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BILL STATUS

1 211558-1 : n : 03/10/2021 : CMH / bm LSA2021-21531

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3 SUBSTITUTE FOR SB210

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8 SYNOPSIS: Under existing law, seizure involves the
9 state taking possession of property suspected of
10 being involved in an unlawful act. Forfeiture,
11 which occurs after seizure, is the litigation in
12 which the state takes final title to the seized
13 property.

14 Under existing law, certain property is
15 subject to seizure and then civil forfeiture when
16 the property is used in the commission of certain
17 unlawful acts or is the proceeds of those acts.
18 Civil forfeiture of property is a civil process
19 that is independent of the criminal prosecution of
20 any person. Property subject to civil forfeiture is
21 forfeited to the state and then sold, destroyed, or
22 disposed of in a proper manner.

23 Also under existing law, all property seized
24 by a state, county, or municipal law enforcement
25 agency for forfeiture in connection with a criminal
26 event is required to be reported to the uniform



1. crime reporting system operated by the Alabama
2 State Law Enforcement Agency.

3 This bill would establish the Alabama
4 Criminal Forfeiture Process Act. The bill would end
5 civil forfeiture for criminal drug offenses and
6 replace it with criminal forfeiture to unify the
7 criminal prosecution and forfeiture litigation into
8 one process.

9 This bill would also authorize criminal
10 forfeiture only after proof of a conviction of
11 criminal drug offenses, with exceptions.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to asset forfeitures; to provide a
18 procedure for criminal asset forfeiture for drug offenses; and
19 to repeal Section 20-2-93, Code of Alabama 1975.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Short Title.

22 This act shall be known and may be cited as the
23 Alabama Criminal Forfeiture Process Act.

24 Section 2. Statement of Purpose.

25 The purpose of this act is to do all of the
26 following:



1 (1) Deter criminal drug activity by reducing its
2 economic incentives.

3 (2) Confiscate property used in the violation of the
4 law and disgorge the fruits of illegal conduct relating to
5 drug offenses.

6 (3) Protect the due process rights of property
7 owners.

8 Section 3. This act applies to seizures and
9 forfeitures of property and proceeds used or derived directly
10 from the commission of a drug offense under Article 5,
11 commencing with Section 13A-12-201, of Chapter 12, Title 13A,
12 Code of Alabama 1975.

13 Section 4. Definitions.

14 As used in this act, the following terms shall have
15 the following meanings:

16 (1) ABANDONED PROPERTY. Personal property left by an
17 owner who intentionally relinquishes all rights to its
18 control. The term does not include real property or property
19 that is disclaimed through a roadside waiver as prohibited by
20 Section 10.

21 (2) ACTUAL KNOWLEDGE. Direct and clear awareness of
22 information, a fact, or a condition.

23 (3) CLAIMANT. A defendant, innocent owner, or other
24 third party with an interest in seized property subject to
25 forfeiture.



1 (4) CONTRABAND. Goods that are unlawful to possess,
2 including scheduled drugs without a valid lawful prescription
3 and illegal firearms.

4 (5) CONVEYANCE. A device used for transportation.
5 The term includes a motor vehicle, trailer, snowmobile,
6 airplane, and vessel, and any equipment attached to it. The
7 term does not include property that is stolen in violation of
8 the law.

9 (6) COURT. The criminal division of the circuit
10 court.

11 (7) INNOCENT OWNER. A sole owner, an owner in joint
12 tenancy, or the defendant's heirs or assigns of property that
13 is subject to forfeiture who does not have actual knowledge of
14 the use of the property in the crime giving rise to the
15 forfeiture. The term does not include the defendant or an
16 interest holder.

17 (8) INSTRUMENTALITY. Property otherwise lawful to
18 possess that is used in the furtherance or commission of an
19 offense of a law subject to forfeiture. The term includes, but
20 is not limited to, land, buildings, containers, conveyances,
21 equipment, materials, products, tools, computers, computer
22 software, telecommunications devices, firearms, ammunition,
23 and accessories for ammunition and firearms.

24 (9) INTEREST HOLDER. A person who is a secured
25 creditor, mortgagee, lienholder, or other person who has a
26 valid claim, security interest, mortgage, lien, leasehold, or



1 other interest in the property subject to forfeiture. The term
2 does not include the defendant or an innocent owner.

