

1 SB119  
2 122991-1  
3 By Senator Orr  
4 RFD: Judiciary  
5 First Read: 01-MAR-11

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8 SYNOPSIS: The Alabama Uniform Controlled Substances  
9 Act authorizes the condemnation and forfeiture of  
10 property used in the manufacturing or sale of  
11 controlled substances. The proceeds from forfeited  
12 property that is sold are distributed by the  
13 circuit court to the law enforcement agencies or  
14 departments that participate in the investigation  
15 that resulted in the seizure.

16 This bill would authorize the circuit court  
17 to distribute proceeds from forfeited property to a  
18 fire department or a volunteer fire department that  
19 participates in the investigation or seizure.  
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21 A BILL  
22 TO BE ENTITLED  
23 AN ACT  
24

25 To amend Section 20-2-93, Code of Alabama 1975,  
26 relating to the Alabama Uniform Controlled Substances Act and  
27 providing for the condemnation and forfeiture of property used

1 in the manufacturing or the sale of controlled substances and  
2 for the distribution of the proceeds; to authorize the  
3 distribution of the proceeds to a fire department or a  
4 volunteer fire department that participates in an  
5 investigation or seizure related to the property.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 "§20-2-93.

10 "(a) The following are subject to forfeiture:

11 "(1) All controlled substances which have been  
12 grown, manufactured, distributed, dispensed or acquired in  
13 violation of any law of this state~~7~~.

14 "(2) All raw materials, products and equipment of  
15 any kind which are used or intended for use in manufacturing,  
16 cultivating, growing, compounding, processing, delivering,  
17 importing or exporting any controlled substance in violation  
18 of any law of this state~~7~~.

19 "(3) All property which is used or intended for use  
20 as a container for property described in subdivision (1) or  
21 (2) of this subsection~~7~~.

22 "(4) All moneys, negotiable instruments, securities,  
23 or other things of value furnished or intended to be furnished  
24 by any person in exchange for a controlled substance in  
25 violation of any law of this state; all proceeds traceable to  
26 such an exchange; and all moneys, negotiable instruments, and  
27 securities used or intended to be used to facilitate any

1 violation of any law of this state concerning controlled  
2 substances7.

3 "(5) All conveyances, including aircraft, vehicles,  
4 or vessels, or agricultural machinery, which are used, or are  
5 intended for use, to transport, or in any manner to facilitate  
6 the transportation, sale, receipt, possession, or concealment  
7 of any property described in subdivision (1) or (2) of this  
8 subsection7.

9 "(6) All books, records and research products and  
10 materials, including formulas, microfilm, tapes and data,  
11 which are used or intended for use in violation of any law of  
12 this state concerning controlled substances7.

13 "(7) All imitation controlled substances as defined  
14 under the laws of this state7.

15 "(8) All real property or fixtures used or intended  
16 to be used for the manufacture, cultivation, growth, receipt,  
17 storage, handling, distribution, or sale of any controlled  
18 substance in violation of any law of this state7.

19 "(9) All property of any type whatsoever  
20 constituting, or derived from, any proceeds obtained directly,  
21 or indirectly, from any violation of any law of this state  
22 concerning controlled substances7.

23 "(b) Property subject to forfeiture under this  
24 chapter may be seized by state, county, or municipal law  
25 enforcement agencies upon process issued by any court having  
26 jurisdiction over the property. Seizure without process may be  
27 made if any of the following apply:

1           "(1) The seizure is incident to an arrest or a  
2 search under a search warrant or an inspection under an  
3 administrative inspection warrant~~7.~~

4           "(2) The property subject to seizure has been the  
5 subject of a prior judgment in favor of the state in a  
6 criminal injunction or forfeiture proceeding based upon this  
7 chapter~~7.~~

8           "(3) The state, county, or municipal law enforcement  
9 agency has probable cause to believe that the property is  
10 directly or indirectly dangerous to health or safety~~7, or.~~

11           "(4) The state, county or municipal law enforcement  
12 agency has probable cause to believe that the property was  
13 used or is intended to be used in violation of this chapter.

