

By: Senator(s) Hewes

To: Ports and Marine Resources; Judiciary

SENATE BILL NO. 2465

1 AN ACT TO CREATE SECTIONS 49-15-201, 49-15-203, 49-15-205 AND
2 49-15-207, MISSISSIPPI CODE OF 1972, TO PROVIDE PROCEDURES FOR THE
3 FORFEITURE OF PROPERTY SEIZED IN MARINE VIOLATIONS; TO PROVIDE
4 NOTICE OF FORFEITURE TO CERTAIN PERSONS; TO PROVIDE FOR A HEARING
5 IN CONTESTED CASES; TO PROVIDE THE PROCEDURE FOR DISTRIBUTION OF
6 PROCEEDS FROM FORFEITED PROPERTY; TO PROVIDE AN ADMINISTRATIVE
7 FORFEITURE PROCEDURE FOR PROPERTY WHOSE VALUE DOES NOT EXCEED A
8 CERTAIN THRESHOLD; AND FOR RELATED PURPOSES.

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

10 SECTION 1. The following shall be codified as Section
11 49-15-201, Mississippi Code of 1972:

12 49-15-201. (1) Except as otherwise provided in Section
13 49-15-207, when any property is seized pursuant to Section
14 49-15-21 or 59-21-33, Mississippi Code of 1972, proceedings under
15 this section shall be instituted promptly. The seizing law
16 enforcement agency may, in the sound exercise of discretion,
17 decide not to bring a forfeiture action if the interests of bona
18 fide lien holders or secured creditors equal or exceed the value
19 of the seized property, or if other factors would produce a
20 negative economic result. No property shall be subject to
21 forfeiture which has been stolen from its owner if the owner can
22 be identified and prosecution for the theft has been initiated.

23 (2) A petition for forfeiture shall be filed promptly in the
24 name of the State of Mississippi, the county or the municipality
25 and may be filed in the county in which the seizure is made, the
26 county in which the criminal prosecution is brought or the county
27 in which the owner of the seized property is found. Forfeiture
28 proceedings may be brought in the circuit court or the county
29 court if a county court exists in the county and the value of the
30 seized property is within the jurisdictional limits of the county



31 court as set forth in Section 9-9-21, Mississippi Code of 1972. A
32 copy of such petition shall be served upon the following persons
33 by service of process in the same manner as in civil cases:

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

35 (b) Any secured party who has registered his lien or
36 filed a financing statement as provided by law, if the identity of
37 such secured party can be ascertained by the Department of Marine
38 Resources or the local law enforcement agency by making a good
39 faith effort to ascertain the identity of such secured party as
40 described in subsections (3), (4), (5), (6) and (7) of this
41 section;

42 (c) Any other bona fide lien holder or secured party or
43 other person holding an interest in the property in the nature of
44 a security interest of whom the Department of Marine Resources or
45 the local law enforcement agency has actual knowledge; and

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

48 (3) If the property is a motor vehicle susceptible of
49 titling under the Mississippi Motor Vehicle Title Law and if there
50 is any reasonable cause to believe that the vehicle has been
51 titled, the Department of Marine Resources or the local law
52 enforcement agency shall make inquiry of the State Tax Commission
53 as to what the records of the State Tax Commission show as to who
54 is the record owner of the vehicle and who, if anyone, holds any
55 lien or security interest which affects the vehicle.

56 (4) If the property is a motor vehicle and is not titled in
57 the State of Mississippi, then the Department of Marine Resources
58 or the local law enforcement agency shall attempt to ascertain the
59 name and address of the person in whose name the vehicle is
60 licensed, and if the vehicle is licensed in a state which has in
61 effect a certificate of title law, the Department of Marine
62 Resources or the local law enforcement agency shall make inquiry
63 of the appropriate agency of that state as to what the records of



64 the agency show as to who is the record owner of the vehicle and
65 who, if anyone, holds any lien, security interest or other
66 instrument in the nature of a security device which affects the
67 vehicle.