3 (10) LAW ENFORCEMENT AGENCY. Any non-federal police
4 force or other local, county, or state agency that has the
5 authority under state law to engage in seizure and forfeiture.

6 (11) PROCEEDS. U.S. currency, non-U.S. currency,
7 securities, negotiable instruments, or any other means of
8 exchange obtained by the sale of property or contraband.

9 (12) PROPERTY SUBJECT TO FORFEITURE. An
10 instrumentality of, or proceeds derived directly from, the
11 commission of an offense under Article 5, commencing with
12 Section 13A-12-201, of Chapter 12, Title 13A, Code of Alabama
13 1975.

14 (13) PROSECUTING AUTHORITY. A district attorney,
15 attorney general, or another acting under his or her specific
16 direction and authority, appointed or charged by law with the
17 responsibility for prosecuting a criminal offense.

18 (14) REAL PROPERTY. Land and anything growing on,
19 attached to, or erected on the land, including a building.

20 Section 5. Jurisdiction.

21 (a) The court with jurisdiction over the related
22 criminal matter shall have jurisdiction over the forfeiture
23 proceeding. The forfeiture proceeding shall be conducted by
24 the court without a jury.

25 (b) Where a felony or misdemeanor charge originates
26 with a complaint for or warrant in district court, the



1 district court shall have original jurisdiction over the
2 criminal matter and the forfeiture proceeding.

3 (c) Any party, at its own expense, or the court, may
4 provide a court reporter at a hearing of the district court.

5 (d) Should the criminal case be bound over by a
6 district court, waived by either party, or originate at the
7 grand jury in the judicial circuit, the circuit court in the
8 jurisdiction shall have jurisdiction over the criminal matter
9 and forfeiture proceeding, should an indictment be returned.

10 (e) Should an indictment not be issued for the
11 criminal matter, the forfeiture proceeding shall be forwarded
12 to the circuit court, assigned to the presiding judge or his
13 or her designee in the circuit, and be given a circuit
14 criminal case number to allow for a final determination on the
15 merits as required by this act.

16 Section 6. Seizure of Personal Property Without
17 Process.

18 Personal property subject to forfeiture may be
19 seized, as part of a lawful search, without a court order,
20 under any of the following conditions:

21 (1) The seizure of personal property is incident to
22 a lawful arrest.

23 (2) The personal property subject to forfeiture has
24 been the subject of a prior and valid judgment in favor of the
25 state.

26 (3) The state has probable cause to believe that the
27 delay occasioned by the necessity to obtain process would



1 result in the removal or destruction of the personal property
2 subject to forfeiture.

3 Section 7. Seizure of Real Property with Process.

4 (a) Real property subject to forfeiture may not be
5 seized or restrained without a court order. A court may issue
6 an order to seize or secure real property only after proper
7 notice to property owners and secured interest holders, and an
8 opportunity for a contested hearing to determine the
9 sufficiency of probable cause for the seizure.

10 (b) Notice may be made by publication as allowed by
11 the Alabama Rules of Civil Procedure if personal service has
12 not been made after reasonable attempts.

13 (c) The court shall enter its order in subsection
14 (a) as a lis pendens or restraining order to hinder the sale
15 or destruction of the real property.

16 (d) Application, issuance, execution, and return of
17 any order are subject to the rules of the court.

18 Section 8. Exemptions from Seizure.

19 (a) All of the following are exempt from seizure:

20 (1) A homestead real property.

21 (2) United States currency totaling one hundred
22 dollars (\$100) or less.

23 (3) A motor vehicle that is less than one thousand
24 dollars (\$1,000) in market value. The Attorney General shall
25 advise law enforcement agencies of publications the agencies
26 may use to establish the value of a motor vehicle in the
27 prosecuting authority's jurisdiction.



1 (b) A prosecuting authority may increase the amount
2 provided in subdivision (2) or (3) of subsection (a) in the
3 prosecuting authority's jurisdiction.

4 Section 9. Contraband.

5 No property right exists in stolen property or
6 contraband. Stolen property and contraband are subject to
7 seizure and shall be returned or disposed of in accordance
8 with state law.

