

1 HB75
2 155990-1
3 By Representative Treadaway
4 RFD: Judiciary
5 First Read: 14-JAN-14
6 PFD: 12/18/2013

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8 SYNOPSIS: This bill would create the Alabama
9 Comprehensive Criminal Proceeds Forfeiture Act to
10 streamline the process for the forfeiture of
11 property acquired directly or indirectly through
12 the commission of certain criminal offenses and
13 proceeds and other instrumentalities derived in
14 connection with certain criminal offenses.

15 This bill would specify procedures for
16 seizure and forfeiture of property and proceeds
17 connected with criminal offenses and would specify
18 how a law enforcement agency may dispose of
19 forfeited property, including the sale of certain
20 property under certain circumstances.

21 This bill also would provide for owner's and
22 bona fide lienholder's interests in real property
23 or fixtures that have been seized under the act.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to forfeitures; to further provide for the
3 seizure and forfeiture of property acquired directly or
4 indirectly through the commission of certain criminal
5 offenses; to provide for the seizure and forfeiture of
6 proceeds and other instrumentalities derived in connection
7 with certain criminal offenses; to provide procedures for the
8 seizure and forfeiture of property and proceeds; to provide
9 for owner's and bona fide lienholder's interests in certain
10 property that has been seized.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known and may be cited
13 as the "Alabama Comprehensive Criminal Proceeds Forfeiture
14 Act."

15 Section 2. For the purposes of this act, the
16 following words shall have the following meanings:

17 (1) FINANCIAL INSTITUTION. A bank, credit union, or
18 savings and loan association.

19 (2) INNOCENT OWNER. Any bona fide purchaser of
20 property that is subject to forfeiture, including any person
21 who establishes a valid claim to or interest in the property
22 and any victim of an alleged offense.

23 (3) INSTITUTED PROMPTLY. The filing by the district
24 attorney or prosecutorial entity of a civil in rem proceeding
25 in a court of competent jurisdiction within 42 days of
26 seizure, unless good cause is shown for delay.

1 (4) INSTRUMENTALITY. Property otherwise lawful to
2 possess that is used in or intended to be used in an offense.
3 The term includes, but is not limited to, a firearm, a mobile
4 instrumentality, a computer, a computer network, a computer
5 system, computer software, a telecommunications device, money,
6 and any other means of exchange.

7 (5) LAW ENFORCEMENT AGENCY. Any municipal, county,
8 or state agency the personnel of which have the power of
9 arrest and to perform law enforcement functions, including
10 prosecutorial entities.

11 (6) OFFENSE. Any act or omission that could be
12 charged as a criminal offense under the Code of Alabama 1975,
13 whether or not a formal criminal prosecution or delinquent
14 proceeding began at the time the forfeiture is initiated.
15 Except as otherwise specified, an offense for which property
16 may be forfeited includes any felony and any misdemeanor. The
17 term also includes the commission of a delinquent act.

18 (7) PROCEEDS. Includes both of the following:

19 a. In cases involving unlawful goods, services, or
20 activities, proceeds includes any property derived directly or
21 indirectly from an offense. The term includes, but is not
22 limited to, money or any other means of exchange. The term is
23 not limited to the net gain or profit realized from the
24 offense.

25 b. In cases involving lawful goods or services that
26 are sold or provided in an unlawful manner, proceeds are the
27 amount of money or other means of exchange acquired through

1 the illegal transaction resulting in the forfeiture, less the
2 direct costs lawfully incurred in providing the goods or
3 services. The lawful costs deduction does not include any part
4 of the overhead expenses of, or income taxes paid by, the
5 entity providing the goods or services. The alleged offender
6 or delinquent has the burden to prove that any costs are
7 lawfully incurred.

8 (8) PROPERTY. Any real or personal property and any
9 benefit, privilege, claim, position, interest in an
10 enterprise, or right derived, directly or indirectly, from the
11 offense.

12 Section 3. (a) All of the following are subject to
13 forfeiture:

14 (1) Contraband involved in an offense.

15 (2) Any property directly or indirectly acquired
16 through the commission of any of the following offenses or as
17 an inducement to commit any of the following offenses:

18 a. A felony.

19 b. A misdemeanor, when forfeiture is specifically
20 authorized by statute or a municipal ordinance that creates
21 the offense or sets forth its penalty.

22 c. An attempt to commit, solicitation to commit, or
23 a conspiracy to commit an offense of the type described in
24 this subdivision.

25 (3) Proceeds derived from, or an instrumentality
26 that is used in or intended to be used in, the commission or
27 facilitation of any offense listed in subdivision (2).

