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3 ORR SUBSTITUTE NO. 2 FOR SB210
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8 SYNOPSIS: This bill would further provide for the
9 seizure and forfeiture of property used in the
10 commission of certain drug offenses.
11

12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 Relating to asset forfeitures; to amend Section
17 20-2-93, Code of Alabama 1975, to further provide for the
18 seizure and forfeiture of certain property used in the
19 commission of certain drug-related offenses.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 20-2-93, Code of Alabama 1975, is
22 amended to read as follows:

23 "§20-2-93.

24 "(a) For the purposes of this section only, the
25 following words shall have the following meanings:

26 "(1) CHARGEABLE CRIMINAL OFFENSE. An offense in
27 which property is used or otherwise implicated as property

1 subject to forfeiture under subsection (b). The term includes
2 any act that could be charged as a felony or misdemeanor,
3 regardless of whether a formal criminal prosecution or
4 delinquency proceeding has begun at the time the forfeiture
5 was initiated.

6 "(2) CONTRABAND. All property as described in
7 subsections (t) and (u). The term includes drug paraphernalia,
8 as defined in Section 13A-12-260, and illegal firearms.

9 "(3) FORFEITURE ACTION. A civil action to forfeit
10 property to the state which is initiated by the prosecuting
11 authority in accordance with this section.

12 "(4) INNOCENT OWNER. A bona fide purchaser,
13 lienholder, or other owner, other than a defendant, of
14 property that is subject to forfeiture, including any of the
15 following:

16 "a. A person who has a valid claim, lien, or other
17 interest in the property seized, who did not have knowledge or
18 consent to the conduct that caused the property to be
19 forfeited, seized, or abandoned under subsection (n) and which
20 property is subject to the requirements of subsection (w).

21 "b. A person who has an interest in the property and
22 did not participate in the commission of a crime or delinquent
23 act giving rise to the forfeiture.

24 "(5) INVENTORY. A written, itemized list of all
25 property seized under this section that names all persons to
26 whom the inventory is given at the time of the seizure, as

1 provided in Rule 3.11 of the Alabama Rules of Criminal
2 Procedure.

3 "(6) KNOWLEDGE. An awareness or understanding of
4 information, a fact, or a condition.

5 "(7) PROSECUTING AUTHORITY. The Attorney General, a
6 district attorney, or a designee thereof.

7 "(8) RESPONDENT. Any person asserting a claim or
8 interest in the property subject to the forfeiture action.

9 "(9) SEIZING AGENCY. A state, county, or municipal
10 law enforcement agency or department that seizes property in
11 accordance with this section.

12 "(10) SEIZURE ORDER. A written order issued by a
13 court in connection with a seizure, establishing that probable
14 cause exists to believe that the seizure is valid as described
15 by this section. The term includes, but is not limited to, a
16 search warrant issued pursuant to Article 1, commencing with
17 Section 15-5-1, of Chapter 5 of Title 15.

18 "~~(a)~~(b) The following are subject to seizure and
19 forfeiture:

20 "(1) All controlled substances ~~which~~ that have been
21 grown, manufactured, distributed, dispensed, or acquired in
22 violation of any law of this state~~7~~.

23 "(2) All raw materials, products, and equipment of
24 any kind ~~which~~ that are used or intended for use in
25 manufacturing, cultivating, growing, compounding, processing,
26 delivering, importing, or exporting any controlled substance
27 in violation of any law of this state~~7~~.

1 ~~"(3) All property which is used or intended for use~~
2 ~~as a container for property described in subdivision (1) or~~
3 ~~(2) of this subsection;~~

4 "~~(4)~~(3) All ~~moneys~~ monies, negotiable instruments,
5 securities, or other things of value furnished or intended to
6 be furnished by any person in exchange for a controlled
7 substance in violation of any law of this state; all proceeds
8 traceable to such an exchange; and all ~~moneys~~ monies,
9 negotiable instruments, and securities used or intended to be
10 used to facilitate any violation of any law of this state
11 concerning controlled substances;.

12 "(4) All property that is used or intended for use
13 as a container for property described in subdivision (1), (2),
14 or (3).