68 (5) If the property is of a nature that a financing
69 statement is required by the laws of this state to be filed to
70 perfect a security interest affecting the property and if there is
71 any reasonable cause to believe that a financing statement
72 covering the security interest has been filed under the laws of
73 this state, the Department of Marine Resources or the local law
74 enforcement agency shall make inquiry of the appropriate office
75 designated in Section 75-9-501, Mississippi Code of 1972, as to
76 what the records show as to who is the record owner of the
77 property and who, if anyone, has filed a financing statement
78 affecting the property.

79 (6) If the property is an aircraft or part thereof and if
80 there is any reasonable cause to believe that an instrument in the
81 nature of a security device affects the property, then the
82 Department of Marine Resources or the local law enforcement agency
83 shall make inquiry as to what the records of the Federal Aviation
84 Administration show as to who is the record owner of the property
85 and who, if anyone, holds an instrument in the nature of a
86 security device which affects the property.

87 (7) In the case of all other personal property subject to
88 forfeiture, if there is any reasonable cause to believe that an
89 instrument in the nature of a security device affects the
90 property, then the Department of Marine Resources or the local law
91 enforcement agency shall make a good faith inquiry to identify the
92 holder of any such instrument.

93 (8) If the answer to an inquiry states that the record owner
94 of the property is any person other than the person who was in
95 possession of it when it was seized, or states that any person
96 holds any lien, encumbrance, security interest, other interest in



97 the nature of a security interest, mortgage or deed of trust which
98 affects the property, the Department of Marine Resources or the
99 local law enforcement agency shall cause any record owner and also
100 any lien holder, secured party, other person who holds an interest
101 in the property in the nature of a security interest which affects
102 the property to be named in the petition of forfeiture and to be
103 served with process in the same manner as in civil cases.

104 (9) If the owner of the property cannot be found and served
105 with a copy of the petition of forfeiture, or if no person was in
106 possession of the property subject to forfeiture at the time that
107 it was seized and the owner of the property is unknown, the
108 Department of Marine Resources or the local law enforcement agency
109 shall file with the clerk of the court in which the proceeding is
110 pending an affidavit to such effect, whereupon the clerk of the
111 court shall publish notice of the hearing addressed to "the
112 Unknown Owner of _____," filling in the blank space with
113 a reasonably detailed description of the property subject to
114 forfeiture. Service by publication shall contain the other
115 requisites prescribed in Section 11-33-41, Mississippi Code of
116 1972, and shall be served as provided in Section 11-33-37,
117 Mississippi Code of 1972, for publication of notice for
118 attachments at law.

119 (10) No proceedings instituted pursuant to the provisions of
120 this section shall proceed to hearing unless the judge conducting
121 the hearing is satisfied that this section has been complied with.
122 Any answer received from an inquiry required by subsections (3)
123 through (7) of this section shall be introduced into evidence at
124 the hearing.

125 **SECTION 2.** The following shall be codified as Section
126 49-15-203, Mississippi Code of 1972:

127 49-15-203. (1) Except as otherwise provided in Section
128 49-15-207, an owner of property that has been seized pursuant to
129 Section 49-15-21 or 59-21-33, Mississippi Code of 1972, shall



130 file an answer within thirty (30) days after the completion of
131 service of process. If an answer is not filed, the court shall
132 hear evidence that the property is subject to forfeiture and
133 forfeit the property to the Department of Marine Resources or the
134 local law enforcement agency. If an answer is filed, a time for
135 hearing on forfeiture shall be set within thirty (30) days of
136 filing the answer or at the succeeding term of court, if court
137 would not be in progress within thirty (30) days after filing the
138 answer. Provided, however, that upon request by the Department of
139 Marine Resources, the local law enforcement agency or the owner of
140 the property, the court may postpone said forfeiture hearing to a
141 date past the time any criminal action is pending against said
142 owner.

143 (2) If the owner of the property has filed an answer denying
144 that the property is subject to forfeiture, then the burden is on
145 the petitioner to prove that the property is subject to
146 forfeiture. However, if an answer has not been filed by the owner
147 of the property, the petition for forfeiture may be introduced
148 into evidence and is prima facie evidence that the property is
149 subject to forfeiture. The standard of proof placed upon the
150 petitioner in regard to property forfeited under the provisions of
151 this article shall be by a preponderance of the evidence.