9 Section 10. Waiver Prohibition.

10 A law enforcement officer, other than the
11 prosecuting authority, may not require, induce, or coerce a
12 person to waive, for purpose of forfeiture, the person's
13 interest in property. A waiver pursuant to a law enforcement
14 officer's requirement, inducement, or coercion is void and
15 inadmissible in court.

16 Section 11. Receipt.

17 When property subject to forfeiture is seized, the
18 law enforcement officer shall give an itemized receipt to the
19 person possessing the property at the time of the seizure. The
20 receipt shall be numbered for future reference. The receipt
21 shall constitute notice of seizure. In the absence of the
22 person possessing the property, the law enforcement officer
23 shall leave a receipt in the place where the property was
24 found, if reasonably possible.

25 Section 12. Counsel.

26 If a claimant-defendant in a criminal matter is
27 represented by a public defender or other counsel appointed by



1 the court, the public defender or other counsel shall
2 represent the defendant in the related forfeiture proceeding.

3 Section 13. Notice to Other Owners.

4 (a) The seizing agency shall perform a reasonable
5 search of the public records to identify any person, other
6 than the defendant, including a registered owner, interest
7 holder, or other person, known to have an interest in the
8 property subject to forfeiture.

9 (b) The seizing agency shall convey information
10 about all known persons to the prosecuting authority within 14
11 calendar days after seizure.

12 (c) The prosecuting authority shall provide notice
13 to a registered owner, interest holder, or other person known
14 to have an interest in a conveyance or other property subject
15 to forfeiture who is not charged or indicted.

16 (d) Notice shall be given as provided by the rules
17 of the court.

18 (e) Notice may also be left at a residence or
19 business upon the second attempt at service.

20 (f) The following language substantially and
21 conspicuously shall appear in the notice: "WARNING: You may
22 lose the right to be heard in court if you do not file
23 promptly a statement of interest or ownership. You do not have
24 to pay a filing fee to file your notice."

25 (g) If notice is not served on any persons appearing
26 to have an interest in the property and no time extension is
27 granted or the extension period has expired, the prosecuting



1 authority may petition the court for a hearing to show that
2 the seizing agency or the prosecuting authority made
3 reasonable efforts to provide notice to all persons who may
4 have an interest in the seized property.

5 (h) Should the court be reasonably satisfied that
6 the seizing agency or the prosecuting authority made
7 reasonable efforts to provide notice to all persons who may
8 have an interest in the property, the court shall grant the
9 petition and set the case for trial on the merits for all
10 claimants.

11 (i) Should the court not be reasonably satisfied
12 that the seizing agency or prosecuting authority made
13 reasonable efforts to provide notice as required under this
14 section, the court shall order the return of the property to
15 the person who makes a request. Contraband may not be
16 returned.

17 Section 14. Prompt Post-seizure Hearing.

18 (a) Following the seizure of property, a claimant
19 has a right to a pretrial hearing.

20 (b) A person with an interest in the property may
21 petition the court for a hearing.

22 (c) At the court's discretion, the court may hold a
23 prompt post-seizure hearing at one of the following:

24 (1) At a separate hearing.

25 (2) At the same time as a probable-cause
26 determination, an arraignment, a post-arraignment hearing, an
27 omnibus hearing, or other pretrial hearing.



1 (d) By agreement or for good cause, either party may
2 move the court for one extension of the hearing for no more
3 than 10 days. The motion may be supported by affidavits or
4 other submissions.

5 (e) The court shall order the return of the property
6 to the claimant if the court finds any of the following:

7 (1) The seizure was invalid.

8 (2) The final judgment likely will be in the
9 claimant's favor.

10 (3) The property is not reasonably required to be
11 held for evidentiary reasons.

12 (4) A criminal charge has not been filed and no
13 extension of the filing period is available.

14 (5) The property is the only reasonable means for a
15 claimant-defendant to pay for legal representation unless the
16 prosecuting authority shows by clear and convincing evidence
17 the property is the instrumentality of or proceeds derived
18 directly from an offense for which the defendant is charged.

19 (f) The court may order the return of proceeds or
20 property sufficient for the claimant-defendant to obtain
21 counsel of choice, but the amount returned shall be less than
22 the total amount seized.

23 (g) Nothing in this section applies to contraband.

