

1 HB120
2 203772-1
3 By Representative Sorrell
4 RFD: State Government
5 First Read: 04-FEB-20

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8 SYNOPSIS: Under existing law, certain property is
9 subject to civil forfeiture when owned or used by a
10 person in the commission of certain unlawful acts.
11 Property subject to civil forfeiture is forfeited
12 to the state and sold, destroyed, or disposed of in
13 a proper manner.

14 Also under existing law, all property seized
15 by a state, county, or municipal law enforcement
16 agency for forfeiture in connection with a criminal
17 event is required to be reported to the uniform
18 crime reporting system operated by the Alabama
19 State Law Enforcement Agency.

20 This bill would establish for the Alabama
21 Forfeiture Accountability and Integrity Reform Act
22 and would authorize asset forfeiture in the state
23 only after proof of a conviction of certain
24 criminal offenses, with exceptions.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

2
3 Relating to asset forfeitures; to establish the
4 exclusive process for asset forfeitures in the state; and to
5 repeal Section 13A-8-117, Section 13A-11-37, Article 4 of
6 Chapter 5 of Title 15, and Section 20-2-93, Code of Alabama
7 1975.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Short title.

10 This act shall be known and may be cited as the
11 Alabama Forfeiture Accountability and Integrity Reform (FAIR)
12 Act.

13 Section 2. Statement of purpose.

14 The purpose of this act is to do all of the
15 following:

16 (1) Deter criminal activity by reducing its economic
17 incentives.

18 (2) Increase the pecuniary loss from criminal
19 activity.

20 (3) Protect against the wrongful forfeiture of
21 property.

22 (4) Ensure that criminal forfeiture is the only
23 process allowed in this state.

24 Section 3. Definitions.

25 As used in this act, the following terms shall have
26 the following meanings:

1 (1) ABANDONED PROPERTY. Personal property left by an
2 owner who intentionally relinquishes all rights to its
3 control. The term does not include real property or property
4 that is disclaimed through a roadside waiver of property
5 rights.

6 (2) ACTUAL KNOWLEDGE. Direct and clear awareness of
7 information, a fact, or a condition.

8 (3) CONSTRUCTIVE KNOWLEDGE. Knowledge that is
9 imputed to an individual where the individual would have had
10 actual knowledge but for deliberate steps taken to achieve a
11 state of willful, intentional ignorance of felonious activity.

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

14 (5) CONVEYANCE. A device used for transportation.
15 The term includes a motor vehicle, trailer, snowmobile,
16 airplane, and vessel, and any equipment attached to it. The
17 term does not include property that is stolen or taken in
18 violation of the law.

19 (6) INNOCENT OWNER. A bona fide purchaser, creditor,
20 or lienholder of property that is subject to forfeiture, who
21 proves by clear and convincing evidence that he or she is any
22 of the following:

23 a. A person who, at the time of the illegal conduct
24 giving rise to the forfeiture, has a valid claim, lien, or
25 other interest in the property subject to forfeiture.

1 b. A person who acquired an ownership interest in
2 the property subject to forfeiture after the commission of a
3 crime or delinquent act giving rise to the forfeiture.

4 c. A victim of an alleged criminal offense.

5 (7) INSTRUMENTALITY. Property otherwise lawful to
6 possess that is used in the furtherance or commission of an
7 offense of a law subject to forfeiture. The term includes
8 land, buildings, containers, conveyances, equipment,
9 materials, products, tools, computers, computer software,
10 telecommunications devices, firearms, or ammunition.

11 (8) LAW ENFORCEMENT AGENCY. Any non-federal police
12 force, or other local, county, or state agency that has the
13 authority under state law to engage in seizure and forfeiture.

14 (9) LAW SUBJECT TO FORFEITURE. Any act chargeable as
15 a felony offense under state law.

16 (10) PROCEEDS. Money, securities, negotiable
17 instruments, or other means of exchange obtained by the sale
18 of property.

