

1 SB210
2 213217-4
3 By Senators Orr, Albritton, Elliott, Smitherman, Singleton and
4 Whatley
5 RFD: Judiciary
6 First Read: 09-FEB-21

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to asset forfeitures; to amend Section
12 20-2-93, Code of Alabama 1975, to further provide for the
13 seizure and forfeiture of certain property used in the
14 commission of certain drug-related offenses.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§20-2-93.

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

21 "(1) CHARGEABLE CRIMINAL OFFENSE. An offense in
22 which property is used or otherwise implicated as property
23 subject to forfeiture under subsection (b). The term includes
24 any act that could be charged as a felony or misdemeanor,
25 regardless of whether a formal criminal prosecution or
26 delinquency proceeding has begun at the time the forfeiture
27 was initiated.

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

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

7 "(4) INNOCENT OWNER. A bona fide purchaser,
8 lienholder, or other owner, other than a defendant, of
9 property that is subject to forfeiture, including any of the
10 following:

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

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

19 "(5) INVENTORY. A written, itemized list of all
20 property seized under this section that names all persons to
21 whom the inventory is given at the time of the seizure, as
22 provided in Rule 3.11 of the Alabama Rules of Criminal
23 Procedure.

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

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

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

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

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

12 "~~(a)~~ (b) The following are subject to seizure and
13 forfeiture:

14 "(1) All controlled substances ~~which~~ that have been
15 grown, manufactured, distributed, dispensed, or acquired in
16 violation of any law of this state~~;~~.

17 "(2) All raw materials, products, and equipment of
18 any kind ~~which~~ that are used or intended for use in
19 manufacturing, cultivating, growing, compounding, processing,
20 delivering, importing, or exporting any controlled substance
21 in violation of any law of this state~~;~~.

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

25 "~~(4)~~ (3) All ~~moneys~~ monies, negotiable instruments,
26 securities, or other things of value furnished or intended to
27 be furnished by any person in exchange for a controlled

1 substance in violation of any law of this state; all proceeds
2 traceable to such an exchange; and all ~~moneys~~ monies,
3 negotiable instruments, and securities used or intended to be
4 used to facilitate any violation of any law of this state
5 concerning controlled substances~~7~~.

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

9 "(5) All conveyances, including aircraft, vehicles,
10 or vessels, or agricultural machinery, which are used, or are
11 intended for use, to transport, or in any manner to facilitate
12 the transportation, sale, receipt, possession, or concealment
13 of any property described in subdivision (1), ~~or (2), or (3)~~
14 of this subsection~~7~~.

15 "(6) All books, records, and research products and
16 materials, including formulas, microfilm, tapes, and data,
17 which are used or intended for use in violation of any law of
18 this state concerning controlled substances~~7~~.

19 "(7) All imitation controlled substances, as defined
20 under the laws of this state~~7~~.

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

25 "(9) All property of any type whatsoever
26 constituting, or derived from, any proceeds obtained directly,

1 or indirectly, from any violation of any law of this state
2 concerning controlled substances~~7~~.

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

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

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

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

13 "(3) The district attorney for a judicial circuit
14 may increase the minimum dollar amounts provided in
15 subdivision (1) for seizures and forfeitures that occur within
16 the judicial circuit.

17 ~~"(b) (d)~~ Except as provided in subsection (c),
18 property ~~Property~~ subject to forfeiture under this ~~chapter~~
19 section may be seized by ~~state, county, or municipal law~~
20 ~~enforcement agencies~~ a seizing agency upon process issued by
21 any court having jurisdiction over the property. Seizure
22 without process may be made ~~if~~ under any of the following
23 conditions:

24 "(1) The seizure is incident to an arrest or a
25 search under a search warrant or an inspection under an
26 administrative inspection warrant~~7~~.

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

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

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

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

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

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

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

7 "b. At the request of the seizing agency, the court
8 may order the filing sealed to protect the confidentiality of
9 any ongoing investigation or witnesses.

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

20 "(4) On motion by the prosecuting authority,
21 property otherwise due to be tendered to the owner pursuant to
22 subdivision (3) or subsection (f) may be retained by the
23 prosecuting authority for the duration of the criminal
24 prosecution only if the prosecuting authority proves, by a
25 preponderance of the evidence, that the seized property is
26 necessary for evidentiary purposes in the criminal
27 prosecution, and that the use of affidavits, photographic

1 evidence, or other admissible evidence is an insufficient
2 means to establish an element of the underlying criminal
3 offense.