24 Section 15. Charging Document; Service of Process.

25 (a) In any case in which the state seeks forfeiture
26 of property under this act, other than under Section 16, the
27 prosecuting authority shall file with the court a Notice of



1 Proposed Forfeiture. The notice shall accompany a charging
2 document or an amendment to a charging instrument. The notice
3 shall not be read to the jury. The notice shall include the
4 following information:

5 (1) A description of the property seized.

6 (2) The date and place of the seizure.

7 (3) A description of how the property was used in,
8 or derived from, the alleged crime.

9 (4) The seizure receipt number in as provided in
10 Section 11, if available.

11 (b) The prosecuting authority may allege the
12 forfeiture of property as a sanction related to an underlying
13 criminal charge, as part of sentencing consideration, or other
14 means for the court to oversee the forfeiture process and to
15 effectuate the forfeiture of property.

16 (c) The prosecuting authority shall serve the
17 charging instrument or the amendment and notice as provided by
18 the Alabama Rules of Criminal Procedure.

19 (d) Upon motion by the prosecuting authority, the
20 court may allow the filing of an additional amendment for good
21 cause shown.

22 (e) The court may grant an unlimited number of
23 90-day extensions to the filing of criminal charges if, for
24 each extension, the court determines probable cause is shown
25 and additional time is warranted.

26 (f) The court shall order the return of the property
27 to the owner if the prosecuting authority does not issue a



1 charging document after seizure as required by this section,
2 if the period of an extension expires, or if the court does
3 not grant an extension.

4 Section 16. Indictment.

5 (a) After the issuance of an indictment by a grand
6 jury, the prosecuting authority shall file with the circuit
7 court a Notice of Proposed Forfeiture. The notice shall not be
8 read to any jury. The notice shall include the following
9 information:

10 (1) A description of the property seized.

11 (2) The date and place of the seizure.

12 (3) A description of how the property was used in,
13 or derived from, the alleged crime.

14 (4) The seizure receipt number as provided in
15 Section 11, if available.

16 (b) The notice shall be deemed to have been filed
17 with the circuit court if the prosecuting authority previously
18 filed the notice with the district court.

19 (c) Upon application of the prosecuting authority,
20 the court may enter a restraining order or injunction, or take
21 other action to preserve the availability of the property
22 seized, only under either of the following circumstances:

23 (1) Upon the issuance of an indictment.

24 (2) Prior to the issuance of an indictment, if the
25 court determines there is a substantial probability that the
26 state will prevail on the issue of criminal forfeiture and
27 that failure to enter the order will result in the property



1 being destroyed, removed from the jurisdiction, or otherwise
2 made unavailable for forfeiture.

3 (d) Any order entered pursuant to subdivision (c) (2)
4 shall be effective for not more than 90 days, unless extended
5 by the court for good cause shown or unless an indictment
6 described in subdivision (c) (1) has been issued subsequently.

7 Section 17. Discovery.

8 Discovery for all claimants concerning any
9 forfeiture under this act is subject to the Alabama Rules of
10 Criminal Procedure.

11 Section 18. Criminal Forfeiture, Conviction
12 Required; Standard of Proof.

13 (a) There shall be no civil forfeiture under this
14 act.

15 (b) In any forfeiture proceeding under this act, the
16 court with jurisdiction over the related criminal matter shall
17 have jurisdiction. The forfeiture proceeding shall be part of
18 the trial of the related criminal offense and, except as
19 provided in subsection (e), shall follow a finding of the
20 defendant's guilt.

21 (c) Property subject to forfeiture may be forfeited
22 if both of the following occur:

23 (1) The state secures a conviction of an offense
24 that subjects property to forfeiture under Article 5,
25 commencing with Section 13A-12-201, of Chapter 12, Title 13A,
26 Code of Alabama 1975, relating to drug offenses.



1 (2) The state establishes by clear and convincing
2 evidence that the property is an instrumentality of, or
3 proceeds derived directly from, the crime for which the state
4 secured a conviction.

5 (d) Except as required under Section 9, nothing in
6 this act prevents property from being forfeited as part of
7 either of the following:

8 (1) A plea agreement.