19 Section 4. Criminal Forfeiture; Property Subject to
20 Forfeiture.

21 When a person is convicted of violating a criminal
22 law subject to forfeiture, the court, consistent with this
23 act, may order the person to forfeit all of the following:

24 (1) Proceeds the person derived from the commission
25 of the crime.

26 (2) Property directly traceable to proceeds derived
27 from the commission of the crime.

1 (3) Instrumentalities the person used in the
2 commission of the crime.

3 Section 5. Contraband.

4 No property right exists in contraband. Contraband
5 is subject to seizure and shall be disposed of according to
6 state law. Contraband is not subject to forfeiture under this
7 act.

8 Section 6. Conviction Required; Standard of Proof.

9 (a) Property may be forfeited if the state proves
10 all of the following by clear and convincing evidence:

11 (1) The offense constitutes a state law felony
12 subject to forfeiture.

13 (2) The offense is established by proof of a
14 criminal conviction.

15 (3) The property is forfeitable under Sections 4 and
16 5.

17 (b) Nothing in this section prevents property from
18 being forfeited by plea agreement approved by the presiding
19 criminal court.

20 (c) The court may waive the conviction requirement
21 if the prosecuting authority shows, upon its own motion, by
22 clear and convincing evidence that any of the following
23 occurred:

24 (1) The defendant died.

25 (2) The defendant was deported by the federal
26 government.

1 (3) The defendant is granted immunity or reduced
2 punishment for the commission of a crime subject to forfeiture
3 in exchange for testifying or assisting a law enforcement
4 investigation or prosecution.

5 (4) The defendant fled the jurisdiction after being
6 arrested, charged with a crime that subjects property to
7 forfeiture, and released on bail.

8 (5) The property subject to forfeiture is abandoned
9 property, as determined by the process required by Section
10 15-5-64, Code of Alabama 1975.

11 (d) Notwithstanding the prosecuting authority's
12 motion for a waiver of the conviction requirement, all
13 property remains subject to claims by innocent owners and
14 other third parties with a bona fide claim to the property as
15 provided by this act.

16 Section 7. Substitution of Assets.

17 Upon the state's motion following conviction, the
18 court may order the forfeiture of substitute property owned by
19 the defendant up to the value of unreachable property that is
20 beyond the court's jurisdiction or cannot be located through
21 due diligence only if the state proves by a preponderance of
22 the evidence that the defendant intentionally transferred,
23 sold, or deposited the unreachable property with a third party
24 to avoid forfeiture.

25 Section 8. No Additional Remedies.

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

4 Section 9. No Joint and Several Liability.

5 A defendant is not jointly and severally liable for
6 forfeiture awards owed by other defendants. When ownership is
7 unclear, a court may order each defendant to forfeit property
8 on a pro rata basis or by another means the court finds
9 equitable.

10 Section 10. Seizure of Personal Property with
11 Process.

12 At the request of the state at any time, a court may
13 issue an ex parte preliminary order to attach, seize, or
14 secure personal property for which forfeiture is sought and to
15 provide for its custody, pending the determination of the
16 prosecuting authority's forfeiture request. Application,
17 issuance, execution, and return are subject to the Alabama
18 Rules of Civil Procedure.

19 Section 11. Seizure of Personal Property without
20 Process.

21 (a) Personal property subject to forfeiture may be
22 seized, pending the determination of the prosecuting
23 authority's forfeiture request, at any time, without a court
24 order, under any of the following conditions:

25 (1) The seizure of personal property is incident to
26 a lawful arrest or a search lawfully conducted.

1 (2) The personal property subject to seizure has
2 been the subject of a prior judgment in favor of the state.

3 (3) The state has probable cause to believe that the
4 delay occasioned by the necessity to obtain process would
5 result in the removal or destruction of the personal property
6 and that the personal property is forfeitable under this act.

7 (b) Mere presence or possession of United States
8 currency, a debit card, or a credit card, without other
9 indicia of a crime that subjects the property to forfeiture,
10 is insufficient probable cause for seizure of the United
11 States currency, debit card, or credit card.

