

1 SB332
2 158196-1
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 11-FEB-14

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8 SYNOPSIS: This bill would create the Alabama
9 Comprehensive Criminal Proceeds Forfeiture Act to
10 provide a process for the forfeiture of property
11 acquired directly or indirectly through the
12 commission of certain criminal offenses and
13 proceeds and other instrumentalities derived in
14 connection with certain criminal offenses.

15 This bill would specify procedures for
16 seizure and forfeiture of property and proceeds
17 connected with criminal offenses and would specify
18 how a law enforcement agency may dispose of
19 forfeited property, including the sale of certain
20 property under certain circumstances.

21 This bill would provide for owner's and bona
22 fide lienholder's interests in real property or
23 fixtures that have been seized under the act.

24 This bill would also provide for the
25 disposition of abandoned forfeited property and
26 proceeds.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 Relating to forfeitures; to further provide for the
6 seizure and forfeiture of property acquired directly or
7 indirectly through the commission of certain criminal
8 offenses; to provide for the seizure and forfeiture of
9 proceeds and other instrumentalities derived in connection
10 with certain criminal offenses; to provide procedures for the
11 seizure and forfeiture of property and proceeds; to provide
12 for owner's and bona fide lienholder's interests in certain
13 property that has been seized; to provide for the disposition
14 of abandoned forfeited property and proceeds; and to ensure
15 restitution for victims of criminal activities.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. This act shall be known and may be cited
18 as the Alabama Comprehensive Criminal Proceeds Forfeiture Act.

19 Section 2. (a) Any property, proceeds, or
20 instrumentality of every kind, used or intended for use in the
21 course of, derived from, or realized through the commission of
22 a felony offense, as defined in this act, or as inducement or
23 attempt or conspiracy to commit such offences, is subject to
24 civil forfeiture.

25 (b) This act does not apply to or limit forfeiture
26 under Sections 20-2-93, 13A-11-84, 13A-12-30, or 13A-12-198,
27 Code of Alabama 1975.

1 Section 3. For the purposes of this act, the
2 following words shall have the following meanings:

3 (1) FELONY OFFENSE. Any act or commission that could
4 be charged as a felony criminal offense under the Code of
5 Alabama 1975, whether or not a formal criminal prosecution or
6 delinquent proceeding began at the time the forfeiture was
7 initiated. The term also includes the commission of a
8 delinquent act that would constitute a felony if committed by
9 an adult.

10 (2) FINANCIAL INSTITUTION. A bank, credit union, or
11 savings and loan association.

12 (3) INNOCENT OWNER. A bona fide purchaser of
13 property that is subject to forfeiture, including any of the
14 following:

15 a. A person who establishes a valid claim to or
16 interest in the property seized who did not know, or in the
17 exercise of reasonable diligence could not have known, of the
18 conduct which caused the property to be forfeited, seized, or
19 abandoned.

20 b. A person who did not participate in the
21 commission of a crime or delinquent act giving rise to the
22 forfeiture.

23 c. A victim of an alleged criminal offense.

24 (4) INSTITUTED PROMPTLY. The filing by the district
25 attorney or prosecutorial entity of a civil in rem proceeding
26 in a court of competent jurisdiction within 42 days of
27 seizure, unless good cause is shown for delay.

1 (5) INSTRUMENTALITY. Property otherwise lawful to
2 possess that is used in or intended to be used in a criminal
3 offense. The term includes, but is not limited to, a firearm,
4 a mobile instrumentality, a computer, a computer network, a
5 computer system, computer software, a telecommunications
6 device, money, or any other means of exchange.

7 (6) LAW ENFORCEMENT AGENCY. Any municipal, county,
8 or state agency the personnel of which have the power of
9 arrest and to perform law enforcement functions, including
10 prosecutorial entities.

11 (7) PROCEEDS. Includes both of the following:

12 a. In cases involving unlawful goods, services, or
13 activities, proceeds includes any property derived directly or
14 indirectly from an offense. The term includes, but is not
15 limited to, money or any other means of exchange. The term is
16 not limited to the net gain or profit realized from the
17 offense.

18 b. In cases involving lawful goods or services that
19 are sold or provided in an unlawful manner, proceeds are the
20 amount of money or other means of exchange acquired through
21 the illegal transaction resulting in the forfeiture, less the
22 direct costs lawfully incurred in providing the goods or
23 services. The lawful costs deduction does not include any part
24 of the overhead expenses of, or taxes paid by, the entity
25 providing the goods or services. The alleged offender or
26 delinquent has the burden to prove that any costs are lawfully
27 incurred.

1 (8) PROPERTY. Any real or personal property and any
2 benefit, privilege, claim, position, interest in an
3 enterprise, or right derived, directly or indirectly, from the
4 criminal offense.

5 Section 4. Except as provided otherwise in this act,
6 the manner, method, and procedure for the seizure, forfeiture,
7 condemnation, and disposition shall be the same as that set
8 out in Section 20-2-93 and Sections 28-4-286 through 28-4-290,
9 inclusive, Code of Alabama 1975, except for the following:

10 (1) An innocent owner's or bona fide lienholder's
11 interest in any type of property shall not be forfeited under
12 this act for any act or omission unless the state proves that
13 the act or omission was committed or omitted with the
14 knowledge or consent of that owner or lienholder.