1 (4) Any property traceable to the proceeds from an
2 offense listed in subdivision (2).

3 (5) Money, motor vehicles, vessels, aircraft,
4 firearms, or other weapons when used or intended to be used in
5 connection with an offense.

6 (6) All conveyances, including aircraft, motor
7 vehicles, vessels, or agricultural machinery, when used or
8 intended to be used in connection with an offense.

9 (7) Books, records, telecommunication equipment, or
10 computers when used or intended to be used in connection with
11 an offense.

12 (8) Real property when used or intended to be used
13 in connection with an offense.

14 (9) Everything of value furnished, or intended to be
15 furnished, in exchange for an act in violation of any criminal
16 statute, all proceeds traceable to the exchange, and all
17 negotiable instruments and securities used, or intended to be
18 used, to facilitate an offense.

19 (10) Any property that has been declared abandoned
20 by the circuit court where the property was abandoned. For
21 property to be declared abandoned pursuant to this section, a
22 representative of the law enforcement agency having possession
23 of abandoned property shall file with the district attorney a
24 sworn affidavit setting for the circumstances of the
25 abandonment, whereupon the district attorney may file an
26 action in the circuit court to declare the property abandoned.
27 If the location of the current owner, registrant, secured

1 party, and lienholder, if any, is unknown, service shall be
2 made at the last known address of the current owner,
3 registrant, secured party, and lienholder, if any, as well as
4 by publication on a governmental web site or a newspaper of
5 general circulation for a period of three weeks. The sworn
6 affidavit and a certificate of service shall accompany any
7 action filed by the district attorney prior to any order of
8 court.

9 (b) This act does not apply to or limit forfeiture
10 under Sections 20-2-93, 13A-11-84, 13A-12-30, or 13A-12-198,
11 Code of Alabama 1975.

12 Section 4. (a) In any in rem forfeiture action in
13 which the subject property is cash, monetary instruments in
14 bearer form, funds deposited in an account in a financial
15 institution, or other like fungible property:

16 (1) It shall not be necessary for the state to
17 identify the specific property, other than as U.S. currency,
18 cash, monetary instruments in bearer form, or as funds
19 deposited in an account in a financial institution, involved
20 in the offense that is the basis for the forfeiture action.
21 Actual serial numbers or another detailed description are not
22 required.

23 (2) It shall not be a defense that the property
24 involved in such an action has been removed and replaced by
25 identical property.

26 (b) Property subject to forfeiture under this act
27 may be seized by a law enforcement agency upon process issued

1 by any court having jurisdiction over the property. Subject to
2 all applicable constitutional limitations, seizures without
3 process may be made under any of the following circumstances:

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

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

11 (3) The law enforcement agency has probable cause to
12 believe that the property is directly or indirectly dangerous
13 to health or safety.

14 (4) The law enforcement agency has probable cause to
15 believe that the property was used or is intended to be used
16 in violation of the criminal laws of this state.

17 (5) The property has been abandoned pursuant to
18 subdivision (10) of subsection (a) of Section 3.

19 (c) In the event of seizure pursuant to subsection
20 (b), proceedings shall be instituted promptly, but the
21 defendant shall not be compelled to proceed until the
22 underlying criminal charges are resolved. The burden of proof
23 is reasonable satisfaction. The proceedings may only be filed
24 by a district attorney or state prosecutorial entity.

25 (d) Property taken or detained under this act shall
26 not be subject to replevin but is deemed to be in the custody
27 of the law enforcement agency subject only to the orders and

1 judgment of the court having jurisdiction over the forfeiture
2 proceedings.

3 (e) In the case of real property or fixtures, the
4 law enforcement agency shall post notice of the seizure on the
5 property, and file and record notice of the seizure with the
6 clerk of the probate court. When property is seized under this
7 act, the law enforcement agency shall do any of the following:

8 (1) Place the property under seal.

9 (2) Remove the property to a place designated by it.

10 (3) Take custody of the property and remove it to an
11 appropriate location for disposition in accordance with law.

12 Section 5. (a) When property is forfeited under this
13 act, unless otherwise ordered by the court, a law enforcement
14 agency may do any of the following:

15 (1) Retain it for official use, except for lawful
16 currency of the United States of America which shall be
17 disposed of in the same manner provided for the disposal of
18 proceeds from a sale in subsection (b).

19 (2) Other than firearms or contraband, sell that
20 which is not required to be destroyed by law and which is not
21 harmful to the public.