12 Section 12. Seizure of Real Property with Process.

13 (a) Real property for which forfeiture is sought may
14 not be seized without a court order. A court may issue an
15 order to seize or secure real property, pending the
16 determination of the prosecuting authority's forfeiture
17 request, only after proper notice to property owners and an
18 opportunity for a contested hearing to determine the
19 sufficiency of probable cause for the seizure.

20 (b) Nothing in this section prohibits the
21 prosecuting authority from seeking a lis pendens or
22 restraining order to hinder the sale or destruction of the
23 real property.

24 (c) Application, issuance, execution, and return of
25 any order are subject to the Alabama Rules of Civil Procedure.

26 Section 13. Receipt.

1 When property is seized, the law enforcement officer
2 shall give an itemized receipt to the person possessing the
3 property. In the absence of the person possessing the
4 property, the law enforcement officer shall leave a receipt in
5 the place where the property was found, if reasonably
6 possible.

7 Section 14. Title to Property.

8 (a) Title to property subject to forfeiture vests
9 with the state when a court issues a forfeiture judgment and
10 relates back to the time when the state seizes or restrains
11 the property.

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

14 (c) Notwithstanding subsections (a) and (b), title
15 to the property is subject to claims by innocent owners, bona
16 fide creditors, lienholders, and other third parties
17 adjudicated under this act.

18 Section 15. Pretrial Replevin Hearing.

19 (a) As used in this section, claimant means a
20 defendant, innocent owner, or other third party with an
21 interest in seized property.

22 (b) Following the seizure of property, a claimant
23 has a right to a pretrial hearing to determine the validity of
24 the seizure.

25 (c) Prior to 60 days before trial of the related
26 criminal offense, the claimant may claim the right to

1 possession of property by motion to the court to issue a writ
2 of replevin.

3 (d) The claimant shall file a motion establishing
4 the validity of the alleged interest in the property.

5 (e) The court shall hear the motion no more than 30
6 days after the motion is filed.

7 (f) The state shall file an answer showing probable
8 cause for the seizure, or cross motions, at least 10 days
9 before the hearing.

10 (g) Either party, by agreement or for good cause,
11 may move the court for one extension of no more than 10 days.
12 The motion may be supported by affidavits or other
13 submissions.

14 (h) The court shall decide the motion for replevin
15 within seven days of the hearing.

16 (i) The court shall issue a writ of replevin if the
17 court finds any of the following:

18 (1) It is likely the final judgment will be that the
19 state must return the property to the claimant.

20 (2) The state has failed to prove the property is
21 reasonably required to be held for evidentiary reasons.

22 (3) The property is the only reasonable means for a
23 defendant to pay for legal representation in the forfeiture or
24 criminal proceeding. The court may order the return of funds
25 or property sufficient to obtain counsel of choice but less
26 than the total amount seized.

1 (j) In lieu of ordering the issuance of the writ,
2 the court may order the state to give security or written
3 assurance for satisfaction of any judgment, including damages,
4 that may be rendered in the action, or order other relief as
5 may be just.

6 Section 16. Discovery.

7 (a) Discovery concerning the forfeiture by a
8 defendant is subject to the Alabama Rules of Criminal
9 Procedure.

10 (b) Discovery concerning the forfeiture by an
11 innocent owner or other third party is subject to the Alabama
12 Rules of Civil Procedure.

13 Section 17. Trial Proceedings.

14 (a) The litigation related to the forfeiture of
15 property shall be held in a single proceeding following the
16 trial of the related alleged offense. The trial judge shall
17 make all findings of fact for any litigation associated with
18 the forfeiture of property of less than ten thousand dollars
19 (\$10,000) in value. Nothing in this act provides a right to a
20 jury trial for any litigation associated with the forfeiture
21 of property of less than ten thousand dollars (\$10,000) in
22 value.

23 (b) Within 30 days of the seizure of property or
24 simultaneously upon filing a related criminal indictment, the
25 state shall file a forfeiture charge that shall include all of
26 the following:

27 (1) The date of the seizure.