15 "(5) All conveyances, including aircraft, vehicles,
16 or vessels, or agricultural machinery, which are used, or are
17 intended for use, to transport, or in any manner to facilitate
18 the transportation, sale, receipt, possession, or concealment
19 of any property described in subdivision (1), ~~or~~ (2), or (3)
20 ~~of this subsection;~~.

21 "(6) All books, records, and research products and
22 materials, including formulas, microfilm, tapes, and data,
23 which are used or intended for use in violation of any law of
24 this state concerning controlled substances;.

25 "(7) All imitation controlled substances, as defined
26 under the laws of this state;.

1 "(8) All real property or fixtures used or intended
2 to be used for the manufacture, cultivation, growth, receipt,
3 storage, handling, distribution, or sale of any controlled
4 substance in violation of any law of this state~~7~~.

5 "(9) All property of any type whatsoever
6 constituting, or derived from, any proceeds obtained directly,
7 or indirectly, from any violation of any law of this state
8 concerning controlled substances~~7~~.

9 "(c) (1) All of the following are exempt from seizure
10 and forfeiture under this section:

11 "a. United States currency totaling two hundred
12 fifty dollars (\$250) or less.

13 "b. A motor vehicle that is less than five thousand
14 dollars (\$5,000) in market value.

15 "(2) For purposes of seizures and forfeitures under
16 subdivision (1), the Attorney General shall advise law
17 enforcement agencies of publications the agencies may use to
18 establish the value of a motor vehicle.

19 "(3) The district attorney for a judicial circuit
20 may increase the minimum dollar amounts provided in
21 subdivision (1) for seizures and forfeitures that occur within
22 the judicial circuit.

23 "~~(b)~~ (d) Except as provided in subsection (c),
24 property ~~Property~~ subject to forfeiture under this ~~chapter~~
25 section may be seized by ~~state, county, or municipal law~~
26 ~~enforcement agencies~~ a seizing agency upon process issued by
27 any court having jurisdiction over the property. Seizure

1 without process may be made ~~if~~ under any of the following
2 conditions:

3 "(1) The seizure is incident to an arrest or a
4 search under a search warrant or an inspection under an
5 administrative inspection warrant~~7~~.

6 "(2) The property subject to seizure has been the
7 subject of a prior judgment in favor of the state in a
8 criminal injunction or forfeiture proceeding based upon this
9 chapter~~7~~.

10 "(3) ~~The state, county, or municipal law enforcement~~
11 seizing agency has probable cause to believe that the property
12 is directly or indirectly dangerous to health or safety~~7~~~~or~~.

13 "(4) ~~The state, county, or municipal law enforcement~~
14 seizing agency has probable cause to believe that the property
15 was used or is intended to be used in violation of this
16 chapter.

17 "~~(c)~~(e) (1) In the event of a seizure pursuant to
18 subsection ~~(b)~~ of this section (d), proceedings under
19 subsection ~~(d)~~ (p) of this section shall be instituted
20 promptly. Prior to the commencement of a forfeiture action by
21 the prosecuting authority under this section against property
22 not seized pursuant to a warrant, the seizing agency shall do
23 all of the following:

24 "a. Within seven business days, or an extension of
25 time for good cause shown, after the seizure pursuant to
26 subsection (d), obtain a seizure order from any circuit or
27 district judge in the jurisdiction of the seizure.

1 "b. Within 14 days after obtaining a seizure order
2 under subdivision (1), the seizing agency shall present the
3 seizure order and an application for forfeiture, which shall
4 include an inventory, to the prosecuting authority in the
5 jurisdiction for consideration.

6 "(2)a. Upon the issuance of a seizure order pursuant
7 to this subsection, the clerk of the court for the
8 jurisdiction shall establish a circuit civil case number and
9 file the order in that case number, which shall become the
10 case number for the forfeiture action should a prosecuting
11 authority file a forfeiture action pursuant to subsection (g).

12 "b. At the request of the seizing agency, the court
13 may order the filing sealed to protect the confidentiality of
14 any ongoing investigation or witnesses.

15 "(3) If the prosecuting authority has not filed a
16 forfeiture action pursuant to this section after 90 days from
17 the date of the seizure order, the clerk shall notify the
18 judge assigned to the case who may review the case with the
19 prosecuting authority for a possible dismissal due to
20 inaction. Pursuant to an order under this subsection, the
21 property shall be tendered to the owner within 14 business
22 days after the dismissal, unless the property is contraband,
23 in which case the property shall be destroyed at the
24 conclusion of the criminal case.

