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;

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

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

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

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

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

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

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

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

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

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

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

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

(4)(A) Except as provided in subdivision (e)(4)(B) of this section, a conveyance, including an aircraft, vehicle, or vessel, that is used, or intended to be used, to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (e)(1) or (2) of this section.
(B)(i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this subchapter;

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

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

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

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

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

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

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

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

(B) Property shall not be forfeited under subdivision (e)(6)(A) of this section to the extent of the interest of an owner by reason of an act or omission established by him or her by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;
(7)(A) Money, coins, or currency found in close proximity to a forfeitable tobacco product or a forfeitable record of an importation of a tobacco product is presumed to be forfeitable under this section.

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

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

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

(ii) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter.

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

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

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

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

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

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

(2) Seizure without process may be made if:

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

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

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

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

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

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

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

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

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

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

(i) Giving notice of pending forfeiture to its
owners and interest holders; or
(ii) Filing notice of pending forfeiture in an appropriate public record relating to the property;

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

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

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

(B) The transfer receipt shall:

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

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

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

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

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

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

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

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

(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.
(C) The original confiscation report shall be:
   (i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and
   (ii) Maintained in a separate file.
(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.
(3) The confiscation report shall contain the following information:
   (A) A detailed description of the property seized including serial or model numbers and odometer or hour reading of vehicles or equipment;
   (B) The date of seizure;
   (C) The name and address of the party from whom the property was seized;
   (D) The reason for the seizure;
   (E) The location where the property will be held;
   (F) The seizing law enforcement officer's name; and
   (G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.
(4) Within three (3) business days after receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the Director of Arkansas Tobacco Control Board.
(5)(A) The Division of Legislative Audit shall notify the Director of Arkansas Tobacco Control Board and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive forfeited funds, forfeited property, or grants from the council, if the division of Legislative Audit determines by its own investigation or upon written notice from the Director of Arkansas Tobacco Control Board that:
   (i) The law enforcement agency failed to complete and file the confiscation reports as required by this section;
   (ii) The law enforcement agency, prosecuting
attorney, or public entity has not properly accounted for the seized
property; or

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

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

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

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

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

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

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

(6) The Director of Arkansas Tobacco Control Board shall
establish by rule, a standardized confiscation report form to be used by all
law enforcement agencies with specific instructions and guidelines concerning
the nature and dollar value of all property, including firearms, to be
included in the confiscation report and forwarded to the office of the local
prosecuting attorney and the Director of Arkansas Tobacco Control Board under
this subsection.
(k)(1)(A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

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

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

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

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

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

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

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

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

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

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

(A) A statement describing the seized property and the
owner's interest or interest holder's interest in the seized property, with
supporting documents to establish the owner's interest or interest holder's
interest;

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

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

and

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

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

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

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

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

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

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

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

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

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

(ii) If the circuit court determines that retained
seized property has been used for personal use or by non-law enforcement
personnel for non-law enforcement purposes, the circuit court shall order the
seized property to be sold 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;

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

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

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

(b) However, if the Director of Arkansas
Tobacco Control Board determines that the aircraft should be sold, the sale 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 (l)(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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) (A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.

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

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

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

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

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

(B) The order of forfeiture shall be consistent with subsection (l) of this section.

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

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

(A) The attorney for the state shall give notice of pending forfeiture in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure to owner or interest holder who has not previously been given notice;
(B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and

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

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

1. Cannot be located;
2. Was transferred or conveyed to, sold to, or deposited with a third party;
3. Is beyond the jurisdiction of the circuit court;
4. Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;
5. Was commingled with other property that cannot be divided without difficulty; or
6. Is subject to interest exempted from forfeiture under this subchapter.

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

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

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

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

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

(5) The law enforcement agencies and prosecuting attorneys shall submit to the Director of Arkansas Tobacco Control on or before June 30th of each year a report detailing any moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

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

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

/s/ Lowery

APPROVED:  4/6/2009