

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

1 SB332

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4 ENROLLED, An Act,

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.

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

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

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

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

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

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

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

22 c. A victim of an alleged criminal offense.

23 (4) INSTITUTED PROMPTLY. The filing by the district
24 attorney or prosecutorial entity of a civil in rem proceeding

1 in a court of competent jurisdiction within 42 days of
2 seizure, unless good cause is shown for delay.

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

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

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

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

20 b. In cases involving lawful goods or services that
21 are sold or provided in an unlawful manner, proceeds are the
22 amount of money or other means of exchange acquired through
23 the illegal transaction resulting in the forfeiture, less the
24 direct costs lawfully incurred in providing the goods or
25 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 court's
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

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

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

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

20 b. Enter a judgment exempting that interest from
21 forfeiture.

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

1 1. The lienholder has filed a proper claim.

2 2. The lienholder has a perfected interest in the
3 property.

4 3. The lienholder is an innocent owner as defined
5 under Section 3.

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

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

23 b. It shall not be a defense that the property
24 involved in such an action has been removed and replaced by
25 identical property.

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

20 Section 6. (a) Unless by other agreement of the
21 primary law enforcement agency and the prosecutorial entity,
22 the proceeds from any forfeiture shall be used, first, for
23 payment of all proper expenses of the proceedings for
24 forfeiture and sale, including expenses of seizure,
25 maintenance of or custody, advertising, prosecution, and court

1 costs. The remaining proceeds from the sale or distribution
2 shall be awarded by the court pursuant to recommendation of
3 the prosecutorial entity on a pro rata share to the
4 participating law enforcement agencies, the prosecutorial
5 entity that pursued the action, and as payment of restitution
6 to any victims of the underlying offense. Any proceeds from
7 sales authorized by this section awarded by the court to a
8 county or municipal law enforcement agency shall be deposited
9 into the respective county or municipal general fund and made
10 available to the appropriate law enforcement agency upon
11 requisition of the chief law enforcement official of the
12 agency. Any monies or proceeds authorized by this act and
13 ordered by the court to be distributed to the district
14 attorney shall be deposited into the district attorney's
15 solicitor's fund to be expended for lawful law enforcement
16 purposes.

17 (b) Upon motion of any party, a proceeding
18 instituted under this act shall be stayed pending the
19 disposition of the underlying criminal action.

20 (c) Any applicable filing fee, court process, or
21 other costs associated with the filing of an action or lien
22 pursuant to this act may not be waived, and shall be payable
23 at the conclusion of the action and deducted from the total
24 award ordered by the court. In the event the plaintiff does
25 not prevail in the action, all filing fees and court costs

1 shall be paid within 15 days from the court's order denying
2 relief.

3 Section 7. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

Senate 13-FEB-14.
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Senate 20-MAR-14
I hereby certify that the within Act originated in and passed
the Senate, as amended by Executive Amendment.

Patrick Harris
Secretary

House of Representatives
Amended and Passed: 13-MAR-14

House of Representatives
Passed: 01-APR-14, as amended by Executive Amendment.

By: Senator Orr