

1 HB135
2 116056-1
3 By Representative Guin
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 01/07/2010

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8 SYNOPSIS: Existing law does not specifically provide
9 that the property of a person who is convicted of
10 facilitating solicitation of unlawful sexual
11 conduct with a child, a Class C felony, electronic
12 solicitation of a child, a Class B felony, or
13 facilitating the online solicitation of a child, a
14 Class B felony is subject to forfeiture.

15 This bill would make such provision and
16 would provide the procedure for the forfeiture of
17 the property.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of the amendment. However,
7 the bill does not require approval of a local
8 governmental entity or enactment by a 2/3 vote to
9 become effective because it comes within one of the
10 specified exceptions contained in the amendment.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 To provide that the property of a person who is
17 convicted of facilitating solicitation of unlawful sexual
18 conduct with a child, electronic solicitation of child, or
19 facilitating the online solicitation of a child is subject to
20 forfeiture; to provide the procedure for the forfeiture; and
21 in connection therewith would have as its purpose or effect
22 the requirement of a new or increased expenditure of local
23 funds within the meaning of Amendment 621 of the Constitution
24 of Alabama of 1901, now appearing as Section 111.05 of the
25 Official Recompilation of the Constitution of Alabama of 1901,
26 as amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) The following property of a person
2 who is convicted of facilitating solicitation of unlawful
3 sexual conduct, electronic solicitation of a child, or
4 facilitating the online solicitation of a child pursuant to
5 Sections 2, 3, and 4 of Act 2009-745 of the 2009 Regular
6 Session (Acts 2009, p. 2233), or transmitting obscene material
7 to a child by computer pursuant to Section 13A-6-111, Code of
8 Alabama 1975, for sex is subject to forfeiture:

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

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

17 (3) All computers used in the solicitation.

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

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

1 (1) Place the property under seal.

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

3 (3) In the case of real property or fixtures solely
4 owned by the perpetrator, post notice of the seizure on the
5 property, and file and record notice of seizure in the probate
6 office.

7 (c) The following is the procedure regarding the
8 seizure of property subject to forfeiture under subsection

9 (a):

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

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

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

1 forfeiture. It shall be an affirmative defense to any bona
2 fide lienholder to the extent of the lienholder's interest
3 that the lienholder neither consented to nor had knowledge of
4 the acts which would otherwise result in forfeiture. The
5 defendant shall be given the opportunity to present evidence.

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

19 The funds shall be used by the law enforcement
20 agency for the enforcement of laws to prevent the solicitation
21 of a child by computer. Twenty percent of these funds shall be
22 used to fund the services of the local child advocacy centers.

23 (e) Where any property owned or possessed by a
24 person is subject to forfeiture pursuant to this section but
25 because of any act, omission, or consent by the person the
26 property:

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

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

5 (3) Has been placed beyond the jurisdiction of the
6 court.

7 (4) Has been substantially diminished in value.

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

18 Section 2. Although this bill would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds, the bill is excluded from further
21 requirements and application under Amendment 621, now
22 appearing as Section 111.05 of the Official Recompilation of
23 the Constitution of Alabama of 1901, as amended, because the
24 bill defines a new crime or amends the definition of an
25 existing crime.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.