

By: Representative Compretta (By Request)

To: Judiciary A

HOUSE BILL NO. 732

1 AN ACT TO AMEND SECTIONS 41-29-153 AND 41-29-159, MISSISSIPPI  
2 CODE OF 1972, TO CLARIFY THE AUTHORITY OF ENFORCEMENT OFFICERS OF  
3 THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION TO SEIZE PROPERTY  
4 UNDER THE UNIFORM CONTROLLED SUBSTANCES LAW; AND FOR RELATED  
5 PURPOSES.

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

7 SECTION 1. Section 41-29-153, Mississippi Code of 1972, is  
8 amended as follows:

9 41-29-153. (a) The following are subject to forfeiture:

10 (1) All controlled substances which have been  
11 manufactured, distributed, dispensed or acquired in violation of  
12 this article;

13 (2) All raw materials, products and equipment of any  
14 kind which are used, or intended for use, in manufacturing,  
15 compounding, processing, delivering, importing, or exporting any  
16 controlled substance in violation of this article;

17 (3) All property which is used, or intended for use, as  
18 a container for property described in paragraph (1) or (2) of this  
19 section;

20 (4) All conveyances, including aircraft, vehicles or  
21 vessels, which are used, or intended for use, to transport, or in  
22 any manner to facilitate the transportation, sale, receipt,  
23 possession or concealment of property described in paragraph (1)  
24 or (2) of this section, however:

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

28 the owner or other person in charge of the conveyance is a  
29 consenting party or privy to a violation of this article;

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

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

41 D. A conveyance is not subject to forfeiture for a  
42 violation of Section 41-29-139(c)(2)(A), (B) or (C);

43 (5) All money, deadly weapons, books, records, and  
44 research products and materials, including formulas, microfilm,  
45 tapes and data which are used, or intended for use, in violation  
46 of this article;

47 (6) All drug paraphernalia as defined in Section  
48 41-29-105(v); and

49 (7) Everything of value, including real estate,  
50 furnished, or intended to be furnished, in exchange for a  
51 controlled substance in violation of this article, all proceeds  
52 traceable to such an exchange, and all monies, negotiable  
53 instruments, businesses or business investments, securities, and  
54 other things of value used, or intended to be used, to facilitate  
55 any violation of this article. All monies, coin and currency  
56 found in close proximity to forfeitable controlled substances, to  
57 forfeitable drug manufacturing or distributing paraphernalia, or  
58 to forfeitable records of the importation, manufacture or  
59 distribution of controlled substances are presumed to be  
60 forfeitable under this paragraph; the burden of proof is upon  
61 claimants of the property to rebut this presumption.

62 A. No property shall be forfeited under the  
63 provisions of paragraph (a)(7) of this section, to the extent of  
64 the interest of an owner, by reason of any act or omission

65 established by him to have been committed or omitted without his  
66 knowledge or consent.

67           B. Neither personal property encumbered by a bona  
68 fide security interest nor real estate encumbered by a bona fide  
69 mortgage, deed of trust, lien or encumbrance shall be forfeited  
70 under the provisions of paragraph (a)(7) of this section, to the  
71 extent of the interest of the secured party or the interest of the  
72 mortgagee, holder of a deed of trust, lien or encumbrance by  
73 reason of any act or omission established by him to have been  
74 committed or omitted without his knowledge or consent.

75           (b) Property subject to forfeiture may be seized by the  
76 bureau, local law enforcement officers, enforcement officers of  
77 the Mississippi Department of Transportation, highway patrolmen,  
78 the board, or the State Board of Pharmacy upon process issued by  
79 any appropriate court having jurisdiction over the property.  
80 Seizure without process may be made if:

81           (1) The seizure is incident to an arrest or a search  
82 under a search warrant or an inspection under an administrative  
83 inspection warrant;

84           (2) The property subject to seizure has been the  
85 subject of a prior judgment in favor of the state in a criminal  
86 injunction or forfeiture proceeding based upon this article;

87           (3) The bureau, the board, local law enforcement  
88 officers, enforcement officers of the Mississippi Department of  
89 Transportation, or highway patrolmen, or the State Board of  
90 Pharmacy have probable cause to believe that the property is  
91 directly or indirectly dangerous to health or safety; or

92           (4) The bureau, local law enforcement officers,  
93 enforcement officers of the Mississippi Department of  
94 Transportation, highway patrolmen, the board, or the State Board  
95 of Pharmacy have probable cause to believe that the property was  
96 used or is intended to be used in violation of this article.