22 (3) Donate or transfer the property to another
23 state, county, or municipal agency within this state.

24 (4) Require the law enforcement agency to take
25 custody of the property and remove it for disposition in
26 accordance with law.

1 (b) Unless by other agreement of the primary law
2 enforcement agency and the prosecutorial entity, the proceeds
3 from the sale authorized by subdivision (a)(2) shall be used,
4 first, for payment of all proper expenses of the proceedings
5 for forfeiture and sale, including expenses of seizure,
6 maintenance of or custody, advertising, prosecution, and court
7 costs. The remaining proceeds from the sale shall be awarded
8 and distributed by the court pursuant to agreement of the
9 primary law enforcement agencies and prosecutorial entity or
10 on a pro rata share to the participating law enforcement
11 agencies and the prosecutorial entity that pursued the action.
12 Any proceeds from sales authorized by this section awarded by
13 the court to a county or municipal law enforcement agency
14 shall be deposited into the respective county or municipal
15 general fund and made available to the affected law
16 enforcement agency upon requisition of the chief law
17 enforcement official of the agency. Any monies or proceeds
18 authorized by this act and ordered by the court to be
19 distributed to the district attorney shall be deposited into
20 the district attorney's solicitor's fund to be expended for
21 lawful law enforcement purposes.

22 (c) A firearm, pistol, shotgun, or rifle seized
23 pursuant to a violation of a criminal law of this state,
24 abandoned, or otherwise seized by a law enforcement agency may
25 not be sold to any person, agency, or any other entity
26 pursuant to a forfeiture action under this act or by agreement
27 of any party to a criminal prosecution, civil forfeiture, or

1 other proceeding. A court may order such property to be
2 destroyed or used for law enforcement purposes by the law
3 enforcement agency seeking the forfeiture action.

4 Section 6. (a) An owner's or bona fide lienholder's
5 interest in real property or fixtures shall not be forfeited
6 under this act for any act or omission unless the state proves
7 that the act or omission was committed or omitted with the
8 knowledge or consent of that owner or lienholder. An owner's
9 or bona fide lienholder's interest in any type of property
10 other than real property and fixtures shall be forfeited under
11 this act unless the owner or bona fide lienholder proves both
12 that the act or omission subjecting the property to forfeiture
13 was committed or omitted without the owner's or lienholder's
14 knowledge or consent and that the owner or lienholder could
15 not have obtained by the exercise of reasonable diligence
16 knowledge of the intended illegal use of the property so as to
17 have prevented such use.

18 (b) Except as provided otherwise in this act, the
19 procedures for the condemnation and forfeiture of property
20 seized under this act shall supplement and be in addition to
21 the procedures set out in Sections 28-4-286 to 28-4-290,
22 inclusive, Code of Alabama 1975, except for the following:

23 (1) The requirements in subsection (a) of Section 3
24 regarding the identification of the specific property involved
25 in the offense shall govern, rather than the requirements in
26 Section 28-4-290, Code of Alabama 1975.

1 (2) The official filing the complaint shall also
2 serve a copy of it on any person, corporation, or other entity
3 having a perfected security interest in the property that is
4 known to that official or that can be discovered through the
5 exercise of reasonable diligence.

6 (c) The state may stipulate that the interest of an
7 owner's or bona fide lienholder's interest is exempt from
8 forfeiture upon presentation of proof of the claim. The state
9 shall file the stipulation with the court exercising
10 jurisdiction over the forfeiture action and the filing of
11 stipulation shall constitute an admission by the state that
12 the interest is exempt from forfeiture. If a stipulation is
13 submitted, no further claim, answer, or pleading shall be
14 required of the stipulated owner or interest holder, and a
15 judgment shall be entered exempting that interest from
16 forfeiture.

17 Section 7. (a) Any law enforcement agency, upon
18 written request of the district attorney, shall provide a
19 detailed accounting of the seizure, storage, cost, and any
20 disbursement of any property, monies, or proceeds pursuant to
21 this act. The district attorney, upon order of the court,
22 shall provide the accounting to the court for its approval or
23 further action.

24 (b) Any court costs, court process, filing fees, or
25 other cost associated with filing an action or lien, shall be
26 waived, remitted or otherwise shall be inapplicable to actions
27 in the district, circuit, or probate court filed by or on

1 behalf of the state pursuant to this act or pursuant to
2 Sections 12-17-224, 12-17-225, 13A-11-84, 13A-12-30,
3 13A-12-198, and 20-2-93, Code of Alabama 1975.

4 Section 8. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.