

1 SB329  
2 148984-1  
3 By Senator Fielding  
4 RFD: Judiciary  
5 First Read: 12-MAR-13

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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 owner is unknown, service shall be made

1 at the last known address of the owner as well as by  
2 publication on a governmental web site or a newspaper of  
3 general circulation for a period of three weeks. The sworn  
4 affidavit and a certificate of service shall accompany any  
5 action filed by the district attorney prior to any order of  
6 court.

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

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

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

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

24 (b) Property subject to forfeiture under this act  
25 may be seized by a law enforcement agency upon process issued  
26 by any court having jurisdiction over the property. Subject to

1 all applicable constitutional limitations, seizures without  
2 process may be made under any of the following circumstances:

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

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 act.

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

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

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

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

24 (d) Property taken or detained under this act shall  
25 not be subject to replevin but is deemed to be in the custody  
26 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.