97           (c) Controlled substances listed in Schedule I of Section

98 41-29-113 that are possessed, transferred, sold, or offered for  
99 sale in violation of this article are contraband and shall be  
100 seized and summarily forfeited to the state. Controlled  
101 substances listed in the said Schedule I, which are seized or come  
102 into the possession of the state, the owners of which are unknown,  
103 are contraband and shall be summarily forfeited to the state.

104 (d) Species of plants from which controlled substances in  
105 Schedules I and II of Sections 41-29-113 and 41-29-115 may be  
106 derived which have been planted or cultivated in violation of this  
107 article, or of which the owners or cultivators are unknown, or  
108 which are wild growths, may be seized and summarily forfeited to  
109 the state.

110 (e) The failure, upon demand by the bureau and/or local law  
111 enforcement officers, or their authorized agents, or highway  
112 patrolmen designated by the bureau, the board, or the State Board  
113 of Pharmacy, of the person in occupancy or in control of land or  
114 premises upon which the species of plants are growing or being  
115 stored, to produce an appropriate registration, or proof that he  
116 is the holder thereof, constitutes authority for the seizure and  
117 forfeiture of the plants.

118 SECTION 2. Section 41-29-159, Mississippi Code of 1972, is  
119 amended as follows:

120 41-29-159. (a) Any officer or employee of the bureau,  
121 investigative unit of the State Board of Pharmacy, investigative  
122 unit of the State Board of Medical Licensure, investigative unit  
123 of the State Board of Dental Examiners, any duly sworn peace  
124 officer of the State of Mississippi, any enforcement officer of  
125 the Mississippi Department of Transportation, or any highway  
126 patrolman, may, while engaged in the performance of his statutory  
127 duties:

128 (1) Carry firearms;

129 (2) Execute and serve search warrants, arrest warrants,  
130 subpoenas, and summonses issued under the authority of this state;

131           (3) Make arrests without warrant for any offense under  
132 this article committed in his presence, or if he has probable  
133 cause to believe that the person to be arrested has committed or  
134 is committing a crime; and

135           (4) Make seizures of property pursuant to this article.

136           (b) As divided among the Mississippi Bureau of Narcotics,  
137 the State Board of Pharmacy, the State Board of Medical Licensure  
138 and the State Board of Dental Examiners, the primary  
139 responsibility of the illicit street traffic or other illicit  
140 traffic of drugs is delegated to agents of the Mississippi Bureau  
141 of Narcotics. The State Board of Pharmacy is delegated the  
142 responsibility of regulating and checking the legitimate drug  
143 traffic among pharmacists, pharmacies, hospitals, nursing homes,  
144 drug manufacturers, and any other related professions and  
145 facilities with the exception of the medical, dental and  
146 veterinary professions. The State Board of Medical Licensure is  
147 responsible for the legitimate drug traffic among nurses,  
148 physicians, podiatrists and veterinarians. The Mississippi Board  
149 of Dental Examiners is responsible for the legitimate drug traffic  
150 among dentists and dental hygienists.

151           (c) The provisions of this section shall not be construed to  
152 limit or preclude the detection or arrest of persons in violation  
153 of Section 41-29-139 by any local law enforcement officer,  
154 sheriff, deputy sheriff or peace officer.

155           (d) Agents of the bureau are hereby authorized to  
156 investigate the circumstances of deaths which are caused by drug  
157 overdose or which are believed to be caused by drug overdose.

158           (e) Any person who shall impersonate in any way the director  
159 or any agent, or who shall in any manner hold himself out as  
160 being, or represent himself as being, an officer or agent of the  
161 Mississippi Bureau of Narcotics shall be guilty of a misdemeanor,  
162 and upon conviction thereof shall be punished by a fine of not  
163 less than One Hundred Dollars (\$100.00) nor more than Five Hundred

164 Dollars (\$500.00) or by imprisonment for not more than one (1)  
165 year, or by both such fine and imprisonment.

166 SECTION 3. This act shall take effect and be in force from  
167 and after its passage.