9 (2) A grant of immunity or reduced punishment, with
10 or without the filing of a criminal charge, in exchange for
11 testifying or assisting a law enforcement investigation or
12 prosecution. If the defendant is represented by counsel, the
13 parties may file notice, under seal, notifying the court. If
14 the defendant is not represented by counsel, the prosecuting
15 authority may file an ex parte notice, under seal, notifying
16 the court. In each situation, notice shall include reasons for
17 granting immunity, reducing punishment, or not filing a
18 charge. The court may consider the notice in awarding title to
19 the property to the state. If no charges for crimes related to
20 the seized property are filed under this subdivision, the
21 presiding judge, or his or her designee for the circuit court,
22 shall have jurisdiction to review the above filings and enter
23 an order according to the rules of the court. The clerk of
24 court shall assign a criminal case number for the filings
25 based on the circuit court's confidential order. The assigned
26 case shall be used to transfer title to the state and make



1 other final determinations on the merit as required by this
2 act.

3 (e) The court may waive the conviction requirement
4 if upon motion no less than 90 days after the seizure, the
5 prosecuting authority shows by clear and convincing evidence
6 that any of the following occurred:

7 (1) The defendant died.

8 (2) The defendant was deported by the federal
9 government.

10 (3) The defendant fled the jurisdiction after being
11 arrested and charged with the crime and released on bail.

12 (4) The defendant abandoned the property subject to
13 forfeiture, other than property by which an interest was
14 impermissibly waived pursuant to Section 10, as determined by
15 the process required by Section 15-5-64, Code of Alabama 1975.

16 (f) Notwithstanding any other provision in this
17 section to the contrary, all property remains subject to all
18 of the following:

19 (1) Claims by innocent owners, secured interest
20 holders, and other third parties with a bona fide claim to the
21 property as provided by this act.

22 (2) Distribution of forfeited property according to
23 Section 30.

24 (3) Reporting requirements.

25 Section 19. Trial Proceedings.

26 (a) All forfeiture proceedings shall be non-jury
27 proceedings.



1 (b) The judge shall make findings of fact and
2 conclusions of law and issue a written order, consistent with
3 sentencing practices and rules of the court.

4 Section 20. Proportionality Hearing.

5 (a) The claimant-defendant may petition the court to
6 determine, before or during trial, whether the forfeiture is
7 unconstitutionally excessive under the Constitution of Alabama
8 of 1901 or the United States Constitution.

9 (b) The claimant-defendant has the burden of
10 establishing that the forfeiture is disproportional to the
11 seriousness of the offense by a preponderance of the evidence
12 at a hearing conducted by the court without a jury.

13 (c) In determining whether the forfeiture of
14 property is unconstitutionally excessive, the court shall
15 consider all relevant factors, including all of the following:

16 (1) The seriousness of the offense and its impact on
17 the community, including the duration of the activity, whether
18 the defendant possessed a firearm during the commission of the
19 offense, and the harm caused by the claimant-defendant.

20 (2) The extent to which the claimant-defendant
21 participated in the offense.

22 (3) The extent to which the property was used in
23 committing the offense.

24 (4) The sentence imposed for committing the offense,
25 including a possible prison sentence and fine.

26 (5) Whether the offense was completed or attempted.



1 (d) In determining the value of the property subject
2 to forfeiture, the court may consider all relevant factors
3 related to the fair market value of the property.

4 (e) The court may not consider the value of the
5 property to the state in determining whether the forfeiture of
6 an instrumentality is constitutionally excessive.

7 Section 21. Secured Interest.

8 (a) Property encumbered by a security interest may
9 not be forfeited.

10 (b) (1) Except as provided in subdivision (2), the
11 prosecuting authority shall summarily return seized property
12 encumbered by a security interest to the person with the bona
13 fide interest, other than the defendant or an innocent owner,
14 up to the value of the interest.

15 (2) Contraband may not be returned.

16 (c) If the property is not summarily returned, the
17 interest holder may file a sworn affidavit and petition the
18 court for a hearing at any time before the court enters
19 judgment in the criminal prosecution or waives the conviction
20 requirement pursuant to subsection (e) of Section 18.

21 (d) The court may hear the petition within 30 days
22 after the petition is filed or at the court's discretion. The
23 hearing shall be held before the court alone, without a jury.
24 The court may consolidate the hearing on the petition with any
25 other hearing before the court in the case; provided, no jury
26 is present at the hearing.



