

1 SB210  
2 208286-1  
3 By Senators Orr, Albritton, Elliott, Smitherman, Singleton and  
4 Whatley  
5 RFD: Judiciary  
6 First Read: 09-FEB-21

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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 seized  
13 property.

14 Under existing law, certain property is  
15 subject to seizure and then civil forfeiture when  
16 used in the commission of certain unlawful acts or  
17 is the proceeds of those acts.

18 Civil forfeiture of property is a civil  
19 process that is independent of the criminal  
20 prosecution of any person. Property subject to  
21 civil forfeiture is forfeited to the state and  
22 sold, destroyed, or 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 The 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 of property  
20 rights.

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.

26           (4) CONTRABAND. Goods that are unlawful to possess,  
27 including scheduled drugs without a valid prescription.

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

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

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

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

21           (9) INTEREST HOLDER. A person who is a secured  
22 creditor, mortgagee, lienholder, or other person who has a  
23 valid claim, security interest, mortgage, lien, leasehold, or  
24 other interest in the property subject to forfeiture. The term  
25 does not include the defendant or an innocent owner.

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

4           (11) PROCEEDS. Money, securities, negotiable  
5 instruments, or other means of exchange obtained by the sale  
6 of property or contraband.

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

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

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

19           Section 5. Jurisdiction.

20           The court with jurisdiction over the related  
21 criminal matter shall have jurisdiction over the forfeiture  
22 proceeding.

23           Section 6. Seizure of Personal Property With  
24 Process.

25           At the request of the state at any time, a court may  
26 issue an ex parte preliminary order to attach, seize, or  
27 secure personal property subject to forfeiture and to provide

1 for its custody, pending the determination of the prosecuting  
2 authority's forfeiture request. Application, issuance,  
3 execution, and return are subject to state law and court  
4 rules.

5 Section 7. Seizure of Personal Property Without  
6 Process.

7 (a) Personal property subject to forfeiture may be  
8 seized, as part of a lawful search, without a court order,  
9 under any of the following conditions:

10 (1) The seizure of personal property is incident to  
11 a lawful arrest.

12 (2) The personal property subject to forfeiture has  
13 been the subject of a prior and valid judgment in favor of the  
14 state.

15 (3) The state has probable cause to believe that the  
16 delay occasioned by the necessity to obtain process would  
17 result in the removal or destruction of the personal property  
18 subject to forfeiture.

19 (b) Mere presence or possession of United States  
20 currency, without other indicia of a crime that subjects the  
21 property to forfeiture, is insufficient probable cause under  
22 state law for seizure of the currency.

23 Section 8. Seizure of Real Property with Process.

24 (a) Real property subject to forfeiture may not be  
25 seized or restrained without a court order. A court may issue  
26 an order to seize or secure real property only after proper  
27 notice to property owners and secured interest holders, and an

1 opportunity for a contested hearing to determine the  
2 sufficiency of probable cause for the seizure.

3 (b) Nothing in this section prohibits the  
4 prosecuting authority from seeking a lis pendens or  
5 restraining order to hinder the sale or destruction of the  
6 real property.

7 (c) Application, issuance, execution, and return of  
8 any order are subject to the rules of the court.

9 Section 9. Exemptions from Seizure.

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

11 (1) A homestead real property.

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

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

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

22 Section 10. Contraband.

23 No property right exists in contraband. Contraband  
24 is subject to seizure and shall be disposed of according to  
25 state law.

26 Section 11. Waiver Prohibition.



1           A law enforcement officer, other than the  
2 prosecuting authority, may not request, require, or induce a  
3 person to waive, for purpose of forfeiture, the person's  
4 interest in property. A waiver pursuant to a law enforcement  
5 officer's request, requirement, or inducement is void and  
6 inadmissible in court.

7           Section 12. Receipt.

8           When property subject to forfeiture is seized, the  
9 law enforcement officer shall give an itemized receipt to the  
10 person possessing the property at the time of the seizure. In  
11 the absence of the person possessing the property, the law  
12 enforcement officer shall leave a receipt in the place where  
13 the property was found, if reasonably possible.