1 (2) The address of the seizure.

2 (3) The name of the law enforcement agency that
3 conducted the seizure.

4 (4) The type of property seized.

5 (5) A general description of the property seized.

6 (6) The name of the person or entity, if known, from
7 whom the property was seized.

8 (7) A description of the suspected underlying
9 criminal activity which led to the seizure.

10 (8) Any known arrest, including the date and charge,
11 related to the seizure which occurred prior to a forfeiture
12 final judgment of the seized property.

13 (9) Any and all civil case action numbers assigned
14 in state court.

15 (10) Any known claimants, including title holders of
16 record or lienholders of record, of the seized property.

17 (11) The disposition of the property, including the
18 date of any order.

19 (12) The name of each entity receiving all or any
20 portion of the seized property subject to the forfeiture
21 disposition. If the forfeiture order requires the selling of
22 the property, all proceeds from the sale shall be accounted
23 for by the recipient.

24 (c) The charging document shall be served upon the
25 defendant, the person from whom the property was seized, the
26 person's attorney of record, and all persons known or

1 reasonably believed to have an interest in the property,
2 including innocent owners and other third parties.

3 Section 18. Proportionality Hearing.

4 (a) At any time following determination of
5 forfeiture by the trier of fact, the defendant may petition
6 the court to determine whether the forfeiture is
7 unconstitutionally excessive under the Constitution of Alabama
8 of 1901 or the United States Constitution.

9 (b) The defendant has the burden of establishing the
10 forfeiture is grossly disproportional to the seriousness of
11 the offense by a preponderance of the evidence at a hearing
12 conducted by the court without a jury.

13 (c) In determining whether the forfeiture of
14 property is unconstitutionally excessive, the court shall
15 consider all relevant factors, including all of the following:

16 (1) The seriousness of the offense and its impact on
17 the community, including the duration of the activity and the
18 harm caused by the defendant.

19 (2) The extent to which the defendant participated
20 in the offense.

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

23 (4) The sentence imposed for committing the crime
24 subject to forfeiture.

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

1 (d) In determining the value of the property subject
2 to forfeiture, the court shall consider all relevant factors,
3 including all of the following:

4 (1) The fair market value of the property.

5 (2) The value of the property to the defendant,
6 including hardship to the defendant if the forfeiture is
7 realized, and whether the forfeiture would deprive the
8 property owner of his or her livelihood.

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

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

15 Section 19. Secured Interest.

16 (a) Except as otherwise provided in this section,
17 property encumbered by a bona fide security interest is not
18 subject to forfeiture. A person claiming a security interest
19 must establish by a preponderance of the evidence the validity
20 of the interest perfected under Article 9A of Title 7 of the
21 Code of Alabama 1975, or a lease or rental agreement.

22 (b) The prosecuting authority shall summarily return
23 seized property to the person with the bona fide security
24 interest, up to the value of the secured interest.

25 (c) If the person alleges a valid security interest
26 but the state seeks to proceed with the forfeiture against the
27 property, the state shall prove by a preponderance of the

1 evidence that the person had actual knowledge of the
2 underlying crime giving rise to the forfeiture.

3 Section 20. Third Party Claims.

4 (a) Any person, other than the defendant, asserting
5 a legal interest in property which has been seized or
6 restrained, at any time up until 90 days after the criminal
7 conviction, may petition the court for a hearing to adjudicate
8 the validity of the person's alleged interest in the property.
9 The hearing shall be held before the court alone, without a
10 jury.

11 (b) The petition shall be signed by the petitioner
12 under penalty of perjury and shall set forth all of the
13 following:

14 (1) The nature and extent of the petitioner's right,
15 title, or interest in the property.

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

18 (3) Any additional facts supporting the petitioner's
19 claim.

20 (4) The relief sought.

21 (c) The hearing on the petition, to the extent
22 practicable and consistent with the interests of justice,
23 shall be held within 60 days of the filing of the petition.
24 The court may consolidate the hearing on the petition with a
25 hearing on any other petition or motion filed by a person
26 other than the defendant under this subsection.

