

1 HB613
2 98774-1
3 By Representative Hall
4 RFD: Judiciary
5 First Read: 04-MAR-08

SYNOPSIS: Existing law does not provide a procedure for the remission of money or proceeds from property forfeited or seized from a person in violation of the controlled or counterfeit substances laws of this state to be applied to the delinquent child support obligation of the defendant from whom the money or the property was seized.

This bill would provide that money or proceeds from property forfeited for violation of the controlled or counterfeit substances laws of this state may be applied to the delinquent child support obligation of the defendant from whom the money or the property is seized.

A BILL
TO BE ENTITLED
AN ACT

1 To amend Section 20-2-93 of the Code of Alabama
2 1975, relating to forfeitures and seizures of property
3 relating to controlled substances; to provide that money or
4 proceeds from property forfeited for violation of the
5 controlled or counterfeit substances laws of this state would
6 be applied to the delinquent child support obligation of the
7 defendant from whom the money or the property was seized.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 20-2-93 of the Code of Alabama
10 1975, is amended to read as follows:

11 "§20-2-93.

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

13 "(1) All controlled substances which have been
14 grown, manufactured, distributed, dispensed or acquired in
15 violation of any law of this state;

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

21 "(3) All property which is used or intended for use
22 as a container for property described in subdivision (1) or
23 (2) of this subsection;

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

1 such an exchange; and all moneys, negotiable instruments, and
2 securities used or intended to be used to facilitate any
3 violation of any law of this state concerning controlled
4 substances;

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

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

15 "(7) All imitation controlled substances as defined
16 under the laws of this state;

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

21 "(9) All property of any type whatsoever
22 constituting, or derived from, any proceeds obtained directly,
23 or indirectly, from any violation of any law of this state
24 concerning controlled substances;

25 "(b) Property subject to forfeiture under this
26 chapter may be seized by state, county or municipal law
27 enforcement agencies upon process issued by any court having

1 jurisdiction over the property. Seizure without process may be
2 made if:

3 "(1) The seizure is incident to an arrest or a
4 search 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 chapter;

10 "(3) The state, county, or municipal law enforcement
11 agency has probable cause to believe that the property is
12 directly or indirectly dangerous to health or safety; or

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

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

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

26 "(1) Place the property under seal;

1 "(2) Remove the property to a place designated by
2 it;

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

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

10 "(e) When property is forfeited under this chapter
11 the state, county or municipal law enforcement agency may:

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

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

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

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

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

23 "(g) Species of plants from which controlled
24 substances in Schedules I and II may be derived which have
25 been planted or cultivated in violation of any law of this
26 state or of which the owners or cultivators are unknown or

1 which are wild growths may be seized and summarily forfeited
2 to the state.

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

1 official or that can be discovered through the exercise of
2 reasonable diligence.

3 "(i) The following shall be applied to the
4 delinquent child support obligation of a defendant:

5 "(1) The proceeds from any property forfeited from a
6 defendant pursuant to this section except for money forfeited
7 pursuant to subdivision (4) of subsection (a) as provided in
8 subdivision (2).

9 "(2) Any money forfeited pursuant to subdivision (4)
10 of subsection (a) if the sum is equal to or more than 200
11 times the existing federal minimum wage."

12 Section 2. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.