

By: Representative Saucier

To: Judiciary B

HOUSE BILL NO. 568

1 AN ACT TO AMEND SECTION 97-9-73, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE FOR THE FORFEITURE OF VEHICLES USED IN RESISTING OR
3 OBSTRUCTING ARREST; TO CREATE A NEW SECTION TO BE CODIFIED AS
4 SECTION 97-9-74, MISSISSIPPI CODE OF 1972, TO PROVIDE THE
5 PROCEDURE FOR FORFEITURE OF VEHICLES USED IN RESISTING OR
6 OBSTRUCTING ARREST; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 97-9-73, Mississippi Code of 1972, is
9 amended as follows:

10 97-9-73. (1) It shall be unlawful for any person to
11 obstruct or resist by force, or violence, or threats, or in any
12 other manner, his lawful arrest or the lawful arrest of another
13 person by any state, local or federal law enforcement officer, and
14 any person or persons so doing shall be guilty of a misdemeanor,
15 and upon conviction thereof, shall be punished by a fine of not
16 more than Five Hundred Dollars (\$500.00), or by imprisonment in
17 the county jail not more than six (6) months, or both.

18 (2) Any vehicle used by a person obstructing or resisting
19 arrest shall be subject to forfeiture as provided in Section 2 of
20 this act.

21 SECTION 2. The following shall be codified as Section
22 97-9-74, Mississippi Code of 1972:

23 97-9-74. (1) All vehicles which are used in any manner to
24 facilitate the resisting of arrest in violation of Section 97-3-73
25 shall be subject to forfeiture, however:

26 (a) No conveyance used by any person as a common
27 carrier in the transaction of business as a common carrier is
28 subject to forfeiture under this section unless it appears that

29 the owner or other person in charge of the conveyance is a
30 consenting party or privy to a violation of Section 97-9-73;

31 (b) No conveyance is subject to forfeiture under this
32 section by reason of any act or omission proved by the owner
33 thereof to have been committed or omitted without his knowledge or
34 consent; if the confiscating authority has reason to believe that
35 the conveyance is a leased or rented conveyance, then the
36 confiscating authority shall notify the owner of the conveyance
37 within five (5) days of the confiscation;

38 (c) A forfeiture of a conveyance encumbered by a bona
39 fide security interest is subject to the interest of the secured
40 party if he neither had knowledge of nor consented to the act or
41 omission.

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

45 (3) A petition for forfeiture shall be filed promptly in the
46 name of the State of Mississippi, the county or the municipality
47 and may be filed in the county in which the seizure is made, the
48 county in which the criminal prosecution is brought or the county
49 in which the owner of the seized property is found. Forfeiture
50 proceedings may be brought in the circuit court or the county
51 court if a county court exists in the county and the value of the
52 seized property is within the jurisdictional limits of the county
53 court as set forth in Section 9-9-21, Mississippi Code of 1972. A
54 copy of such petition shall be served upon the following persons
55 by service of process in the same manner as in civil cases:

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

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

63 (c) Any other bona fide lienholder or secured party or
64 other person holding an interest in the property in the nature of
65 a security interest of whom the local law enforcement agency has

66 actual knowledge; and

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

69 (4) If the property is a motor vehicle susceptible of
70 titling under the Mississippi Motor Vehicle Title Law and if there
71 is any reasonable cause to believe that the vehicle has been
72 titled, the local law enforcement agency shall make inquiry of the
73 State Tax Commission as to what the records of the State Tax
74 Commission show as to who is the record owner of the vehicle and
75 who, if anyone, holds any lien or security interest which affects
76 the vehicle.

77 (5) If the property is a motor vehicle and is not titled in
78 the State of Mississippi, then the local law enforcement agency
79 shall attempt to ascertain the name and address of the person in
80 whose name the vehicle is licensed, and if the vehicle is licensed
81 in a state which has in effect a certificate of title law, the
82 local law enforcement agency shall make inquiry of the appropriate
83 agency of that state as to what the records of the agency show as
84 to who is the record owner of the vehicle and who, if anyone,
85 holds any lien, security interest or other instrument in the
86 nature of a security device which affects the vehicle.

87 (6) In the event the answer to an inquiry states that the
88 record owner of the property is any person other than the person
89 who was in possession of it when it was seized, or states that any
90 person holds any lien, encumbrance, security interest or other
91 interest which affects the property, the local law enforcement
92 agency shall cause any record owner and also any lienholder,
93 secured party or other person who holds an interest in the
94 property in the nature of a security interest which affects the
95 property to be named in the petition of forfeiture and to be
96 served with process in the same manner as in civil cases.

97 (7) If the owner of the property cannot be found and served
98 with a copy of the petition of forfeiture, or if no person was in

99 possession of the property subject to forfeiture at the time that
100 it was seized and the owner of the property is unknown, the local
101 law enforcement agency shall file with the clerk of the court in
102 which the proceeding is pending an affidavit to such effect,
103 whereupon the clerk of the court shall publish notice of the
104 hearing addressed to "the Unknown Owner of _____," filling in the
105 blank space with a reasonably detailed description of the property
106 subject to forfeiture. Service by publication shall contain the
107 other requisites prescribed in Section 11-33-41, Mississippi Code
108 of 1972, and shall be served as provided in Section 11-33-37,
109 Mississippi Code of 1972, for publication of notice for
110 attachments at law.

111 (8) No proceedings instituted pursuant to the provisions of
112 this section shall proceed to hearing unless the judge conducting
113 the hearing is satisfied that this section has been complied with.
114 Any answer received from an inquiry required by subsections (4)
115 through (5) of this section shall be introduced into evidence at
116 the hearing.

