

By: Representative Saucier

To: Judiciary B

HOUSE BILL NO. 565

1 AN ACT TO AMEND SECTION 99-3-13, MISSISSIPPI CODE OF 1972, TO
2 CREATE A FELONY OFFENSE FOR FAILING TO STOP ON INSTRUCTION OF A
3 LAW ENFORCEMENT OFFICER AND CAUSING PURSUIT BY SUCH OFFICER; TO
4 CREATE A NEW SECTION TO BE CODIFIED AS SECTION 99-3-14,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE FORFEITURE OF
6 VEHICLES USED IN VIOLATING THE PROVISIONS OF THIS ACT; AND FOR
7 RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. Section 99-3-13, Mississippi Code of 1972, is
10 amended as follows:

11 99-3-13. (1) If a person commits an offense and be pursued
12 by a sheriff or constable, and escape from the county of the
13 officer, the officer may pursue and apprehend him in any county
14 and take him to the county in which the offense was committed; and
15 in all cases an officer or other person having the lawful custody
16 of a prisoner, passing through any county on his route, may lodge
17 the prisoner in any jail for safekeeping, as circumstances
18 require. In like manner if a person commit an offense within the
19 corporate limits of an incorporated municipality and be pursued by
20 a marshal or any other municipal peace or police officer and shall
21 escape from the municipality, such municipal peace or police
22 officer may pursue and apprehend such offender to places without
23 the corporate limits of the municipality and to any place within
24 the State of Mississippi to which such person may flee and may
25 return such person to the municipality in which such offense was
26 committed.

27 (2) Any person in a motor vehicle who shall fail to stop
28 after being instructed by a law enforcement officer who has

29 probable cause to stop such vehicle and shall cause such law
30 enforcement officer to pursue such person in hot pursuit in order
31 to apprehend or arrest such person shall be guilty of a felony and
32 upon conviction shall be fined not more than Five Thousand Dollars
33 (\$5,000.00) or imprisoned for not more than three (3) years, or
34 both. In addition to the penalties provided in this subsection,
35 any person convicted under this subsection shall be subject to
36 having their motor vehicle forfeited as provided in Section 2 of
37 this act.

38 SECTION 2. The following shall be codified as Section
39 99-3-14, Mississippi Code of 1972:

40 99-3-14. (1) All vehicles which are used in any manner to
41 facilitate flight from a law enforcement officer in violation of
42 Section 99-3-13(2) shall be subject to forfeiture, however:

43 (a) No conveyance used by any person as a common
44 carrier in the transaction of business as a common carrier is
45 subject to forfeiture under this section unless it appears that
46 the owner or other person in charge of the conveyance is a
47 consenting party or privy to a violation of Section 99-3-13(2);

48 (b) No conveyance is subject to forfeiture under this
49 section by reason of any act or omission proved by the owner
50 thereof to have been committed or omitted without his knowledge or
51 consent; if the confiscating authority has reason to believe that
52 the conveyance is a leased or rented conveyance, then the
53 confiscating authority shall notify the owner of the conveyance
54 within five (5) days of the confiscation;

55 (c) A forfeiture of a conveyance encumbered by a bona
56 fide security interest is subject to the interest of the secured
57 party if he neither had knowledge of nor consented to the act or
58 omission.

59 (2) Except as otherwise provided in subsection (16), when
60 any property is seized pursuant to subsection (1), proceedings
61 under this section shall be instituted promptly.

62 (3) A petition for forfeiture shall be filed promptly in the
63 name of the State of Mississippi, the county or the municipality
64 and may be filed in the county in which the seizure is made, the
65 county in which the criminal prosecution is brought or the county

66 in which the owner of the seized property is found. Forfeiture
67 proceedings may be brought in (a) the circuit court, or (b) the
68 county court if a county court exists in the county and the value
69 of the seized property is within the jurisdictional limits of the
70 county court as set forth in Section 9-9-21, Mississippi Code of
71 1972, or (c) the youth court in the case of a person adjudicated
72 delinquent where the underlying basis for the delinquency is a
73 violation of Section 99-3-13(2), Mississippi Code of 1972. A copy
74 of such petition shall be served upon the following persons by
75 service of process in the same manner as in civil cases:

76 (a) The owner of the property, if address is known;

77 (b) Any secured party who has registered his lien or
78 filed a financing statement as provided by law, if the identity of
79 such secured party can be ascertained by the local law enforcement
80 agency by making a good faith effort to ascertain the identity of
81 such secured party as described in subsections (4), (5), (6), (7)
82 and (8) of this section;

83 (c) Any other bona fide lienholder or secured party or
84 other person holding an interest in the property in the nature of
85 a security interest of whom the local law enforcement agency has
86 actual knowledge; and

87 (d) Any person in possession of property subject to
88 forfeiture at the time that it was seized.

