the property is known in fact to*  
22 *the law enforcement agency at the time of seizure; or*

23 *(iii) The property is subject to a security interest*  
24 *perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.*

25 *(2) The law enforcement agency is only obligated to make*  
26 *diligent search and inquiry as to the owner of the property, and if, after*  
27 *diligent search and inquiry, the law enforcement agency is unable to*  
28 *ascertain the owner, the requirement of actual notice by mail with respect to*  
29 *a person having a perfected security interest in the property is not*  
30 *applicable.*

31 *(g)(1) A defendant or a third party claiming an interest in the*  
32 *property has a right to notice of and to participate in the pretrial hearing*  
33 *set by the court under subdivision (e)(2) of this section to determine the*  
34 *validity of the seizure.*

35 *(2) The claimant may claim at any time the right to possession*  
36 *of the property by filing a motion establishing the validity of the*

1 claimant's interest in the property and requesting the circuit court to issue  
2 a writ of replevin.

3 (3) The circuit court shall hear the motion at the pretrial  
4 hearing required under subdivision (e)(2) of this section.

5 (4) The state shall file an answer showing probable cause for  
6 the seizure of the property and any motions at least ten (10) days before the  
7 pretrial hearing.

8 (5) The circuit court shall grant the motion under subdivision  
9 (g)(2) of this section if it finds that:

10 (A) It is likely the final judgment will be that the state  
11 must return the property to the claimant;

12 (B) The property is not reasonably required to be held for  
13 investigatory reasons; or

14 (C)(i) The property is the only reasonable means for a  
15 defendant to pay for legal representation in the forfeiture or criminal  
16 proceeding.

17 (ii) The circuit court may order the return of funds  
18 or property sufficient to obtain legal counsel but less than the total amount  
19 seized and may require an accounting.

20 (6) In lieu of ordering the issuance of the writ of replevin,  
21 the circuit court may order the state to give security or written assurance  
22 for satisfaction of any judgment, including damages, that may be rendered in  
23 the action, or order other relief as may be just.

24 ~~(g)(h)~~ At the hearing on the matter ~~trial~~, the petitioner has the  
25 burden to establish that the property is subject to forfeiture by a  
26 preponderance of the evidence.

27 ~~(h)(i)~~ In determining whether or not a motor vehicle should be ordered  
28 forfeited, the circuit court may take into consideration the following  
29 factors:

30 (1) Any prior criminal conviction or delinquency adjudication of  
31 the felon or ~~juvenile~~ minor;

32 (2) Whether or not the firearm was used in connection with any  
33 other criminal act;

34 (3) Whether or not the vehicle was used in connection with any  
35 other criminal act;

36 (4) Whether or not the ~~juvenile~~ minor or felon was the lawful

1 owner of the vehicle in question;

2 (5) If the ~~juvenile~~ minor or felon is not the lawful owner of  
3 the vehicle in question, whether or not the lawful owner knew of the unlawful  
4 act being committed that gives rise to the forfeiture penalty; and

5 (6) Any other factor the circuit court deems relevant.

6 ~~(i)~~(j) The final order of forfeiture by the circuit court shall  
7 perfect in the law enforcement agency right, title, and interest in and to  
8 the property and shall relate back to the date of the seizure.

9 ~~(j)~~(k) Physical seizure of property is not necessary in order to  
10 allege in a petition under this section that the property is forfeitable.

11 ~~(k)~~(l) Upon filing the petition, the prosecuting attorney for the  
12 judicial district may also seek such protective orders as are necessary to  
13 prevent the transfer, encumbrance, or other disposal of any property named in  
14 the petition.

15 ~~(l)~~(m) The law enforcement agency to which the property is forfeited  
16 shall:

17 (1) Destroy any forfeited firearm; and

18 (2) Either:

19 (A) Sell the motor vehicle in accordance with subsection  
20 ~~(m)~~(n) of this section; or

21 (B) If the motor vehicle is not subject to a lien that has  
22 been preserved by the circuit court, retain the motor vehicle for official  
23 use.

24 ~~(m)~~~~(l)~~(n)(1) If a law enforcement agency desires to sell a forfeited  
25 motor vehicle, the law enforcement agency shall first cause notice of the  
26 sale to be made by publication at least two (2) times a week for two (2)  
27 consecutive weeks in a newspaper having general circulation in the county and  
28 by sending a copy of the notice of the sale by certified mail, return receipt  
29 requested, to each person having ownership of or a security interest in the  
30 property or in the manner provided in Rule 4 of the Arkansas Rules of Civil  
31 Procedure if:

32 (A) The property is of a type for which title or  
33 registration is required by law;

34 (B) The owner of the property is known in fact to the law  
35 enforcement agency at the time of seizure; or

36 (C) The property is subject to a security interest

1 *perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.*

2 *(2) The notice of the sale shall include the time, place, and*  
3 *conditions of the sale and a description of the property to be sold.*

4 *(3) The property shall then be disposed of at public auction to*  
5 *the highest bidder for cash without appraisal.*

6 ~~(n)~~(o) *The proceeds of any sale and any moneys forfeited shall be*  
7 *applied to the payment of:*

8 *(1) The balance due on any lien preserved by the circuit court*  
9 *in the forfeiture proceedings;*

10 *(2) The cost incurred by the seizing law enforcement agency in*  
11 *connection with the storage, maintenance, security, and forfeiture of the*  
12 *property;*

13 *(3) The costs incurred by the prosecuting attorney or attorney*  
14 *for the law enforcement agency, approved by the prosecuting attorney, to*  
15 *which the property is forfeited; and*

16 *(4) Costs incurred by the circuit court.*

17 ~~(o)~~(p) *The remaining proceeds or moneys shall be deposited into a*  
18 *special county fund to be titled the "Juvenile Crime Prevention Fund", and*  
19 *the moneys in the fund shall be used solely for making grants to community-*  
20 *based nonprofit organizations that work with juvenile crime prevention and*  
21 *rehabilitation.*

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23 */s/Collins-Smith*  
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