

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 1205

1 AN ACT TO AMEND SECTION 41-29-181, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DISPOSITION OF FORFEITED PROPERTY IN DRUG CASES; AND
3 FOR RELATED PURPOSES.

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

5 SECTION 1. Section 41-29-181, Mississippi Code of 1972, is
6 amended as follows:

7 41-29-181. (1) Regarding all controlled substances, raw
8 materials and paraphernalia which have been forfeited, the circuit
9 court shall by its order direct the Bureau of Narcotics to:

10 (a) Retain the property for its official purposes;

11 (b) Deliver the property to a government agency or
12 department for official purposes;

13 (c) Deliver the property to a person authorized by the
14 court to receive it; or

15 (d) Destroy the property that is not otherwise
16 disposed, pursuant to the provisions of Section 41-29-154.

17 (2) All other property, real or personal, which is forfeited
18 under this article, except as otherwise provided in Section
19 41-29-185, and except as provided in subsections (3), (7) and (8)
20 of this section, shall be liquidated and, after deduction of court
21 costs and the expenses of liquidation, the proceeds shall be
22 divided and deposited as follows:

23 (a) In the event only one law enforcement agency
24 participates in the underlying criminal case out of which the
25 forfeiture arises, twenty percent (20%) of the proceeds shall be
26 forwarded to the State Treasurer and deposited in the General Fund
27 of the state and eighty percent (80%) of the proceeds shall be

28 deposited and credited to the budget of the participating law
29 enforcement agency.

30 (b) In the event more than one law enforcement agency
31 participates in the underlying criminal case out of which the
32 forfeiture arises, eighty percent (80%) of the proceeds shall be
33 deposited and credited to the budget of the law enforcement agency
34 whose officers initiated the criminal case, with the exception of
35 the Mississippi Bureau of Narcotics, and twenty percent (20%)
36 shall be divided equitably between or among the other
37 participating law enforcement agencies, and shall be deposited and
38 credited to the budgets of the participating law enforcement
39 agencies. In the event that the other participating law
40 enforcement agencies cannot agree on the division of their twenty
41 percent (20%), a petition shall be filed by any one of them in the
42 court in which the civil forfeiture case is brought and the court
43 shall make an equitable division.

44 If the criminal case is initiated by an officer of the
45 Mississippi Bureau of Narcotics and more than one (1) law
46 enforcement agency participates in the underlying criminal case
47 out of which the forfeiture arises, only twenty percent (20%) of
48 the proceeds shall be deposited and credited to the budget of the
49 Mississippi Bureau of Narcotics and eighty percent (80%) shall be
50 divided equitably between or among the other participating law
51 enforcement agencies, and shall be deposited and credited to the
52 budgets of the participating law enforcement agencies. In the
53 event that the other participating law enforcement agencies cannot
54 agree on the division of their eighty percent (80%), a petition
55 shall be filed by any one of them in the court in which the civil
56 forfeiture case is brought and the court shall make an equitable
57 division.

58 (3) All money which is forfeited under this article, except
59 as otherwise provided by Section 41-29-185, shall be divided,

60 deposited and credited in the same manner as set forth in
61 subsection (2) of this section.

62 (4) All property forfeited, deposited and credited to the
63 Mississippi Bureau of Narcotics under this article shall be
64 forwarded to the State Treasurer and deposited in a special fund
65 for use by the Mississippi Bureau of Narcotics upon appropriation
66 by the Legislature.

67 (5) All real estate which is forfeited under the provisions
68 of this article shall be sold to the highest and best bidder at a
69 public auction for cash, such auction to be conducted by the chief
70 law enforcement officer of the initiating law enforcement agency,
71 or his designee, at such place, on such notice and in accordance
72 with the same procedure, as far as practicable, as is required in
73 the case of sales of land under execution at law. The proceeds of
74 such sale shall first be applied to the cost and expense in
75 administering and conducting such sale, then to the satisfaction
76 of all mortgages, deeds of trust, liens and encumbrances of record
77 on such property. The remaining proceeds shall be divided,
78 forwarded and deposited in the same manner set out in subsection
79 (2) of this section.

80 (6) All other property that has been forfeited shall, except
81 as otherwise provided, be sold at a public auction for cash by the
82 chief law enforcement officer of the initiating law enforcement
83 agency, or his designee, to the highest and best bidder after
84 advertising the sale for at least once each week for three (3)
85 consecutive weeks, the last notice to appear not more than ten
86 (10) days nor less than five (5) days prior to such sale, in a
87 newspaper having a general circulation in the jurisdiction in
88 which said law enforcement agency is located. Such notices shall
89 contain a description of the property to be sold and a statement
90 of the time and place of sale. It shall not be necessary to the
91 validity of such sale either to have the property present at the
92 place of sale or to have the name of the owner thereof stated in

93 such notice. The proceeds of the sale shall be disposed of as
94 follows:

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

98 (b) The balance, if any, remaining after deduction of
99 all storage, court costs and expenses of liquidation shall be
100 divided, forwarded and deposited in the same manner set out in
101 subsection (2) of this section.

102 (7) Any county or municipal law enforcement agency may
103 maintain, repair, use and operate for official purposes all
104 property, other than real property, money or such property that is
105 described in subsection (1) of this section, that has been
106 forfeited to the agency if it is free from any interest of a bona
107 fide lienholder, secured party or other party who holds an
108 interest in the property in the nature of a security interest.
109 Such county or municipal law enforcement agency may purchase the
110 interest of a bona fide lienholder, secured party or other party
111 who holds an interest so that the property can be released for its
112 use. If the property is a motor vehicle susceptible of titling
113 under the Mississippi Motor Vehicle Title Law, the law enforcement
114 agency shall be deemed to be the purchaser, and the certificate of
115 title shall be issued to it as required by subsection (9) of this
116 section.

117 (8) The Mississippi Bureau of Narcotics may maintain,
118 repair, use and operate for official purposes all property, other
119 than real property, money or such property as is described in
120 subsection (1) of this section, that has been forfeited to the
121 bureau if it is free from any interest of a bona fide lienholder,
122 secured party, or other party who holds an interest in the
123 property in the nature of a security interest. In such case, the
124 bureau may purchase the interest of a bona fide lienholder,

125 secured party, or other party who holds an interest so that such
126 property can be released for use by the bureau.

127 The bureau may maintain, repair, use and operate such
128 property with money appropriated to the bureau for current
129 operations. If the property is a motor vehicle susceptible of
130 titling under the Mississippi Motor Vehicle Title Law, the bureau
131 is deemed to be the purchaser and the certificate of title shall
132 be issued to it as required by subsection (9) of this section.

133 (9) The State Tax Commission shall issue a certificate of
134 title to any person who purchases property under the provisions of
135 this section when a certificate of title is required under the
136 laws of this state.

137 SECTION 2. This act shall take effect and be in force from
138 and after July 1, 2001.