1 (e) The interest holder has the burden of
2 establishing by clear and convincing evidence the validity of
3 the security interest, mortgage, lien, leasehold, lease,
4 rental agreement, or other agreement.

5 (f) If the interest holder establishes the validity
6 of the alleged interest, the prosecuting authority may proceed
7 with the forfeiture only after establishing by clear and
8 convincing evidence of either of the following:

9 (1) The interest is invalid or results from a
10 fraudulent conveyance.

11 (2) The interest holder consented to the use of the
12 property in the crime for which the defendant is charged.

13 (g) If the state fails to meet its burden in
14 subsection (f), the court shall order the state to relinquish
15 claims to the property, up to the value of the interest, and
16 return the interest to the interest holder.

17 Section 22. Innocent owner.

18 (a) Property of an innocent owner may not be
19 forfeited.

20 (b) The prosecuting authority shall summarily return
21 property to an innocent owner. Contraband may not be returned.

22 (c) If the property is not summarily returned as
23 required under subsection (b), an innocent owner-claimant may
24 petition the court at any time before the court enters
25 judgment in the criminal prosecution or grants the motion as
26 provided in subsection (e) of Section 18.



1 (d) The petitioner shall file with the court a
2 simple statement that sets forth the following:

3 (1) The petitioner's right, title, or interest in
4 the property.

5 (2) The time and circumstances of the petitioner's
6 acquisition of the right, title, or interest in the property.

7 (3) Any additional facts supporting the petitioner's
8 claim.

9 (4) The relief sought by the petitioner.

10 (e) Any filing fee for the statement under this
11 section is waived.

12 (f) The court shall hear the petition within 30 days
13 after the filing of the petition or at the court's discretion.
14 The court may consolidate the hearing on the petition with a
15 hearing on any other issue before the court in the case.

16 (g) The petitioner bears the burden of proving by a
17 preponderance of the evidence that the petitioner has a legal
18 right, title, or interest in the property seized under this
19 act.

20 (h) If the petitioner has met the burden under
21 subsection (g) and the state seeks to proceed with the
22 forfeiture of the property, the state shall prove by clear and
23 convincing evidence that any of the following apply to the
24 petitioner:

25 (1) The petitioner's interest in the property is
26 invalid.



1 (2) The petitioner had actual knowledge that the
2 property was used in or derived directly from the crime for
3 which the defendant is charged.

4 (3) The petitioner deliberately failed to make a
5 reasonable inquiry of wrongdoing despite suspicion or an
6 awareness of the high probability of the existence of
7 wrongdoing.

8 (4) The petitioner was not a bona fide purchaser
9 without notice of any defect in title and for valuable
10 consideration.

11 (i) If the state fails to meet its burden in
12 subsection (h), the court shall order the state to relinquish
13 all claims of title to the property and to return the property
14 to the petitioner.

15 (j) No information in the petitioner's statement in
16 subsection (g) may be used as evidence in the prosecution of
17 the criminal charges in the case.

18 (k) Nothing in this section prohibits the petitioner
19 from providing information to any party or testifying in any
20 criminal trial as to facts within the petitioner's knowledge.

21 (l) The defendant may invoke the right against
22 self-incrimination or the marital privilege during the
23 forfeiture stage of the prosecution. The trier of fact at the
24 hearing may draw an adverse inference from the invocation of
25 the right or privilege.

26 Section 23. Judgment.



1 (a) If the prosecuting authority fails to meet its
2 burden as to any claim under this act, the court shall enter a
3 judgment dismissing the forfeiture proceeding and delivering
4 the property to the prevailing owner within a reasonable
5 period, unless the owner's possession of the property is
6 unlawful.

7 (b) If the prosecuting authority meets its burden as
8 to all claimants, the court shall enter a judgment forfeiting
9 the property.

10 (c) The court may enter a judgment following a
11 hearing, pursuant to a stipulation or plea agreement, or at
12 the court's discretion.

13 Section 24. Substitution of Assets.

14 Upon the state's motion following a conviction under
15 subdivision (c) (1) of Section 18, the court may order the
16 forfeiture of substitute property owned by the
17 claimant-defendant up to the value of unreachable property
18 that is beyond the court's jurisdiction or cannot be located
19 through due diligence only if the state proves by a
20 preponderance of the evidence that the claimant-defendant
21 intentionally did any of the following:

22 (1) Dissipated the property.