14          Section 13. Counsel.

15          (a) If a claimant engages in pro se representation  
16 before a judge, the court is not bound by the common law,  
17 court rules of evidence, statutory rules of evidence, or  
18 technical or formal rules of pleading or procedure in the  
19 proceeding related to the forfeiture of property.

20          (b) If a claimant-defendant in a criminal matter is  
21 represented by a public defender or other counsel appointed by  
22 the court, the public defender or other counsel may represent  
23 the defendant in the related forfeiture proceeding.

24          Section 14. Notice to Other Owners.

25          (a) The prosecuting authority shall perform a  
26 reasonable search of the public records to identify any

1 person, other than the defendant, known to have an interest in  
2 the property subject to forfeiture.

3 (b) The prosecuting authority shall provide notice  
4 to a registered owner, interest holder, or other person known  
5 to have an interest in a conveyance or other property subject  
6 to forfeiture who is not charged or indicted.

7 (c) Notice shall be given as provided by the rules  
8 of the court.

9 (d) The following language substantially and  
10 conspicuously shall appear in the notice: "WARNING: You may  
11 lose the right to be heard in court if you do not file  
12 promptly a statement of interest or ownership. You do not have  
13 to pay a filing fee to file your notice."

14 (e) If notice is not served on any persons appearing  
15 to have an interest in the property and no time extension is  
16 granted or the extension period has expired, the prosecuting  
17 authority or court shall order the return of the property to  
18 the person who makes a request. Contraband may not be  
19 returned.

20 Section 15. Prompt Post-seizure Hearing.

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

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

25 (c) At the court's discretion, the court may hold a  
26 prompt post-seizure hearing at either of the following:

27 (1) As a separate hearing.

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

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

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

10           (1) The seizure was invalid.

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

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

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

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

22           (f) The court may order the return of proceeds or  
23 property sufficient for the claimant-defendant to obtain  
24 counsel of choice but less than the total amount seized.

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

26           Section 16. Charging Document; Service of Process.

1           (a) In any case in which the state seeks forfeiture  
2 of property under this act, other than under Section 17, the  
3 prosecuting authority shall include the following information  
4 in a charging document or an amendment to a charging document:

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 or  
8 derived from the alleged crime.

9           (b) The prosecuting authority may allege the  
10 forfeiture of property as a sanction related to an underlying  
11 criminal charge, as part of sentencing consideration, or other  
12 means to effectuate the forfeiture of property.

13           (c) The prosecuting authority shall serve the  
14 document or the amendment as provided by the Alabama Rules of  
15 Criminal Procedure.

16           (d) Upon motion by the prosecuting authority, the  
17 court may allow the filing of an additional amendment for good  
18 cause shown.

19           (e) The court may grant an unlimited number of  
20 90-day extensions to the filing of criminal charges if, for  
21 each extension, the court determines probable cause is shown  
22 and additional time is warranted.

23           (f) The court shall order the return of the property  
24 to the owner if the prosecuting authority does not issue a  
25 charging document after seizure as required by this section,  
26 the period of an extension expires, or the court does not  
27 grant an extension.

1                   Section 17. Indictment.

2                   (a) When the state seeks forfeiture of property,  
3 other than under Section 16, the prosecuting authority shall  
4 present evidence to a grand jury supporting an indictment that  
5 includes all of the following:

6                   (1) A proposed criminal charge.

7                   (2) An allegation for which forfeiture of property  
8 may be ordered.

9                   (b) The property-related allegation may be presented  
10 as a sanction related to an underlying criminal charge, as  
11 part of a sentencing consideration, or by other means to  
12 effectuate the forfeiture of property.

13                   (c) The property-related allegation shall identify  
14 the specific property to be forfeited, if known.

15                   (d) Upon application of the prosecuting authority,  
16 the court may enter a restraining order or injunction or take  
17 other action to preserve the availability of property only  
18 under either of the following circumstances:

19                   (1) Upon the issuance of an indictment.

