

By: Senator(s) Little (By Request)

To: Highways and
Transportation

SENATE BILL NO. 2474
(As Passed the Senate)

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

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

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

8 41-29-153. (a) The following are subject to forfeiture:

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

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

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

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

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

28 consenting party or privy to a violation of this article;

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

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

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

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

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

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

61 A. No property shall be forfeited under the
62 provisions of paragraph (a)(7) of this section, to the extent of
63 the interest of an owner, by reason of any act or omission
64 established by him to have been committed or omitted without his

65 knowledge or consent.

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

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

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

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

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

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

96 (c) Controlled substances listed in Schedule I of Section
97 41-29-113 that are possessed, transferred, sold, or offered for

98 sale in violation of this article are contraband and shall be
99 seized and summarily forfeited to the state. Controlled
100 substances listed in the said Schedule I, which are seized or come
101 into the possession of the state, the owners of which are unknown,
102 are contraband and shall be summarily forfeited to the state.

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

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