

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

1 SB210

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4 ENROLLED, An Act,

5 Relating to asset forfeitures; to amend Section  
6 20-2-93, Code of Alabama 1975, to further provide for the  
7 seizure and forfeiture of certain property used in the  
8 commission of certain drug-related offenses.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 "§20-2-93.

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

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

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

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

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

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

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

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

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

23           "(7) PROSECUTING AUTHORITY. The Attorney General, a  
24 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;~~

1           "~~(4)~~(3) All ~~moneys~~ monies, negotiable instruments,  
2 securities, or other things of value furnished or intended to  
3 be furnished by any person in exchange for a controlled  
4 substance in violation of any law of this state; all proceeds  
5 traceable to such an exchange; and all ~~moneys~~ monies,  
6 negotiable instruments, and securities used or intended to be  
7 used to facilitate any violation of any law of this state  
8 concerning controlled substances~~7~~.

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

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

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

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

24           "(8) All real property or fixtures used or intended  
25 to be used for the manufacture, cultivation, growth, receipt,

1 storage, handling, distribution, or sale of any controlled  
 2 substance in violation of any law of this state~~7~~.

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

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

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

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

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

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

21 "~~(b)~~ (d) Except as provided in subsection (c),  
 22 property ~~Property~~ subject to forfeiture under this ~~chapter~~  
 23 section may be seized by ~~state, county, or municipal law~~  
 24 ~~enforcement agencies~~ a seizing agency upon process issued by  
 25 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

1 subsection (d), obtain a seizure order from any circuit or  
2 district judge in the jurisdiction of the seizure.

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

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

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

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



1 in which case the property shall be destroyed at the  
2 conclusion of the criminal case.

3 "(4) On motion by the prosecuting authority,  
4 property otherwise due to be tendered to the owner pursuant to  
5 subdivision (3) or subsection (f) may be retained by the  
6 prosecuting authority for the duration of the criminal  
7 prosecution only if the prosecuting authority proves, by a  
8 preponderance of the evidence, that the seized property is  
9 necessary for evidentiary purposes in the criminal  
10 prosecution, and that the use of affidavits, photographic  
11 evidence, or other admissible evidence is an insufficient  
12 means to establish an element of the underlying criminal  
13 offense.

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

22 "(g) Upon compliance with subsection (f), the  
23 prosecuting authority may file a forfeiture action in the  
24 circuit court under this section within 42 days, or a greater

1 time upon a showing of good cause to the court, from the date  
2 of the seizure of the property.

3 "(h) The seizing agency shall provide an inventory  
4 to any person in possession of the seized property at the time  
5 of the seizure. The inventory shall be prima facie evidence of  
6 notice of the seizure to any person served with the inventory  
7 at the time of the seizure.

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

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

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

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

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

24 "(m) The state may stipulate that the interest of an  
25 innocent owner is exempt from forfeiture upon presentation of

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

10 "(n) Convictions or adjudications of chargeable  
11 criminal offenses may be considered by the court as prima  
12 facie evidence that the property seized is contraband,  
13 proceeds, or instrumentalities, and is due to be forfeited.  
14 The conviction or adjudication may be proven by the court  
15 taking judicial notice or by providing a certified copy of the  
16 conviction or adjudication to the court.

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

23 "(p) (1) The state may file for a default judgment  
24 against any party at any time pursuant to the Alabama Rules of  
25 Civil Procedure unless the case is stayed under subsection

1 (j). The state may satisfy its burden for a default judgment  
2 with testimony taken under oath, or by presenting a sworn to  
3 and notarized affidavit.

4 "(2) A respondent shall be deemed to have abandoned  
5 the property and any claims to the property, and a default  
6 judgement may be entered by the court, upon the occurrence of  
7 any of the following:

8 "a. The death of the respondent.

9 "b. The deportation of the respondent.

10 "c. The absconding of the respondent. Violation of  
11 bond in the underlying criminal case and the issuance of a  
12 failure to appear warrant is prima facie evidence of the  
13 respondent's abandonment of the property.

14 "(q) As part of an order of final judgment, pursuant  
15 to a trial or a default judgment hearing, the court shall not  
16 condemn and forfeit an instrumentality that is  
17 disproportionate to the underlying chargeable criminal offense  
18 or offenses that gave rise to the forfeiture action. Among  
19 other factors, the court may consider the following in  
20 determining whether a seizure is proportional to the  
21 underlying chargeable criminal offense or offenses:

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

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

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

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

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

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

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

11           "~~(d)~~(r) Property taken or detained under this  
12 section shall not be subject to replevin,l but is deemed to be  
13 in the custody of the ~~state, county, or municipal law~~  
14 ~~enforcement~~ seizing agency,l subject only to the orders and  
15 judgment of the court having jurisdiction over the forfeiture  
16 proceedings. When property is seized under this chapter, the  
17 ~~state, county, or municipal law enforcement~~ seizing agency may  
18 do any of the following:

19           "(1) Place the property under seal~~7~~.

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

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

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

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

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

12           "(2) Sell that which is not required to be destroyed  
13 by law and which is not harmful to the public. The proceeds  
14 from the sale authorized by this ~~subsection~~ subdivision shall  
15 be used, first, for payment of all proper expenses of the  
16 proceedings for forfeiture and sale, including expenses of  
17 seizure, maintenance of or custody, advertising, and court  
18 costs; and the remaining proceeds from ~~such~~ the sale shall be  
19 awarded and distributed by the court to the ~~municipal law~~  
20 ~~enforcement~~ seizing agency or prosecuting authority  
21 ~~department, and/or county law enforcement agency or~~  
22 ~~department, and/or state law enforcement agency or department,~~  
23 following a determination of the court of ~~whose~~ which law  
24 enforcement agencies ~~or departments~~ are determined by the  
25 court to have been a participant in the investigation

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

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

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

23 "~~(g)~~ (u) Species of plants from which controlled  
24 substances in Schedules I and II may be derived, l which have  
25 been planted or cultivated in violation of any law of this

1 state or of which the owners or cultivators are unknown or  
2 which are wild growths, are contraband and may be seized and  
3 summarily forfeited to the state.

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

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



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

1 under the federal Controlled Substances Act, Public Law 91-513  
2 (Oct. 27, 1970), or other federal law, unless the property  
3 includes United States currency that exceeds ten thousand  
4 dollars (\$10,000).

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

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

17 Section 2. This act shall become effective January  
18 1, 2022, following its passage and approval by the Governor,  
19 or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB210

Senate 20-APR-21

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

Patrick Harris,  
Secretary.

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House of Representatives  
Amended and passed 17-MAY-21

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Senate concurred in House amendment 17-MAY-21

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By: Senator Orr