

By: Representative Compretta (By Request)

To: Judiciary A

HOUSE BILL NO. 732
(As Passed the House)

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.