23 (2) Transferred, sold, or deposited the unreachable
24 property with a third party to avoid forfeiture.

25 (3) Substantially diminished the value of the
26 property.



1 (4) Commingled the property with other property that
2 cannot be divided without difficulty.

3 Section 25. No Additional Remedies.

4 The state may not seek personal judgments for money
5 or other remedies to satisfy a forfeiture award that is not
6 provided for in this act.

7 Section 26. No Joint and Several Liability.

8 A claimant-defendant is not jointly and severally
9 liable for forfeiture awards owed by other defendants. When
10 ownership is unclear, a court may order each defendant to
11 forfeit property on a pro rata basis or by another means the
12 court finds equitable.

13 Section 27. Title to Property.

14 (a) Title to property subject to forfeiture vests
15 with the state when a court issues a forfeiture judgment and
16 relates back to the time when the state seized or restrained
17 the property.

18 (b) Title to substituted assets vests when the court
19 issues an order forfeiting substitute assets.

20 (c) Notwithstanding subsections (a) and (b), title
21 to the property is subject to claims by innocent owners, bona
22 fide creditors, mortgagees, lienholders, and other third
23 parties as provided in this act.

24 Section 28. Appeal.

25 (a) A party to a forfeiture proceeding, other than
26 the defendant, may appeal the court's decision.



1 (b) The defendant may appeal the court's decision
2 regarding the seizure or forfeiture of property following
3 final judgment in the forfeiture proceeding.

4 Section 29. Attorney fees.

5 In any forfeiture litigation in which the court
6 determines the seizing agency seized property without probable
7 cause or a property owner's claim prevails by recovering 50
8 percent or more of the value of the property or currency
9 claimed, the seizing agency or prosecuting authority, at fault
10 for the wrongful seizure or unsuccessful litigation,
11 respectively, shall be liable for all the following if the
12 court determines the seizing agency or prosecuting authority
13 acted without reasonable care:

14 (1) Reasonable attorney fees and other litigation
15 costs incurred by the claimant.

16 (2) Post-judgment interest.

17 (3) In cases involving currency, other negotiable
18 instruments, or the proceeds of an interlocutory sale, any
19 interest actually paid from the date of seizure.

20 Section 30. Disposition of Property and Proceeds.

21 (a) At any time when contraband is no longer needed
22 as evidence, the court may order that it be destroyed or
23 otherwise disposed of pursuant to state law.

24 (b) At any time when abandoned property or property
25 seized from a defendant who flees the jurisdiction is no
26 longer needed as evidence, the court may order that it be
27 sold.



1 (c) If the forfeiture is granted, the court shall
2 order the sale of forfeited property other than currency.

3 (d) The court may employ any method to sell
4 property, including the sales method under Section 35-6A-10,
5 Code of Alabama 1975.

6 (e) Upon exhaustion of all appeals, the court may
7 order forfeited currency and sale proceeds to be disbursed for
8 the following purposes:

9 (1) Payment of restitution to the victim related to
10 the underlying criminal offense.

11 (2) Satisfaction of all outstanding recorded liens,
12 mortgages, or filed security interests in the forfeited
13 property.

14 (3) Payments of reasonable costs for the towing,
15 storage, maintenance, repairs, advertising and sale of the
16 property, and court costs.

17 (f) After the disbursements under subsection (e)
18 have been made, the court may order disbursements of up to
19 twelve thousand five hundred dollars (\$12,500) as follows:

20 (1) Sixty-five percent to the seizing agency for law
21 enforcement purposes, which shall be deposited into the law
22 enforcement agency's respective county or municipal general
23 fund and made available to the law enforcement agency upon
24 requisition of the chief law enforcement official of the
25 agency.



1 (2) Twenty-five percent to the prosecuting
2 authority, which shall be deposited into the prosecuting
3 authority's fund to be expended for law enforcement purposes.

4 (3) Ten percent to the Office of Indigent Defense
5 Services, which shall be deposited into the office's fund to
6 be expended for criminal defense purposes.