1 (d) At the hearing, the petitioner may testify and
2 present evidence and witnesses on the petitioner's own behalf
3 and cross-examine witnesses who appear at the hearing. The
4 state may present evidence and witnesses in rebuttal and in
5 defense of its claim to the property and cross-examine
6 witnesses who appear at the hearing.

7 (e) A court shall rule on the petition within 14
8 days of the hearing.

9 (f) The petitioner who has an ownership interest in
10 property subject to forfeiture existing at the time the
11 illegal conduct giving rise to forfeiture occurred and who
12 claims to be an innocent owner or other third party with an
13 interest in the property bears the burden of proving by clear
14 and convincing evidence that the petitioner has a legal right,
15 title, or interest in the property seized under this act.

16 (g) If subsection (f) is satisfied and the state
17 seeks to proceed with the forfeiture against the property, the
18 state shall prove by clear and convincing evidence that the
19 petitioner consented to the use of the property with actual or
20 constructive knowledge that it would be or was used for the
21 underlying crime giving rise to the forfeiture.

22 (h) A petitioner who acquired an ownership interest
23 in property subject to forfeiture after the commission of a
24 crime giving rise to the forfeiture and who claims to be an
25 innocent owner or other third party with an interest in the
26 property bears the burden of proving by clear and convincing

1 evidence that the petitioner has a legal right, title, or
2 interest in the property seized under this act.

3 (i) If subsection (h) is satisfied and the state
4 seeks to proceed with the forfeiture against the property, the
5 state shall prove by clear and convincing evidence that at the
6 time the petitioner acquired the property either of the
7 following were true:

8 (1) The petitioner had actual or constructive
9 knowledge that the property was an instrumentality or the
10 proceeds of a felonious act subjecting it to forfeiture.

11 (2) The petitioner was not a bona fide purchaser
12 without notice of any defect in title and for valuable
13 consideration.

14 (j) If the state fails to meet its burden in
15 subsections (g) and (i), the court shall find that the
16 petitioner is an innocent owner and shall order the state to
17 relinquish all claims of title to the property and return the
18 property to the innocent owner within a reasonable period not
19 to exceed five days.

20 (k) The defendant or convicted offender may invoke
21 the right against self-incrimination or the marital privilege
22 during the forfeiture-related stage of the prosecution. The
23 trier of fact at the hearing may draw an adverse inference
24 from the invocation of the right or privilege.

25 Section 21. Appeal.

26 A party to forfeiture litigation, including a
27 criminal defendant, a petitioner seeking innocent owner

1 status, or a petitioner for replevin, may appeal the court's
2 decision regarding the seizure or forfeiture of property under
3 this act. The appeal may be on an interlocutory basis.

4 Section 22. Disposition of Property and Proceeds.

5 (a) At any time when unclaimed property or
6 contraband held for evidentiary purposes is no longer needed
7 for that purpose, the court may order it be delivered to the
8 prosecuting or seizing agency within 30 days, or, in the case
9 of contraband, be destroyed within 30 days.

10 (b) If the forfeiture is granted, the court may
11 order the property be delivered to the prosecuting or seizing
12 agency within 30 days.

13 (c) If the forfeiture is denied, the court must
14 order the property be returned to the person from whom the
15 property was seized within a reasonable period, not to exceed
16 five days.

17 (d) Upon motion, the court may order that a portion
18 of the currency seized or proceeds from the sale of forfeited
19 property be used to pay reasonable non-personnel expenses for
20 the seizure, storage, and maintenance of any forfeited
21 property.

22 (e) (1) The prosecuting or seizing agency shall
23 dispose of all non-currency forfeited property. The sale
24 proceeds and forfeited currency shall be distributed in the
25 following order:

26 a. To pay all outstanding recorded liens on the
27 forfeited property.

1 b. To pay reasonable non-personnel expenses to
2 comply with an order of the court.