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

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

17 "(h) The seizing agency shall provide an inventory
18 to any person in possession of the seized property at the time
19 of the seizure. The inventory shall be prima facie evidence of
20 notice of the seizure to any person served with the inventory
21 at the time of the seizure.

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

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

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

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

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

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

22 "(n) Convictions or adjudications of chargeable
23 criminal offenses may be considered by the court as prima
24 facie evidence that the property seized is contraband,
25 proceeds, or instrumentalities, and is due to be forfeited.
26 The conviction or adjudication may be proven by the court

1 taking judicial notice or by providing a certified copy of the
2 conviction or adjudication to the court.

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

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

15 "(2) A respondent shall be deemed to have abandoned
16 the property and any claims to the property, and a default
17 judgement may be entered by the court, upon the occurrence of
18 any of the following:

19 "a. The death of the respondent.

20 "b. The deportation of the respondent.

21 "c. The absconding of the respondent. Violation of
22 bond in the underlying criminal case and the issuance of a
23 failure to appear warrant is prima facie evidence of the
24 respondent's abandonment of the property.

25 "(q) As part of an order of final judgment, pursuant
26 to a trial or a default judgment hearing, the court shall not
27 condemn and forfeit an instrumentality that is

1 disproportionate to the underlying chargeable criminal offense
2 or offenses that gave rise to the forfeiture action. Among
3 other factors, the court may consider the following in
4 determining whether a seizure is proportional to the
5 underlying chargeable criminal offense or offenses:

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

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

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

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

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

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

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

20 "(d)(r) Property taken or detained under this
21 section shall not be subject to replevin, but is deemed to be
22 in the custody of the ~~state, county, or municipal law~~
23 ~~enforcement~~ seizing agency, subject only to the orders and
24 judgment of the court having jurisdiction over the forfeiture
25 proceedings. When property is seized under this chapter, the
26 ~~state, county, or municipal law enforcement~~ seizing agency may
27 do any of the following:

1 "(1) Place the property under seal~~;~~.

2 "(2) Remove the property to a place designated by
3 ~~it;~~ the seizing agency.

4 "(3) Require the ~~state, county, or municipal law~~
5 ~~enforcement~~ seizing agency to take custody of the property and
6 remove ~~it~~ the property to an appropriate location for
7 disposition in accordance with law~~;~~and.

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

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

14 "(1) Retain ~~it~~ the property for official use; except
15 for lawful currency ~~(money)~~ of the United States of America
16 which shall be disposed of in the same manner provided for the
17 disposal of proceeds from a sale in subdivision ~~(e)~~(2) ~~of this~~
18 ~~section;~~.

19 "(2) Sell that which is not required to be destroyed
20 by law and which is not harmful to the public. The proceeds
21 from the sale authorized by this ~~subsection~~ subdivision shall
22 be used, first, for payment of all proper expenses of the
23 proceedings for forfeiture and sale, including expenses of
24 seizure, maintenance of or custody, advertising, and court
25 costs; and the remaining proceeds from ~~such~~ the sale shall be
26 awarded and distributed by the court to the ~~municipal law~~
27 ~~enforcement~~ seizing agency or prosecuting authority

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

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

21 "~~(f)~~ (t) Controlled substances listed in Schedule I
22 that are possessed, transferred, sold, or offered for sale in
23 violation of any law of this state are contraband and shall be
24 seized and summarily forfeited to the state. Controlled
25 substances listed in Schedule I which are seized or come into
26 the possession of the state, the owners of which are unknown,
27 are contraband and shall be summarily forfeited to the state.

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

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

23 "~~(h)~~(w) An innocent owner's ~~or bona fide~~
24 ~~lienholder's~~ interest in personal property, real property, or
25 fixtures shall not be forfeited under this section for any act
26 or omission unless the state proves by a preponderance of the
27 evidence that ~~that~~ the act or omission was committed or

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

23 "(x) (1) A prosecuting authority or seizing agency
24 may not transfer or offer for adoption property seized under
25 this section to a federal agency for the purpose of forfeiture
26 under the federal Controlled Substances Act, Public Law 91-513
27 (Oct. 27, 1970), or other federal law, unless the property

1 includes United States currency that exceeds ten thousand
2 dollars (\$10,000).

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

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

15 Section 2. This act shall become effective January
16 1, 2022, following its passage and approval by the Governor,
17 or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 09-FEB-21

Read for the second time and placed on the calen-
dar..... 10-FEB-21

Read for the third time and passed as amended 20-APR-21

Yeas 28
Nays 0

Patrick Harris,
Secretary.