25 "(4) On motion by the prosecuting authority,
26 property otherwise due to be tendered to the owner pursuant to
27 subdivision (3) or subsection (f) may be retained by the

1 prosecuting authority for the duration of the criminal
2 prosecution only if the prosecuting authority proves, by a
3 preponderance of the evidence, that the seized property is
4 necessary for evidentiary purposes in the criminal
5 prosecution, and that the use of affidavits, photographic
6 evidence, or other admissible evidence is an insufficient
7 means to establish an element of the underlying criminal
8 offense.

9 "(f) A forfeiture action may only be instituted
10 after the finding of probable cause by the prosecuting
11 authority that the seizure is valid. If the prosecuting
12 authority does not find probable cause that the seizure is
13 valid, the property shall be tendered to the owner within 14
14 business days of the denial, unless the property is
15 contraband, in which case the property shall be destroyed at
16 the conclusion of the criminal case.

17 "(g) Upon compliance with subsection (f), the
18 prosecuting authority may file a forfeiture action in the
19 circuit court under this section within 42 days, or a greater
20 time upon a showing of good cause to the court, from the date
21 of the seizure of the property.

22 "(h) The seizing agency shall provide an inventory
23 to any person in possession of the seized property at the time
24 of the seizure. The inventory shall be prima facie evidence of
25 notice of the seizure to any person served with the inventory
26 at the time of the seizure.

1 "(i) (1) Nothing in this section shall be construed
2 to permit a seizing agency to conduct extrajudicial seizures
3 or forfeitures.

4 "(2) A law enforcement officer may not induce or
5 require a person to waive, for purposes of a seizure or
6 forfeiture action, the person's interest in property.

7 "(j) On motion of any party, the court may stay the
8 proceedings under this section, including any requirement
9 under the Alabama Rules of Civil Procedure.

10 "(k) Nothing in this section shall prevent the pro
11 tanto dismissal of any party pursuant to the Alabama Rules of
12 Civil Procedure.

13 "(l) An innocent owner may petition the court for a
14 hearing under Section 15-5-63 at any time after seizure of
15 property and before entry of a conviction in the related
16 criminal case.

17 "(m) The state may stipulate that the interest of an
18 innocent owner is exempt from forfeiture upon presentation of
19 proof of the claim. The state shall file the stipulation with
20 the court exercising jurisdiction over the forfeiture action,
21 and the filing of the stipulation shall constitute an
22 admission by the state that the interest is exempt from
23 forfeiture. If a stipulation is submitted, no further claim,
24 answer, or pleading shall be required of the stipulated
25 innocent owner or lienholder, and a judgment shall be entered
26 exempting that interest from forfeiture. An order under this
27 subsection shall waive all court costs.

1 "(n) Convictions or adjudications of chargeable
2 criminal offenses may be considered by the court as prima
3 facie evidence that the property seized is contraband,
4 proceeds, or instrumentalities, and is due to be forfeited.
5 The conviction or adjudication may be proven by the court
6 taking judicial notice or by providing a certified copy of the
7 conviction or adjudication to the court.

8 "(o) All civil forfeiture cases are in rem and all
9 issues shall be tried in the circuit court without the
10 presence of a jury. The state must prove by a preponderance of
11 the evidence the property subject to forfeiture is an
12 instrumentality of, or proceeds derived directly from, a
13 chargeable criminal offense.

14 "(p) (1) The state may file for a default judgment
15 against any party at any time pursuant to the Alabama Rules of
16 Civil Procedure unless the case is stayed under subsection
17 (j). The state may satisfy its burden for a default judgment
18 with testimony taken under oath, or by presenting a sworn to
19 and notarized affidavit.

20 "(2) A respondent shall be deemed to have abandoned
21 the property and any claims to the property, and a default
22 judgement may be entered by the court, upon the occurrence of
23 any of the following:

24 "a. The death of the respondent.

25 "b. The deportation of the respondent.