152 (3) At the hearing any claimant of any right, title or
153 interest in the property may prove his lien, encumbrance, security
154 interest or other interest in the nature of a security interest to
155 be bona fide and created without knowledge or consent that the
156 property was to be used so as to cause the property to be subject
157 to forfeiture.

158 (4) If it is found that the property is subject to
159 forfeiture, then the judge shall forfeit the property to the
160 Department of Marine Resources or the local law enforcement
161 agency. However, if proof at the hearing discloses that the
162 interest of any bona fide lien holder, secured party, other person



163 holding an interest in the property in the nature of a security
164 interest is greater than or equal to the present value of the
165 property, the court shall order the property released to him. If
166 such interest is less than the present value of the property and
167 if the proof shows that the property is subject to forfeiture, the
168 court shall order the property forfeited to the Department of
169 Marine Resources or the local law enforcement agency.

170 **SECTION 3.** The following shall be codified as Section
171 49-15-205, Mississippi Code of 1972:

172 49-15-205. (1) All other property which is forfeited under
173 Sections 49-15-201 through 49-15-207, and except as provided in
174 subsections (2), (5) and (6) of this section, shall be liquidated
175 and, after deduction of court costs and the expenses of
176 liquidation, the proceeds shall be divided and deposited as
177 follows:

178 (a) If only one (1) law enforcement agency participates
179 in the underlying criminal case out of which the forfeiture
180 arises, fifty percent (50%) of the proceeds shall be forwarded to
181 the State Treasurer and deposited in the General Fund of the state
182 and fifty percent (50%) of the proceeds shall be deposited and
183 credited to the budget of the participating law enforcement
184 agency.

185 (b) If more than one (1) law enforcement agency
186 participates in the underlying criminal case out of which the
187 forfeiture arises, fifty percent (50%) of the proceeds shall be
188 deposited and credited to the budget of the law enforcement agency
189 whose officers initiated the criminal case and fifty percent (50%)
190 shall be divided equitably between or among the other
191 participating law enforcement agencies, and shall be deposited and
192 credited to the budgets of the participating law enforcement
193 agencies. If the other participating law enforcement agencies
194 cannot agree on the division of their fifty percent (50%), a
195 petition shall be filed by any one of them in the court in which



196 the civil forfeiture case is brought and the court shall make an
197 equitable division.

198 (2) All money which is forfeited under Sections 49-15-201
199 through 49-15-207 shall be divided, deposited and credited in the
200 same manner as set forth in subsection (1) of this section.

201 (3) All property forfeited, deposited and credited to the
202 Department of Marine Resources under Sections 49-15-201 through
203 49-15-207 shall be forwarded to the State Treasurer and deposited
204 in the Seafood Fund for use by the Department of Marine Resources
205 upon appropriation by the Legislature.

206 (4) All other property that has been forfeited shall, except
207 as otherwise provided, be sold at a public auction for cash by the
208 chief law enforcement officer of the initiating law enforcement
209 agency, or his designee, to the highest and best bidder after
210 advertising the sale for at least once each week for three (3)
211 consecutive weeks, the last notice to appear not more than ten
212 (10) days nor less than five (5) days prior to such sale, in a
213 newspaper having a general circulation in the jurisdiction in
214 which said law enforcement agency is located. Such notices shall
215 contain a description of the property to be sold and a statement
216 of the time and place of sale. It shall not be necessary to the
217 validity of such sale either to have the property present at the
218 place of sale or to have the name of the owner thereof stated in
219 such notice. The proceeds of the sale shall be disposed of as
220 follows:

221 (a) To any bona fide lien holder, secured party, or
222 other party holding an interest in the property in the nature of a
223 security interest, to the extent of his interest; and

224 (b) The balance, if any, remaining after deduction of
225 all storage, court costs and expenses of liquidation shall be
226 divided, forwarded and deposited in the same manner set out in
227 subsection (1) of this section.



