

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

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

25 Section 2. (a) Any property, proceeds, or  
26 instrumentality of every kind, used or intended for use in the  
27 course of, derived from, or realized through the commission of

1 a felony offense, as defined in this act, or as inducement or  
2 attempt or conspiracy to commit such offences, is subject to  
3 civil forfeiture.

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

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

9 (1) FELONY OFFENSE. Any act or commission that could  
10 be charged as a felony criminal offense under the Code of  
11 Alabama 1975, whether or not a formal criminal prosecution or  
12 delinquent proceeding began at the time the forfeiture was  
13 initiated.

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

16 (3) INNOCENT OWNER. A bona fide purchaser or  
17 lienholder of property that is subject to forfeiture,  
18 including any of the following:

19 a. A person who has a valid claim, lien, or other  
20 interest in the property seized who did not know or consent to  
21 the conduct that caused the property to be forfeited, seized,  
22 or abandoned under subdivision (1) of Section 4.

23 b. A person who did not participate in the  
24 commission of a crime or delinquent act giving rise to the  
25 forfeiture.

26 c. A victim of an alleged criminal offense.

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

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

11 (6) LAW ENFORCEMENT AGENCY. Any municipal, county,  
12 or state agency the personnel of which have the power of  
13 arrest and to perform law enforcement functions, including  
14 prosecutorial entities.

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

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

22 b. In cases involving lawful goods or services that  
23 are sold or provided in an unlawful manner, proceeds are the  
24 amount of money or other means of exchange acquired through  
25 the illegal transaction resulting in the forfeiture, less the  
26 direct costs lawfully incurred in providing the goods or  
27 services. The lawful costs deduction does not include any part

1 of the overhead expenses of, or taxes paid by, the entity  
2 providing the goods or services. The alleged offender or  
3 delinquent has the burden to prove that any costs are lawfully  
4 incurred.

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

9 Section 4. The state must prove to the courts  
10 reasonable satisfaction that the proceeds, property, or  
11 instrumentality of any kind were used in, intended to be used  
12 in, or derived from, a felony offense. Except as provided  
13 otherwise in this act, the manner, method, and procedure for  
14 the seizure, forfeiture, condemnation, and disposition shall  
15 be the same as that set out in Section 20-2-93 and Sections  
16 28-4-286 through 28-4-290, inclusive, Code of Alabama 1975,  
17 except for the following:

18 (1) An innocent owner's or bona fide lienholder's  
19 interest in any type of property shall not be forfeited under  
20 this act for any act or omission unless the state proves that  
21 the act or omission was committed or omitted with the  
22 knowledge or consent of that owner or lienholder.

23 (2) The state may stipulate that the interest of an  
24 innocent owner or bona fide lienholder is exempt from  
25 forfeiture upon presentation of proof of the claim. The state  
26 shall file the stipulation with the court exercising  
27 jurisdiction over the forfeiture action and the filing of

1 stipulation shall constitute an admission by the state that  
2 the interest is exempt from forfeiture. If a stipulation is  
3 submitted, no further claim, answer, or pleading shall be  
4 required of the stipulated innocent owner or lienholder, and a  
5 judgment shall be entered exempting that interest from  
6 forfeiture.

7 (3) If an answer is filed within 30 days of service  
8 by an innocent owner or bona fide lienholder requesting an  
9 expedited hearing, the court may issue an order to show cause  
10 to the seizing law enforcement agency for a hearing on the  
11 sole issue of whether probable cause for forfeiture of the  
12 property or proceeds exists. The hearing shall be held within  
13 60 days of the filing of the request for expedited hearing  
14 unless continued for good cause. After the hearing, the court  
15 may do any of the following:

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

18 b. Enter a judgment exempting that interest from  
19 forfeiture.

20 c. Order property that has been seized for  
21 forfeiture to be sold to satisfy a specified interest of any  
22 lienholder, on motion of any party on all of the following  
23 conditions:

24 1. The lienholder has filed a proper claim.