117 (9) Except as otherwise provided in subsection (16), an
118 owner of property that has been seized pursuant to subsection (1),
119 shall file an answer within thirty (30) days after the completion
120 of service of process. If an answer is not filed, the court shall
121 hear evidence that the property is subject to forfeiture and
122 forfeit the property to the local law enforcement agency. If an
123 answer is filed, a time for hearing on forfeiture shall be set
124 within thirty (30) days of filing the answer or at the succeeding
125 term of court, if court would not be in progress within thirty
126 (30) days after filing the answer. Provided, however, that upon
127 request by the local law enforcement agency or the owner of the
128 property, the court may postpone said forfeiture hearing to a date
129 past the time any criminal action is pending against said owner.

130 (10) If the owner of the property has filed an answer
131 denying that the property is subject to forfeiture, then the

132 burden is on the petitioner to prove that the property is subject
133 to forfeiture. However, if an answer has not been filed by the
134 owner of the property, the petition for forfeiture may be
135 introduced into evidence and is prima facie evidence that the
136 property is subject to forfeiture. The standard of proof placed
137 upon the petitioner in regard to property forfeited under the
138 provisions of Section 97-9-73 shall be by a preponderance of the
139 evidence.

140 (11) At the hearing any claimant of any right, title or
141 interest in the property may prove his lien, encumbrance, security
142 interest or other interest in the nature of a security interest to
143 be bona fide and created without knowledge or consent that the
144 property was to be used so as to cause the property to be subject
145 to forfeiture.

146 (12) If it is found that the property is subject to
147 forfeiture, then the judge shall forfeit the property to the local
148 law enforcement agency. However, if proof at the hearing
149 discloses that the interest of any bona fide lienholder, secured
150 party or other person holding an interest in the property in the
151 nature of a security interest is greater than or equal to the
152 present value of the property, the court shall order the property
153 released to him. If such interest is less than the present value
154 of the property and if the proof shows that the property is
155 subject to forfeiture, the court shall order the property
156 forfeited to the local law enforcement agency.

157 (13) All other property which is forfeited under this act
158 shall be liquidated and, after deduction of court costs and the
159 expenses of liquidation, the proceeds shall be divided and
160 deposited as follows:

161 (a) In the event only one (1) law enforcement agency
162 participates in the underlying criminal case out of which the
163 forfeiture arises, fifty percent (50%) of the proceeds shall be
164 forwarded to the State Treasurer and deposited in the General Fund

165 of the state and fifty percent (50%) of the proceeds shall be
166 deposited and credited to the budget of the participating law
167 enforcement agency;

168 (b) In the event more than one (1) law enforcement
169 agency participates in the underlying criminal case out of which
170 the forfeiture arises, fifty percent (50%) of the proceeds shall
171 be deposited and credited to the budget of the law enforcement
172 agency whose officers initiated the criminal case and fifty
173 percent (50%) shall be divided equitably between or among the
174 other participating law enforcement agencies, and shall be
175 deposited and credited to the budgets of the participating law
176 enforcement agencies. In the event that the other participating
177 law enforcement agencies cannot agree on the division of their
178 fifty percent (50%), a petition shall be filed by any one (1) of
179 them in the court in which the civil forfeiture case is brought
180 and the court shall make an equitable division.

181 (14) All other property that has been forfeited shall,
182 except as otherwise provided, be sold at a public auction for cash
183 by the chief law enforcement officer of the initiating law
184 enforcement agency, or his designee, to the highest and best
185 bidder after advertising the sale for at least once each week for
186 three (3) consecutive weeks, the last notice to appear not more
187 than ten (10) days nor less than five (5) days prior to such sale,
188 in a newspaper having a general circulation in the jurisdiction in
189 which said law enforcement agency is located. Such notices shall
190 contain a description of the property to be sold and a statement
191 of the time and place of sale. It shall not be necessary to the
192 validity of such sale either to have the property present at the
193 place of sale or to have the name of the owner thereof stated in
194 such notice. The proceeds of the sale shall be disposed of as
195 follows:

196 (a) To any bona fide lienholder, secured party or other
197 party holding an interest in the property in the nature of a

198 security interest, to the extent of his interest; and

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

203 (15) The State Tax Commission shall issue a certificate of
204 title to any person who purchases property under the provisions of
205 this section when a certificate of title is required under the
206 laws of this state.

207 (16) When any property the value of which does not exceed
208 Five Thousand Dollars (\$5,000.00) is seized pursuant to subsection
209 (1), the property may be forfeited by the administrative
210 forfeiture procedures provided for in subsections (16) through
211 (22).

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

216 (18) In the event that notice of intention to forfeit the
217 seized property administratively cannot be given as provided in
218 subsection (17) of this section because of refusal, failure to
219 claim, insufficient address or any other reason, the attorney for
220 the seizing law enforcement agency shall provide notice by
221 publication in a newspaper of general circulation in the county in
222 which the seizure occurred for once a week for three (3)
223 consecutive weeks.

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

226 (a) A description of the property;

227 (b) The approximate value of the property;

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

229 (d) The connection between the property and the
230 violation of Section 97-9-73;

231 (e) The instructions for filing a request for judicial
232 review; and

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

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

242 (21) If no request for judicial review is timely filed, the
243 attorney for the seizing law enforcement agency shall prepare a
244 written declaration of forfeiture of the subject property and the
245 forfeited property shall be used, distributed or disposed of in
246 accordance with the provisions of this section.

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

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