14           "(c) In the event of seizure pursuant to subsection  
15 (b) of this section, proceedings under subsection (d) of this  
16 section shall be instituted promptly.

17           "(d) Property taken or detained under this section  
18 shall not be subject to replevin but is deemed to be in the  
19 custody of the state, county or municipal law enforcement  
20 agency subject only to the orders and judgment of the court  
21 having jurisdiction over the forfeiture proceedings. When  
22 property is seized under this chapter, the state, county or  
23 municipal law enforcement agency may do all of the following:

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

25           "(2) Remove the property to a place designated by  
26 it~~7.~~

1           "(3) Require the state, county or municipal law  
2 enforcement agency to take custody of the property and remove  
3 it to an appropriate location for disposition in accordance  
4 with law;~~and.~~

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

8           "(e) When property is forfeited under this chapter  
9 the state, county or municipal law enforcement agency may do  
10 all of the following:

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

15           "(2) Sell that which is not required to be destroyed  
16 by law and which is not harmful to the public. The proceeds  
17 from the sale authorized by this subsection shall be used,  
18 first, for payment of all proper expenses of the proceedings  
19 for forfeiture and sale, including expenses of seizure,  
20 maintenance of or custody, advertising and court costs; and  
21 the remaining proceeds from such sale shall be awarded and  
22 distributed by the court to the ~~municipal law enforcement~~  
23 ~~agency or department, and/or county law enforcement agency or~~  
24 ~~department, and/or state law enforcement agency or department~~  
25 municipal, county, or state law enforcement agency or  
26 department or fire department or volunteer fire department,  
27 following a determination of the court of whose law

1 enforcement agencies or departments or fire departments or  
2 volunteer fire departments are determined by the court to have  
3 been a participant in the investigation resulting in the  
4 seizure, and such award and distribution shall be made on the  
5 basis of the percentage as determined by the court, which the  
6 respective agency or department contributed to the police work  
7 resulting in the seizure. Provided however, any proceeds from  
8 sales authorized by this section awarded by the court to a  
9 county or municipal law enforcement agency or department or  
10 fire department or volunteer fire department shall be  
11 deposited into the respective county or municipal general fund  
12 and made available to the affected law enforcement agency or  
13 department or fire department or volunteer fire department  
14 upon requisition of the chief law enforcement or fire  
15 department or volunteer fire department official of such  
16 agency or department.

17 "(3) Require the state, county or municipal law  
18 enforcement agency to take custody of the property and remove  
19 it for disposition in accordance with law.

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

1           "(g) Species of plants from which controlled  
2 substances in Schedules I and II may be derived which have  
3 been planted or cultivated in violation of any law of this  
4 state or of which the owners or cultivators are unknown or  
5 which are wild growths may be seized and summarily forfeited  
6 to the state.

7           "(h) An owner's or bona fide lienholder's interest  
8 in real property or fixtures shall not be forfeited under this  
9 section for any act or omission unless the state proves that  
10 that act or omission was committed or omitted with the  
11 knowledge or consent of that owner or lienholder. An owner's  
12 or bona fide lienholder's interest in any type of property  
13 other than real property and fixtures shall be forfeited under  
14 this section unless the owner or bona fide lienholder proves  
15 both that the act or omission subjecting the property to  
16 forfeiture was committed or omitted without the owner's or  
17 lienholder's knowledge or consent and that the owner or  
18 lienholder could not have obtained by the exercise of  
19 reasonable diligence knowledge of the intended illegal use of  
20 the property so as to have prevented such use. Except as  
21 specifically provided to the contrary in this section, the  
22 procedures for the condemnation and forfeiture of property  
23 seized under this section shall be governed by and shall  
24 conform to the procedures set out in Sections 28-4-286 through  
25 28-4-290, except that: (1) the burden of proof and standard of  
26 proof shall be as set out in this subsection instead of as set  
27 out in the last three lines of Section 28-4-290; and (2) the



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

6                 Section 2. This act shall become effective on the  
7       first day of the third month following its passage and  
8       approval by the Governor, or its otherwise becoming law.