

1 HB135
2 116379-2
3 By Representative Guin
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 01/07/2010

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To provide that the property of a person who is
9 convicted of facilitating solicitation of unlawful sexual
10 conduct with a child, electronic solicitation of child, or
11 facilitating the online solicitation of a child is subject to
12 forfeiture; to provide the procedure for the forfeiture; and
13 in connection therewith would have as its purpose or effect
14 the requirement of a new or increased expenditure of local
15 funds within the meaning of Amendment 621 of the Constitution
16 of Alabama of 1901, now appearing as Section 111.05 of the
17 Official Recompilation of the Constitution of Alabama of 1901,
18 as amended.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. This act shall be known and cited as the
21 "Lea Fite Child Protection Act."

22 Section 2. (a) The following property of a person
23 who is convicted of facilitating solicitation of unlawful
24 sexual conduct, electronic solicitation of a child, or
25 facilitating the online solicitation of a child pursuant to
26 Sections 2, 3, and 4 of Act 2009-745 of the 2009 Regular

1 Session (Acts 2009, p. 2233), or transmitting obscene material
2 to a child by computer pursuant to Section 13A-6-111, Code of
3 Alabama 1975, for sex is subject to forfeiture:

4 (1) The dwelling or building including the contents
5 solely owned by the person where the solicitation occurred or
6 originated. However, if a spouse and/or children live in the
7 dwelling or building and are unaware of the unlawful activity,
8 such dwelling or building, including the contents, may not be
9 subject to forfeiture.

10 (2) All moneys, negotiable instruments, and funds
11 used, or intended to be used in the solicitation.

12 (3) All computers used in the solicitation.

13 (4) All motor vehicles used by the person for
14 transportation to meet a child for sex.

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

23 (1) Place the property under seal.

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

25 (3) In the case of real property or fixtures solely
26 owned by the perpetrator, post notice of the seizure on the
27 property, and file and record notice of seizure in the probate
28 office.

1 (c) The following is the procedure regarding the
2 seizure of property subject to forfeiture under subsection
3 (a):

4 (1) Property subject to forfeiture may be seized by
5 state, county, or municipal law enforcement agencies upon
6 process issued by any court having jurisdiction over the
7 property upon a showing of probable cause.

8 (2) In the event of seizure, a forfeiture action
9 shall be instituted promptly and within time limits mandated
10 by the United States Constitution.

11 (3) The Attorney General or district attorney may
12 initiate a forfeiture action in the name of the State of
13 Alabama in the circuit court. The action shall be heard and
14 determined within time limits mandated by the United States
15 Constitution. It shall be the duty of the State of Alabama at
16 the hearing to prove by clear and convincing evidence that the
17 property should be forfeited. It shall be an affirmative
18 defense to the forfeiture action to the extent of the owner's
19 interest that the owner of the property neither expressly or
20 implicitly consented to nor had actual or constructive
21 knowledge of the acts which would otherwise result in
22 forfeiture. It shall be an affirmative defense to any bona
23 fide lienholder to the extent of the lienholder's interest
24 that the lienholder neither consented to nor had knowledge of
25 the acts which would otherwise result in forfeiture. The
26 defendant shall be given the opportunity to present evidence.

1 (d) After trial on the merits, the court shall issue
2 the forfeiture and seizure orders as are proper under the law
3 and facts. Prior to issuing an order, the court shall consider
4 the degree of hardship such forfeiture imposes on the spouse
5 and children of the defendant. The court shall order the
6 property forfeited to be destroyed or retained for official
7 law enforcement use or sold and distributed, after payment of
8 all proper expenses relating to the forfeiture and sale, to
9 the General Fund of the State or general fund of the county or
10 municipality whose department, office, or agency contributed
11 to the investigation of the acts resulting in forfeiture,
12 based upon the contribution, including expenses, of the
13 department, office, or agency as determined by the court.

14 The funds shall be used by the law enforcement
15 agency for the enforcement of laws to prevent the solicitation
16 of a child by computer. Twenty percent of these funds shall be
17 used to fund the services of the local child advocacy centers.

18 (e) Where any property owned or possessed by a
19 person is subject to forfeiture pursuant to this section but
20 because of any act, omission, or consent by the person the
21 property:

22 (1) Cannot be located upon the exercise of due
23 diligence.

24 (2) Has been transferred or sold to, or deposited
25 with, a third party.

26 (3) Has been placed beyond the jurisdiction of the
27 court.

28 (4) Has been substantially diminished in value.

1 (5) Has been commingled with other property which
2 cannot be divided without difficulty, and the person knowingly
3 participated either as a principal, aider and abettor, or
4 conspirator in the acts subjecting the property to forfeiture,
5 the Attorney General or district attorney may initiate a civil
6 action in the name of the State of Alabama against the person
7 for forfeiture of a money judgment amount up to the value of
8 and in lieu of the property described in subsection (a). The
9 judgment upon satisfaction shall be distributed as provided in
10 subsection (d).

11 Section 3. Although this bill would have as its
12 purpose or effect the requirement of a new or increased
13 expenditure of local funds, the bill is excluded from further
14 requirements and application under Amendment 621, now
15 appearing as Section 111.05 of the Official Recompilation of
16 the Constitution of Alabama of 1901, as amended, because the
17 bill defines a new crime or amends the definition of an
18 existing crime.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 12-JAN-10

Read for the second time and placed
on the calendar with 1 substitute
and 14-JAN-10

Read for the third time and passed
as amended 19-JAN-10

Yeas 95, Nays 0, Abstains 0

Greg Pappas
Clerk