228 (5) Any state, county or municipal law enforcement agency
229 may maintain, repair, use and operate for official purposes all
230 property or money that has been forfeited to the agency if it is
231 free from any interest of a bona fide lien holder, secured party
232 or other party who holds an interest in the property in the nature
233 of a security interest. Such state, county or municipal law
234 enforcement agency may purchase the interest of a bona fide lien
235 holder, secured party or other party who holds an interest so that
236 the property can be released for its use. If the property is a
237 motor vehicle susceptible of titling under the Mississippi Motor
238 Vehicle Title Law, the law enforcement agency shall be deemed to
239 be the purchaser, and the certificate of title shall be issued to
240 it as required by subsection (7) of this section.

241 (6) The Department of Marine Resources may maintain, repair,
242 use and operate for official purposes all property, other than
243 money that has been forfeited to the Department of Marine
244 Resources if it is free from any interest of a bona fide lien
245 holder, secured party, or other party who holds an interest in the
246 property in the nature of a security interest. In such case, the
247 Department of Marine Resources may purchase the interest of a bona
248 fide lien holder, secured party, or other party who holds an
249 interest so that such property can be released for use by the
250 department.

251 The Department of Marine Resources may maintain, repair, use
252 and operate such property with money appropriated to the
253 department for current operations. If the property is a motor
254 vehicle susceptible of titling under the Mississippi Motor Vehicle
255 Title Law, the Department of Marine Resources is deemed to be the
256 purchaser and the certificate of title shall be issued to it as
257 required by subsection (7) of this section.

258 (7) The State Tax Commission shall issue a certificate of
259 title to any person who purchases property under the provisions of



260 this section when a certificate of title is required under the
261 laws of this state.

262 **SECTION 4.** The following shall be codified as Section
263 49-15-207, Mississippi Code of 1972:

264 49-15-207. (1) When any property the value of which does
265 not exceed Five Thousand Dollars (\$5,000.00), is seized pursuant
266 to Section 49-15-21 or 59-21-33, Mississippi Code of 1972, the
267 property may be forfeited by the administrative forfeiture
268 procedures provided for in this section.

269 (2) The attorney for the seizing law enforcement agency
270 shall provide notice of intention to forfeit the seized property
271 administratively, by certified mail, return receipt requested, to
272 all persons who are required to be notified pursuant to Section
273 49-15-201(2).

274 (3) If the notice of intention to forfeit the seized
275 property administratively cannot be given as provided in
276 subsection (2) of this section because of refusal, failure to
277 claim, insufficient address or any other reason, the attorney for
278 the seizing law enforcement agency shall provide notice by
279 publication in a newspaper of general circulation in the county in
280 which the seizure occurred for once a week for three (3)
281 consecutive weeks.

282 (4) Notice pursuant to subsections (2) and (3) of this
283 section shall include the following information:

- 284 (a) A description of the property;
- 285 (b) The approximate value of the property;
- 286 (c) The date and place of the seizure;
- 287 (d) The connection between the property and the
288 violation of the laws under the jurisdiction of the Department of
289 Marine Resources;
- 290 (e) The instructions for filing a request for judicial
291 review; and



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

295 (5) Persons claiming an interest in the seized property may
296 initiate judicial review of the seizure and proposed forfeiture by
297 filing a request for judicial review with the attorney for the
298 seizing law enforcement agency, within thirty (30) days after
299 receipt of the certified letter or within thirty (30) days after
300 the first publication of notice, whichever is applicable.

301 (6) If no request for judicial review is timely filed, the
302 attorney for the seizing law enforcement agency shall prepare a
303 written declaration of forfeiture of the subject property and the
304 forfeited property shall be used, distributed or disposed of in
305 accordance with the provisions of Section 49-15-205.

306 (7) Upon receipt of a timely request for judicial review,
307 the attorney for the seizing law enforcement agency shall promptly
308 file a petition for forfeiture and proceed as provided in Section
309 49-15-201.

310 **SECTION 5.** This act shall take effect and be in force from
311 and after July 1, 2002.