89 (4) If the property is a motor vehicle susceptible of
90 titling under the Mississippi Motor Vehicle Title Law and if there
91 is any reasonable cause to believe that the vehicle has been
92 titled, the local law enforcement agency shall make inquiry of the
93 State Tax Commission as to what the records of the State Tax
94 Commission show as to who is the record owner of the vehicle and
95 who, if anyone, holds any lien or security interest which affects
96 the vehicle.

97 (5) If the property is a motor vehicle and is not titled in
98 the State of Mississippi, then the local law enforcement agency

99 shall attempt to ascertain the name and address of the person in
100 whose name the vehicle is licensed, and if the vehicle is licensed
101 in a state which has in effect a certificate of title law, the
102 local law enforcement agency shall make inquiry of the appropriate
103 agency of that state as to what the records of the agency show as
104 to who is the record owner of the vehicle and who, if anyone,
105 holds any lien, security interest or other instrument in the
106 nature of a security device which affects the vehicle.

107 (6) In the event the answer to an inquiry states that the
108 record owner of the property is any person other than the person
109 who was in possession of it when it was seized, or states that any
110 person holds any lien, encumbrance, security interest or other
111 interest which affects the property, the local law enforcement
112 agency shall cause any record owner and also any lienholder,
113 secured party or other person who holds an interest in the
114 property in the nature of a security interest which affects the
115 property to be named in the petition of forfeiture and to be
116 served with process in the same manner as in civil cases.

117 (7) If the owner of the property cannot be found and served
118 with a copy of the petition of forfeiture, or if no person was in
119 possession of the property subject to forfeiture at the time that
120 it was seized and the owner of the property is unknown, the local
121 law enforcement agency shall file with the clerk of the court in
122 which the proceeding is pending an affidavit to such effect,
123 whereupon the clerk of the court shall publish notice of the
124 hearing addressed to "the Unknown Owner of _____",
125 filling in the blank space with a reasonably detailed description
126 of the property subject to forfeiture. Service by publication
127 shall contain the other requisites prescribed in Section 11-33-41,
128 Mississippi Code of 1972, and shall be served as provided in
129 Section 11-33-37, Mississippi Code of 1972, for publication of
130 notice for attachments at law.

131 (8) No proceedings instituted pursuant to the provisions of

132 this section shall proceed to hearing unless the judge conducting
133 the hearing is satisfied that this section has been complied with.
134 Any answer received from an inquiry required by subsections (4)
135 through (5) of this section shall be introduced into evidence at
136 the hearing.

137 (9) Except as otherwise provided in subsection (16), an
138 owner of property that has been seized pursuant to subsection (1)
139 shall file an answer within thirty (30) days after the completion
140 of service of process. If an answer is not filed, the court shall
141 hear evidence that the property is subject to forfeiture and
142 forfeit the property to the local law enforcement agency. If an
143 answer is filed, a time for hearing on forfeiture shall be set
144 within thirty (30) days of filing the answer or at the succeeding
145 term of court, if court would not be in progress within thirty
146 (30) days after filing the answer. Provided, however, that upon
147 request by the local law enforcement agency or the owner of the
148 property, the court may postpone said forfeiture hearing to a date
149 past the time any criminal action is pending against said owner.

150 (10) If the owner of the property has filed an answer
151 denying that the property is subject to forfeiture, then the
152 burden is on the petitioner to prove that the property is subject
153 to forfeiture. However, if an answer has not been filed by the
154 owner of the property, the petition for forfeiture may be
155 introduced into evidence and is prima facie evidence that the
156 property is subject to forfeiture. The standard of proof placed
157 upon the petitioner in regard to property forfeited under the
158 provisions of Section 99-3-13(2) shall be by a preponderance of
159 the evidence.

160 (11) At the hearing any claimant of any right, title or
161 interest in the property may prove his lien, encumbrance, security
162 interest or other interest in the nature of a security interest to
163 be bona fide and created without knowledge or consent that the
164 property was to be used so as to cause the property to be subject

165 to forfeiture.

166 (12) If it is found that the property is subject to
167 forfeiture, then the judge shall forfeit the property to the local
168 law enforcement agency. However, if proof at the hearing
169 discloses that the interest of any bona fide lienholder, secured
170 party or other person holding an interest in the property in the
171 nature of a security interest is greater than or equal to the
172 present value of the property, the court shall order the property
173 released to him. If such interest is less than the present value
174 of the property and if the proof shows that the property is
175 subject to forfeiture, the court shall order the property
176 forfeited to the local law enforcement agency.