20                   (2) Prior to the issuance of an indictment, if the  
21 court determines there is a substantial probability that the  
22 state will prevail on the issue of criminal forfeiture and  
23 that failure to enter the order will result in property being  
24 destroyed, removed from the jurisdiction, or otherwise made  
25 unavailable for forfeiture.

26                   (e) Any order entered pursuant to subdivision (d) (2)  
27 shall be effective for not more than 90 days, unless extended

1 by the court for good cause shown or unless an indictment  
2 described in subdivision (d)(1) has been issued subsequently.

3 Section 18. Discovery.

4 Discovery concerning any forfeiture under this act  
5 is subject to the Alabama Rules of Criminal Procedure.

6 Section 19. Criminal Forfeiture, Conviction  
7 Required; Standard of Proof.

8 (a) There shall be no civil forfeiture under this  
9 act.

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

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

18 (1) The state secures a conviction of an offense  
19 that subjects property to forfeiture under Article 5  
20 (commencing with Section 13A-12-201) of Chapter 12, Title 13A,  
21 Code of Alabama 1975.

22 (2) The state establishes by clear and convincing  
23 evidence that the property is an instrumentality of or  
24 proceeds derived directly from the crime for which the state  
25 secured a conviction.

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

4           (1) A plea agreement.

5           (2) A grant of immunity or reduced punishment, with  
6 or without the filing of a criminal charge, in exchange for  
7 testifying or assisting a law enforcement investigation or  
8 prosecution.

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

13           (1) The defendant died.

14           (2) The defendant was deported by the federal  
15 government.

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

18           (4) The defendant abandoned the property subject to  
19 forfeiture, other than property by which an interest was  
20 impermissibly waived pursuant to Section 11, as determined by  
21 the process required by Section 15-5-64, Code of Alabama 1975.

22           (f) Notwithstanding any other provision in this  
23 section to the contrary, all property remains subject to all  
24 of the following:

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

1           (2) Distribution of forfeited property according to  
2 Section 31.

3           (3) Reporting requirements.

4           Section 20. Trial Proceedings.

5           (a) The trial judge shall make findings of fact for  
6 any proceeding associated with the forfeiture of property of  
7 less than ten thousand dollars (\$10,000) in value.

8           (b) A claimant-defendant has a right to a jury trial  
9 for any proceeding associated with the forfeiture of property  
10 only when the property is ten thousand dollars (\$10,000) or  
11 more in value.

12           Section 21. Proportionality Hearing.

13           (a) The claimant-defendant may petition the court to  
14 determine, before or during trial, whether the forfeiture is  
15 unconstitutionally excessive under the Constitution of Alabama  
16 of 1901 or the United States Constitution.

17           (b) The claimant-defendant has the burden of  
18 establishing that the forfeiture is disproportional to the  
19 seriousness of the offense by a preponderance of the evidence  
20 at a hearing conducted by the court without a jury.

21           (c) In determining whether the forfeiture of  
22 property is unconstitutionally excessive, the court shall  
23 consider all relevant factors, including all of the following:

24           (1) The seriousness of the offense and its impact on  
25 the community, including the duration of the activity and the  
26 harm caused by the claimant-defendant.



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

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

5           (4) The sentence imposed for committing the offense.

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

7           (6) The hardship to the claimant-defendant if the  
8 forfeiture is realized and whether the forfeiture would  
9 deprive the claimant-defendant of his or her livelihood.

10          (7) The hardship from the loss of a primary  
11 residence, motor vehicle, or other property to the  
12 claimant-defendant's family members or others if the property  
13 is forfeited.

14          (d) In determining the value of the property subject  
15 to forfeiture, the court may consider all relevant factors  
16 related to the fair market value of the property.

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

20           Section 22. Secured Interest.

21          (a) Property encumbered by a security interest may  
22 not be forfeited.

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

1 (2) Contraband may not be returned.