26 "c. The absconding of the respondent. Violation of
27 bond in the underlying criminal case and the issuance of a

1 failure to appear warrant is prima facie evidence of the
2 respondent's abandonment of the property.

3 "(q) As part of an order of final judgment, pursuant
4 to a trial or a default judgment hearing, the court shall not
5 condemn and forfeit an instrumentality that is
6 disproportionate to the underlying chargeable criminal offense
7 or offenses that gave rise to the forfeiture action. Among
8 other factors, the court may consider the following in
9 determining whether a seizure is proportional to the
10 underlying chargeable criminal offense or offenses:

11 "(1) The extent to which the property was used in
12 committing the chargeable criminal offense or offenses.

13 "(2) The extent to which the respondent participated
14 in the chargeable criminal offense or offenses.

15 "(3) Any legitimate use of the property seized.

16 "(4) The maximum possible prison sentence for the
17 chargeable criminal offense or offenses.

18 "(5) The maximum possible fines for the chargeable
19 criminal offense or offenses.

20 "(6) Possession of a firearm by the respondent
21 during the chargeable criminal offense or offenses.

22 "(7) The seriousness of the chargeable criminal
23 offense or offenses and its impact on the community, including
24 the duration of the activity and the harm caused.

25 ~~(d)~~(r) Property taken or detained under this
26 section shall not be subject to replevin, but is deemed to be
27 in the custody of the ~~state, county, or municipal law~~

1 ~~enforcement~~ seizing agency, subject only to the orders and
2 judgment of the court having jurisdiction over the forfeiture
3 proceedings. When property is seized under this chapter, the
4 ~~state, county, or municipal law enforcement~~ seizing agency may
5 do any of the following:

6 "(1) Place the property under seal, ~~and~~.

7 "(2) Remove the property to a place designated by
8 ~~it,~~ the seizing agency.

9 "(3) Require the ~~state, county, or municipal law~~
10 ~~enforcement~~ seizing agency to take custody of the property and
11 remove ~~it~~ the property to an appropriate location for
12 disposition in accordance with law, ~~and~~.

13 "(4) In the case of real property or fixtures, post
14 notice of the seizure on the property, and file and record
15 notice of the seizure in the probate office.

16 "~~(e)~~(s) When property is forfeited under this
17 chapter, ~~the state, county, or municipal law enforcement~~
18 seizing agency may do any of the following:

19 "(1) Retain ~~it~~ the property for official use; except
20 for lawful currency ~~(money)~~ of the United States of America
21 which shall be disposed of in the same manner provided for the
22 disposal of proceeds from a sale in subdivision ~~(e)~~(2) ~~of this~~
23 ~~section,~~.

24 "(2) Sell that which is not required to be destroyed
25 by law and which is not harmful to the public. The proceeds
26 from the sale authorized by this ~~subsection~~ subdivision shall
27 be used, first, for payment of all proper expenses of the

1 proceedings for forfeiture and sale, including expenses of
2 seizure, maintenance of or custody, advertising, and court
3 costs; and the remaining proceeds from ~~such the~~ sale shall be
4 awarded and distributed by the court to the ~~municipal law~~
5 ~~enforcement~~ seizing agency or prosecuting authority
6 ~~department, and/or county law enforcement agency or~~
7 ~~department, and/or state law enforcement agency or department,~~
8 following a determination of the court of ~~whose~~ which law
9 enforcement agencies ~~or departments~~ are determined by the
10 court to have been a participant in the investigation
11 resulting in the seizure, ~~and such~~ and litigation. The award
12 and distribution shall be made on the basis of the percentage,
13 as determined by the court, of which ~~the~~ respective law
14 enforcement agency or ~~department~~ prosecuting authority
15 contributed to the police work or litigation resulting in the
16 seizure and forfeiture. Provided, however, any proceeds from
17 sales authorized by this section awarded by the court to a
18 county or municipal law enforcement agency ~~or department~~ shall
19 be deposited into the respective county or municipal general
20 fund and made available to the affected law enforcement agency
21 or department upon requisition of the chief law enforcement
22 official of ~~such the~~ agency or department.

23 "(3) Require the ~~state, county, or municipal law~~
24 ~~enforcement~~ seizing agency to take custody of the property and
25 remove it for disposition in accordance with law.