3 c. The remaining proceeds from the sale or
4 distribution shall be awarded by the court pursuant to a
5 recommendation by the state on a pro rata share to the
6 participating law enforcement agencies, the prosecuting entity
7 that pursued the action, and as payment of restitution to any
8 victims of the underlying offense.

9 (2) Any proceeds from sales authorized by this
10 section awarded by the court to a county or municipal law
11 enforcement agency shall be deposited into the respective
12 county or municipal general fund and made available to the
13 appropriate law enforcement agency upon requisition of the
14 chief law enforcement official of the agency. Any monies or
15 proceeds authorized by this act and ordered by the court to be
16 distributed to the district attorney shall be deposited into
17 the district attorney's solicitor's fund to be expended for
18 law enforcement purposes.

19 (f) Abandoned property or property seized from an
20 owner who fled the jurisdiction shall be delivered to the
21 State Treasurer. The State Treasurer shall dispose of all such
22 non-currency property in accordance with state law. The sale
23 proceeds and currency shall be deposited into the State
24 General Fund.

25 Section 23. Prohibition on Retaining Property; Sale
26 Restrictions.

1 No law enforcement agency may retain forfeited or
2 abandoned non-currency property for its own use or sell it,
3 directly or indirectly, to any employee of the agency, to a
4 person related to an employee by blood or marriage, or to
5 another law enforcement agency.

6 Section 24. Return of Property, Damages, and Costs.

7 (a) The law enforcement agency that holds the
8 property shall return the property to the owner or other
9 prevailing claimant within a reasonable period of time not to
10 exceed five days after judgment in favor of that person.

11 (b) The law enforcement agency that holds the
12 property is responsible for any damages, storage fees, and
13 related costs applicable to property returned under subsection
14 (a).

15 Section 25. Adoption, Joint Task Forces and Receipt
16 of Payment of Forfeiture Proceeds from the Federal Government.

17 (a) A law enforcement agency shall not refer,
18 transfer, or otherwise relinquish possession of property
19 seized under state law to a federal agency by way of adoption
20 of the seized property or other means by the federal agency
21 for the purpose of the property's forfeiture under the federal
22 Controlled Substances Act.

23 (b) A law enforcement agency or participant in a
24 joint task force with the federal government or other
25 multijurisdictional collaboration with the federal government
26 shall not accept payment of any kind or distribution of
27 forfeiture proceeds or property resulting from a joint task

1 force with the federal government or other multijurisdictional
2 collaboration with the federal government unless the aggregate
3 net equity value of the property or currency forfeited in a
4 case exceeds one hundred thousand dollars (\$100,000),
5 excluding the value of contraband.

6 (c) Nothing in subsection (a) or (b) shall be
7 construed to restrict a law enforcement agency from acting
8 alone or collaborating with a federal agency or other agency
9 to seize contraband or property a law enforcement agent has
10 probable cause to believe is the proceeds or instruments of a
11 crime that subjects the property to forfeiture.

12 (d) Nothing in subsection (a) or (b) shall be
13 construed to prohibit the federal government from seizing
14 property and seeking forfeiture under federal law.

15 Section 26. Repeal of all other inconsistent
16 forfeiture provisions.

17 This act sets out the exclusive process for asset
18 forfeitures in the state and supersedes other provisions in
19 state or local law that are inconsistent with this act. All
20 civil forfeiture provisions of the Code of Alabama 1975, that
21 are inconsistent with this act are repealed. Specifically, the
22 following sections are repealed: Section 20-2-93, Code of
23 Alabama 1975, relating to forfeiture in controlled substance
24 cases; Section 13A-8-117, Code of Alabama 1975, relating to
25 forfeiture of certain computers and software; Article 4,
26 commencing with Section 15-5-60 of Chapter 5 of Title 15 of
27 the Code of Alabama 1975, The Alabama Comprehensive Criminal

1 Proceeds Forfeiture Act; and Section 13A-11-37, Code of
2 Alabama 1975, relating to forfeiture of an eavesdropping
3 device.

4 Section 27. 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.