2 (c) If the property is not summarily returned, the  
3 interest holder may petition the court for a hearing at any  
4 time before the court enters judgment in the criminal  
5 prosecution or waives the conviction requirement pursuant to  
6 subsection (e) of Section 19.

7 (d) The court shall hear the petition within 30 days  
8 after its filing or at the court's discretion. The hearing  
9 shall be held before the court alone, without a jury. The  
10 court may consolidate the hearing on the petition with any  
11 other hearing before the court in the case.

12 (e) The interest holder has the burden of  
13 establishing by clear and convincing evidence the validity of  
14 the security interest, mortgage, lien, leasehold, lease,  
15 rental agreement or other agreement.

16 (f) If the interest holder establishes the validity  
17 of the alleged interest, the prosecuting authority may proceed  
18 with the forfeiture only after establishing by clear and  
19 convincing evidence either of the following:

20 (1) The interest is invalid.

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

23 (g) If the state fails to meet its burden in  
24 subsection (f), the court shall order the state to relinquish  
25 claims to the property, up to the value of the interest, and  
26 return the interest to the interest holder.

27 Section 23. Innocent owner.

1 (a) Property of an innocent owner may not be  
2 forfeited.

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

5 (c) If the property is not summarily returned as  
6 required under subsection (b), an innocent owner-claimant may  
7 petition the court at any time before the court enters  
8 judgment in the criminal prosecution or grants the motion in  
9 subsection (e) of Section 9.

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

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

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

16 (3) Any additional facts supporting the petitioner's  
17 claim.

18 (4) The relief sought by the petitioner.

19 (e) The filing fee for the statement under this  
20 section is waived.

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

25 (g) The petitioner bears the burden of proving by a  
26 preponderance of the evidence that the petitioner has a legal

1 right, title, or interest in the property seized under this  
2 act.

3 (h) If the petitioner has met the burden under  
4 subsection (g) and the state seeks to proceed with the  
5 forfeiture of the property, the state shall prove by clear and  
6 convincing evidence that any of the following apply to the  
7 petitioner:

8 (1) The petitioner's interest in the property is  
9 invalid.

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

13 (3) The petitioner was willfully blind to the  
14 commission of the crime. As used in this subdivision, the term  
15 willfully blind means a deliberate failure to make a  
16 reasonable inquiry of wrongdoing despite suspicion or an  
17 awareness of the high probability of its existence.

18 (4) The petitioner was not a bona fide purchaser  
19 without notice of any defect in title and for valuable  
20 consideration.

21 (i) If the state fails to meet its burden in  
22 subsection (h), the court shall order the state to relinquish  
23 all claims of title to the property and return the property to  
24 the petitioner.

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

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

4 (l) The defendant may invoke the right against  
5 self-incrimination or the marital privilege during the  
6 forfeiture stage of the prosecution. The trier of fact at the  
7 hearing may draw an adverse inference from the invocation of  
8 the right or privilege.

9 Section 24. Judgment.

10 (a) If the prosecuting authority fails to meet its  
11 burden as to any claim under this act, the court shall enter a  
12 judgment dismissing the forfeiture proceeding and delivering  
13 the property to the prevailing owner within a reasonable  
14 period, unless the owner's possession of the property is  
15 unlawful.

16 (b) If the prosecuting authority meets its burden as  
17 to all claimants, the court shall enter a judgment forfeiting  
18 the property.

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

22 Section 25. Substitution of Assets.

23 Upon the state's motion following a conviction under  
24 subdivision (c) (1) of Section 19, the court may order the  
25 forfeiture of substitute property owned by the  
26 claimant-defendant up to the value of unreachable property  
27 that is beyond the court's jurisdiction or cannot be located

1 through due diligence only if the state proves by a  
2 preponderance of the evidence that the claimant-defendant  
3 intentionally did any of the following:

4 (1) Dissipated the property.

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

7 (3) Substantially diminished the value of the  
8 property.

9 (4) Commingled the property with other property that  
10 cannot be divided without difficulty.