26 "~~(f)~~ (t) Controlled substances listed in Schedule I
27 that are possessed, transferred, sold, or offered for sale in

1 violation of any law of this state are contraband and shall be
2 seized and summarily forfeited to the state. Controlled
3 substances listed in Schedule I which are seized or come into
4 the possession of the state, the owners of which are unknown,
5 are contraband and shall be summarily forfeited to the state.

6 "~~(g)~~ (u) Species of plants from which controlled
7 substances in Schedules I and II may be derived, which have
8 been planted or cultivated in violation of any law of this
9 state or of which the owners or cultivators are unknown or
10 which are wild growths, are contraband and may be seized and
11 summarily forfeited to the state.

12 "(v) As used in this subsection, the term "false or
13 secret compartment" means any enclosure that is integrated
14 into or attached to a vehicle, the purpose of which enclosure
15 is to conceal, hide, or prevent discovery of contraband by a
16 law enforcement officer. The term includes, but is not limited
17 to, false, altered, or modified fuel tanks; original factory
18 equipment on a vehicle that has been modified; and any
19 compartment, space, or box that is added or attached to
20 existing compartments, spaces, or boxes of the vehicle. Upon
21 the seizure of a vehicle, the court may infer that the
22 respondent intended to use a false or secret compartment to
23 conceal a controlled substance or other contraband if the
24 vehicle has a false or secret compartment that concealed a
25 controlled substance or other contraband, or evidence is shown
26 of the previous concealment of a controlled substance or other
27 contraband within the false or secret compartment.

1 "~~(h)~~(w) An innocent owner's ~~or bona fide~~
2 ~~lienholder's~~ interest in personal property, real property, or
3 fixtures shall not be forfeited under this section for any act
4 or omission unless the state proves by a preponderance of the
5 evidence that ~~that~~ the act or omission was committed or
6 omitted with the knowledge or consent of that owner ~~or~~
7 ~~lienholder~~. An owner's ~~or bona fide lienholder's~~ interest in
8 any type of property other than real property and fixtures
9 shall be forfeited under this section unless the owner ~~or bona~~
10 ~~fide lienholder~~ proves ~~both~~ that the act or omission
11 subjecting the property to forfeiture was committed or omitted
12 without the owner's ~~or lienholder's~~ knowledge or consent ~~and~~
13 ~~that the owner or lienholder could not have obtained by the~~
14 ~~exercise of reasonable diligence knowledge of the intended~~
15 ~~illegal use of the property so as to have prevented such use.~~
16 Except as specifically provided to the contrary in this
17 section, the procedures for the condemnation and forfeiture of
18 property seized under this section shall be governed by and
19 shall conform to the procedures set out in Sections 28-4-286
20 through 28-4-290, except that: (1) ~~the~~ The burden of proof and
21 standard of proof shall be as set out in this subsection
22 instead of as set out in the last three lines of Section
23 28-4-290; and (2) the official filing the complaint shall also
24 serve a copy of it on any person, corporation, or other entity
25 having a perfected security interest in the property that is
26 known to that official or that can be discovered through the
27 exercise of reasonable diligence.

1 "(x) (1) A prosecuting authority or seizing agency
2 may not transfer or offer for adoption property seized under
3 this section to a federal agency for the purpose of forfeiture
4 under the federal Controlled Substances Act, Public Law 91-513
5 (Oct. 27, 1970), or other federal law, unless the property
6 includes United States currency that exceeds ten thousand
7 dollars (\$10,000).

8 "(2) Subdivision (1) only applies to a seizure by a
9 state or local law enforcement agency pursuant to their own
10 authority under this section and without involvement of the
11 federal government. Nothing in subdivision (1) shall be
12 construed to limit state and local agencies from participating
13 in joint task forces with the federal government.

14 "(3) State and local law enforcement agencies may
15 not accept payment of any kind or distribution of forfeiture
16 proceeds from the federal government if the state or local law
17 enforcement agency violates subdivision (1). Any proceeds
18 received as a result of any violation of subdivision (1) shall
19 be directed to the State General Fund."

20 Section 2. This act shall become effective January
21 1, 2022, following its passage and approval by the Governor,
22 or its otherwise becoming law.