25 2. The lienholder has a perfected interest in the  
26 property.

1           3. The lienholder is an innocent owner as defined  
2 under Section 3.

3           (4) Upon order of a court, the lienholder shall  
4 dispose of the property by public sale and apply the proceeds  
5 from the sale first to obligations to the lienholder secured  
6 by the lien, and then to the lienholder's reasonable expenses  
7 incurred in connection with the sale or disposal with the  
8 balance of the proceeds, if any, to be returned to the actual  
9 or constructive custody of the court, in an interest-bearing  
10 account, subject to further proceedings under this act.

11           (5)a. In cases where the property to be forfeited is  
12 cash, monetary instruments in bearer form, funds deposited in  
13 an account in a financial institution, or other like fungible  
14 property, it shall not be necessary for the state to identify  
15 the specific property, other than as U.S. currency, cash,  
16 monetary instruments in bearer form, or as funds deposited in  
17 an account in a financial institution, involved in the offense  
18 that is the basis for the forfeiture action. Actual serial  
19 numbers or other detailed descriptions are not required.

20           b. It shall not be a defense that the property  
21 involved in such an action has been removed and replaced by  
22 identical property.

23           Section 5. In order for property or proceeds to be  
24 deemed abandoned, a representative of the law enforcement  
25 agency having possession of abandoned property or proceeds  
26 shall file with the district attorney a sworn affidavit  
27 setting forth the circumstances of the abandonment, including

1 the results of a search of records to identify the owner or  
2 lienholders. The records to be searched shall include records  
3 of the Alabama Department of Revenue, judge of probate, and  
4 the Secretary of State. After the filing of the affidavit, the  
5 district attorney may file an action in the circuit court to  
6 declare the property or proceeds abandoned. If the location of  
7 the owner, registrant, secured party, or lienholder is  
8 unknown, service shall be made at the last known address of  
9 the current owner, registrant, secured party, or lienholder,  
10 as well as by publication on a governmental web site or a  
11 newspaper of general circulation for a period of three weeks.  
12 The sworn affidavit and a certificate of service shall  
13 accompany any action filed by the district attorney to any  
14 order of court.

15 Section 6. (a) Unless by other agreement of the  
16 primary law enforcement agency and the prosecutorial entity,  
17 the proceeds from any forfeiture shall be used, first, for  
18 payment of all proper expenses of the proceedings for  
19 forfeiture and sale, including expenses of seizure,  
20 maintenance of or custody, advertising, prosecution, and court  
21 costs. The remaining proceeds from the sale or distribution  
22 shall be awarded by the court pursuant to recommendation of  
23 the prosecutorial entity on a pro rata share to the  
24 participating law enforcement agencies, the prosecutorial  
25 entity that pursued the action, and as payment of restitution  
26 to any victims of the underlying offense. Any proceeds from  
27 sales authorized by this section awarded by the court to a



1 county or municipal law enforcement agency shall be deposited  
2 into the respective county or municipal general fund and made  
3 available to the appropriate law enforcement agency upon  
4 requisition of the chief law enforcement official of the  
5 agency. Any monies or proceeds authorized by this act and  
6 ordered by the court to be distributed to the district  
7 attorney shall be deposited into the district attorney's  
8 solicitor's fund to be expended for lawful law enforcement  
9 purposes.

10 (b) Upon motion of either party, a proceeding  
11 instituted under this act shall be stayed pending the  
12 disposition of the underlying criminal action.

13 (c) Any applicable filing fee, court process, or  
14 other costs associated with the filing of an action or lien  
15 pursuant to this act may not be waived.

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

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Senate

Read for the first time and referred to the Senate committee on Judiciary.....	11-FEB-14
Read for the second time and placed on the calen- dar 1 amendment.....	12-FEB-14
Read for the third time and passed as amended ....	13-FEB-14

Patrick Harris  
Secretary