11 Section 26. No Additional Remedies.

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

15 Section 27. No Joint and Several Liability.

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

21 Section 28. Title to Property.

22 (a) Title to property subject to forfeiture vests  
23 with the state when a court issues a forfeiture judgment and  
24 relates back to the time when the state seized or restrained  
25 the property.

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

1 (c) Notwithstanding subsections (a) and (b), title  
2 to the property is subject to claims by innocent owners, bona  
3 fide creditors, lienholders, and other third parties as  
4 provided in this act.

5 Section 29. Appeal.

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

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

11 Section 30. Attorney fees.

12 In any proceeding in which a property owner making a  
13 claim prevails by recovering 50 percent or more of the value  
14 of the property or currency claimed, the seizing agency shall  
15 be liable for all the following:

16 (1) Reasonable attorney fees and other litigation  
17 costs incurred by the claimant.

18 (2) Post-judgment interest.

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

22 Section 31. Disposition of Property and Proceeds.

23 (a) At any time when contraband is no longer needed  
24 as evidence, the court may order that it be destroyed pursuant  
25 to state law.

26 (b) At any time when abandoned property or property  
27 seized from a defendant who flees the jurisdiction is no

1 longer needed as evidence, the court may order that it be  
2 sold.

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

5 (d) The court may order forfeited currency and sale  
6 proceeds to be disbursed for the following purposes:

7 (1) Payment of restitution to the victim related to  
8 the underlying criminal offense.

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

12 (3) Payments of reasonable costs for the towing,  
13 storage, maintenance, repairs, advertising and sale of the  
14 property, and other operating costs related to maintenance and  
15 disposition of forfeited property.

16 (4) Reimbursement of the seizing law enforcement  
17 agency for non-personnel operating costs, including controlled  
18 drug-buy money, related to the investigation of the underlying  
19 criminal offense.

20 (5) Reimbursement of the prosecuting authority for  
21 non-personnel operating costs for the forfeiture litigation  
22 including court and witness costs.

23 (6) Remission of all remaining funds into the State  
24 General Fund.

25 (e) The court may also order non-currency property  
26 to be retained by the seizing law enforcement agency or  
27 department for official use.



1 (f) (1) Any proceeds from sales authorized by this  
2 section awarded by the court to a law enforcement agency in  
3 subdivision (d) (5) shall be deposited into the law enforcement  
4 agency's respective county or municipal general fund and made  
5 available to the law enforcement agency upon requisition of  
6 the chief law enforcement official of the agency.

7 (2) Any proceeds authorized by this act and ordered  
8 by the court to be distributed to the prosecuting authority in  
9 subdivision (d) (5) shall be deposited into the prosecuting  
10 authority's fund to be expended for law enforcement purposes.

11 Section 32. Sale Restrictions.

12 A law enforcement agency may not sell forfeited,  
13 unclaimed, or abandoned non-currency property, directly or  
14 indirectly, to an employee of the agency, to a person related  
15 to an employee by blood or marriage, or to another law  
16 enforcement agency.

17 Section 33. Return of Property, Damages, and Costs.

18 (a) The law enforcement agency that holds property  
19 under this act shall return the property to the owner or other  
20 prevailing claimant within a reasonable period not to exceed  
21 five days after judgment in favor of that person.

22 (b) The law enforcement agency that holds the  
23 property is responsible for any damages, storage fees, and  
24 related costs applicable to property returned under subsection  
25 (a).

26 Section 34. Minimum for Federal Adoption of Seizures  
27 Performed Under State Law.

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

6 (1) Includes U.S. currency of less than five  
7 thousand dollars (\$5,000).

8 (2) Is seized under state law.

9 (b) Within the prosecuting authority's jurisdiction,  
10 a prosecuting authority may establish a minimum higher than  
11 the five thousand dollar (\$5,000) minimum established under  
12 subsection (a).

13 Section 35. No Change to Joint Task Forces.

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

17 (b) A prosecuting authority may establish guidelines  
18 for a law enforcement agency's participation in a joint task  
19 force with the federal government in the prosecuting  
20 authority's jurisdiction.

21 Section 36. Repeal.

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

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