15 (2) The state may stipulate that the interest of an
16 innocent owner or bona fide lienholder is exempt from
17 forfeiture upon presentation of proof of the claim. The state
18 shall file the stipulation with the court exercising
19 jurisdiction over the forfeiture action and the filing of
20 stipulation shall constitute an admission by the state that
21 the interest is exempt from forfeiture. If a stipulation is
22 submitted, no further claim, answer, or pleading shall be
23 required of the stipulated innocent owner or lienholder, and a
24 judgment shall be entered exempting that interest from
25 forfeiture.

26 (3) If an answer is filed within 30 days of service
27 by an innocent owner or bona fide lienholder requesting an

1 expedited hearing, the court may issue an order to show cause
2 to the seizing law enforcement agency for a hearing on the
3 sole issue of whether probable cause for forfeiture of the
4 property or proceeds exists. The hearing shall be held within
5 60 days of the filing of the request for expedited hearing
6 unless continued for good cause. After the hearing, the court
7 may do any of the following:

8 a. Find probable cause and stay further proceedings
9 until the resolution of any underlying criminal case.

10 b. Enter a judgment exempting that interest from
11 forfeiture.

12 c. Order property that has been seized for
13 forfeiture to be sold to satisfy a specified interest of any
14 lienholder, on motion of any party on all of the following
15 conditions:

16 1. The lienholder has filed a proper claim.

17 2. The lienholder has a perfected interest in the
18 property.

19 3. The lienholder is an innocent owner as defined
20 under Section 3.

21 (4) The lienholder shall also dispose of the
22 property by commercially reasonable public sale and apply the
23 proceeds from the sale first to its interest and then to its
24 reasonable expenses incurred in connection with the sale or
25 disposal with the balance of the proceeds, if any, to be
26 returned to the actual or constructive custody of the court,

1 in an interest-bearing account, subject to further proceedings
2 under this section.

3 (5)a. In cases where the property to be forfeited is
4 cash, monetary instruments in bearer form, funds deposited in
5 an account in a financial institution, or other like fungible
6 property, it shall not be necessary for the state to identify
7 the specific property, other than as U.S. currency, cash,
8 monetary instruments in bearer form, or as funds deposited in
9 an account in a financial institution, involved in the offense
10 that is the basis for the forfeiture action. Actual serial
11 numbers or other detailed descriptions are not required.

12 b. It shall not be a defense that the property
13 involved in such an action has been removed and replaced by
14 identical property.

15 Section 5. In order for property or proceeds to be
16 deemed abandoned, a representative of the law enforcement
17 agency having possession of abandoned property or proceeds
18 shall file with the district attorney a sworn affidavit
19 setting forth the circumstances of the abandonment. After the
20 filing of the affidavit, the district attorney may file an
21 action in the circuit court to declare the property or
22 proceeds abandoned. If the location of the owner, registrant,
23 secured party, or lienholder is unknown, service shall be made
24 at the last known address of the current owner, registrant,
25 secured party, or lienholder, as well as by publication on a
26 governmental web site or a newspaper of general circulation
27 for a period of three weeks. The sworn affidavit and a

1 certificate of service shall accompany any action filed by the
2 district attorney to any order of court.

3 Section 6. (a) Unless by other agreement of the
4 primary law enforcement agency and the prosecutorial entity,
5 the proceeds from any forfeiture shall be used, first, for
6 payment of all proper expenses of the proceedings for
7 forfeiture and sale, including expenses of seizure,
8 maintenance of or custody, advertising, prosecution, and court
9 costs. The remaining proceeds from the sale or distribution
10 shall be awarded by the court pursuant to recommendation of
11 the prosecutorial entity on a pro rata share to the
12 participating law enforcement agencies, the prosecutorial
13 entity that pursued the action, and as payment of restitution
14 to any victims of the underlying offense. Any proceeds from
15 sales authorized by this section awarded by the court to a
16 county or municipal law enforcement agency shall be deposited
17 into the respective county or municipal general fund and made
18 available to the appropriate law enforcement agency upon
19 requisition of the chief law enforcement official of the
20 agency. Any monies or proceeds authorized by this act and
21 ordered by the court to be distributed to the district
22 attorney shall be deposited into the district attorney's
23 solicitor's fund to be expended for lawful law enforcement
24 purposes.

25 (b) Any court costs, court process, filing fees, or
26 other costs associated with filing an action or lien, shall be
27 waived, remitted, or otherwise shall be inapplicable to

1 actions in the district, circuit, or probate court filed by or
2 on behalf of the state pursuant to this act or pursuant to
3 Sections 12-17-224, 12-17-225, 13A-11-84, 13A-12-30,
4 13A-12-198, and 20-2-93, Code of Alabama 1975.

5 Section 7. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor, or its otherwise becoming law.