7 (g) After the disbursements under subsection (e) and
8 (f) have been made, the court may order disbursements of up to
9 two hundred thousand dollars (\$200,000) to the Office of
10 Prosecution Services or the Alabama Department of Economic and
11 Community Affairs for statewide grants to state or local
12 agencies for any of the following:

13 (1) Equipment, including equipment for use by law
14 enforcement personnel, prosecutors, and the Office of Indigent
15 Defense Services that supports their activities, including
16 furniture, file cabinets, office supplies, telecommunications
17 equipment, copiers, safes, computers, computer accessories and
18 software, body armor, uniforms, firearms, radios, cellular
19 telephones, electronic surveillance equipment, vehicles, and
20 animals and animal-related expenses.

21 (2) Training and education, including the training
22 of investigators, prosecutors, public defense attorneys, and
23 court-appointed attorneys in any area necessary to perform
24 official duties, including the areas of: Canine handler,
25 narcotics, defense tactics, criminal justice, language,
26 constitutional law, accounting, finance, or forensics;
27 provided, the employee's regular duties require knowledge of



1 these topics. Also included are training and conference
2 registration fees, tuition, speaker fees, and costs to produce
3 training curricula.

4 (3) Drug, gang, and other prevention or awareness
5 programs, and the costs of producing the programs. Included
6 are public service announcements, meeting costs, motivational
7 speakers, and items used or distributed by the agency, such as
8 child identification kits and anti-crime items, literature,
9 and software.

10 (h) After the disbursements under subsections (e),
11 (f), and (g) have been made, the court may order equal
12 disbursements of any remaining funds to the governing body of
13 the seizing agency, the Office of Prosecution Services, and
14 the Office of Indigent Defense Services.

15 (i) The court may also order non-currency property
16 to be retained by the seizing law enforcement agency or
17 department for official use.

18 Section 31. Sale Restrictions.

19 A law enforcement agency may not sell forfeited,
20 unclaimed, or abandoned non-currency property, directly or
21 indirectly, to an employee of the agency, to a person related
22 to an employee by blood or marriage, or to another law
23 enforcement agency.

24 Section 32. Return of Property, Damages, and Costs.

25 (a) Any law enforcement agency that holds property
26 under this act shall return the property to the owner or other



1 prevailing claimant within a reasonable period not to exceed
2 five days after judgment in favor of that person.

3 (b) The law enforcement agency that holds the
4 property is responsible for any damages, storage fees, and
5 related costs applicable to property returned under subsection
6 (a).

7 Section 33. Minimum for Federal Adoption of Seizures
8 Performed Under State Law.

9 (a) A law enforcement agency may not offer for
10 adoption a seizure of property to a federal agency for the
11 purpose of forfeiture under the federal Controlled Substances
12 Act, Public Law 91-513 (Oct. 27, 1970), or other federal law
13 which does both of the following:

14 (1) Includes U.S. currency of less than ten thousand
15 dollars (\$10,000).

16 (2) Is seized under state law.

17 (b) Within the prosecuting authority's jurisdiction,
18 a prosecuting authority may establish a minimum higher than
19 the ten thousand dollar (\$10,000) minimum established under
20 subsection (a).

21 Section 34. No Change to Joint Task Forces.

22 (a) Nothing in this act shall be construed to
23 restrict a law enforcement agency from participating in a
24 joint task force with the federal government.

25 (b) The Office of Prosecution Services and the
26 Alabama District Attorneys Association, from time to time,



1 shall publish best practices on their websites and offer
2 training on seizure and forfeiture under this act.

3 (c) A prosecuting authority, after consulting the
4 responsible United States Attorney, shall establish guidelines
5 for the law enforcement agency's participation in a joint task
6 force with the federal government in the prosecuting
7 authority's jurisdiction.

8 Section 35. Preemption.

9 This act preempts laws by municipalities and
10 counties of the state that regulate civil and criminal
11 forfeiture for crimes related to controlled substances.

12 Section 36. Repeal.

13 Section 20-2-93, Code of Alabama 1975, relating to
14 forfeiture in controlled substance cases, is repealed.

15 Section 37. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.

SENATE 3-18 2021
ADOPTED
YEAS 29 NAYS 0 ABS 0
PATRICK HARRIS, SECRETARY