177 (13) All other property which is forfeited under this
178 section shall be liquidated and, after deduction of court costs
179 and the expenses of liquidation, the proceeds shall be divided and
180 deposited as follows:

181 (a) In the event only one (1) law enforcement agency
182 participates in the underlying criminal case out of which the
183 forfeiture arises, fifty percent (50%) of the proceeds shall be
184 forwarded to the State Treasurer and deposited in the General Fund
185 of the state and fifty percent (50%) of the proceeds shall be
186 deposited and credited to the budget of the participating law
187 enforcement agency.

188 (b) In the event more than one (1) law enforcement
189 agency participates in the underlying criminal case out of which
190 the forfeiture arises, fifty percent (50%) of the proceeds shall
191 be deposited and credited to the budget of the law enforcement
192 agency whose officers initiated the criminal case and fifty
193 percent (50%) shall be divided equitably between or among the
194 other participating law enforcement agencies, and shall be
195 deposited and credited to the budgets of the participating law
196 enforcement agencies. In the event that the other participating
197 law enforcement agencies cannot agree on the division of their

198 fifty percent (50%), a petition shall be filed by any one (1) of
199 them in the court in which the civil forfeiture case is brought
200 and the court shall make an equitable division.

201 (14) All other property that has been forfeited shall,
202 except as otherwise provided, be sold at a public auction for cash
203 by the chief law enforcement officer of the initiating law
204 enforcement agency, or his designee, to the highest and best
205 bidder after advertising the sale for at least once each week for
206 three (3) consecutive weeks, the last notice to appear not more
207 than ten (10) days nor less than five (5) days prior to such sale,
208 in a newspaper having a general circulation in the jurisdiction in
209 which said law enforcement agency is located. Such notices shall
210 contain a description of the property to be sold and a statement
211 of the time and place of sale. It shall not be necessary to the
212 validity of such sale either to have the property present at the
213 place of sale or to have the name of the owner thereof stated in
214 such notice. The proceeds of the sale shall be disposed of as
215 follows:

216 (a) To any bona fide lienholder, secured party or other
217 party holding an interest in the property in the nature of a
218 security interest, to the extent of his interest; and

219 (b) The balance, if any, remaining after deduction of
220 all storage, court costs and expenses of liquidation shall be
221 divided, forwarded and deposited in the same manner set out in
222 subsection (13) of this section.

223 (15) The State Tax Commission shall issue a certificate of
224 title to any person who purchases property under the provisions of
225 this section when a certificate of title is required under the
226 laws of this state.

227 (16) When any property the value of which does not exceed
228 Five Thousand Dollars (\$5,000.00) is seized pursuant to subsection
229 (1), the property may be forfeited by the administrative
230 forfeiture procedures provided for in subsections (16) through

231 (22).

232 (17) The attorney for the seizing law enforcement agency
233 shall provide notice of intention to forfeit the seized property
234 administratively, by certified mail, return receipt requested, to
235 all persons who are required to be notified.

236 (18) In the event that notice of intention to forfeit the
237 seized property administratively cannot be given as provided in
238 subsection (17) of this section because of refusal, failure to
239 claim, insufficient address or any other reason, the attorney for
240 the seizing law enforcement agency shall provide notice by
241 publication in a newspaper of general circulation in the county in
242 which the seizure occurred for once a week for three (3)
243 consecutive weeks.

244 (19) Notice pursuant to subsections (17) and (18) of this
245 section shall include the following information:

246 (a) A description of the property;

247 (b) The approximate value of the property;

248 (c) The date and place of the seizure;

249 (d) The connection between the property and the
250 violation of Section 99-3-13(2);

251 (e) The instructions for filing a request for judicial
252 review; and

253 (f) A statement that the property will be forfeited to
254 the seizing law enforcement agency if a request for judicial
255 review is not timely filed.

256 (20) Persons claiming an interest in the seized property may
257 initiate judicial review of the seizure and proposed forfeiture by
258 filing a request for judicial review with the attorney for the
259 seizing law enforcement agency, within thirty (30) days after
260 receipt of the certified letter or within thirty (30) days after
261 the first publication of notice, whichever is applicable.

262 (21) If no request for judicial review is timely filed, the
263 attorney for the seizing law enforcement agency shall prepare a

264 written declaration of forfeiture of the subject property and the
265 forfeited property shall be used, distributed or disposed of in
266 accordance with the provisions of this section.

267 (22) Upon receipt of a timely request for judicial review,
268 the attorney for the seizing law enforcement agency shall promptly
269 file a petition for forfeiture and proceed as provided in
270 subsections (3) through (15).

271 SECTION 3. This act shall take effect and be in force from
272 and after July 1, 1999.