

By: Senator(s) Smith (By Request)

To: Judiciary

## SENATE BILL NO. 2961

1       AN ACT TO AMEND SECTION 41-29-181, MISSISSIPPI CODE OF 1972,  
2 TO ALLOW THE DEPARTMENT OF CORRECTIONS TO PARTICIPATE IN  
3 FORFEITURE OF ASSETS AND RECEIVE A PRO RATA SHARE ON THE SAME  
4 BASIS AS OTHER PARTICIPATING LAW ENFORCEMENT AGENCIES; AND FOR  
5 RELATED PURPOSES.

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

7       **SECTION 1.** Section 41-29-181, Mississippi Code of 1972, is  
8 amended as follows:

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

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

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

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

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

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

25               (i) In the event only one (1) law enforcement  
26 agency participates in the underlying criminal case out of which  
27 the forfeiture arises, twenty percent (20%) of the proceeds shall  
28 be forwarded to the State Treasurer and deposited in the General



29 Fund of the state and eighty percent (80%) of the proceeds shall  
30 be deposited and credited to the budget of the participating law  
31 enforcement agency.

32                 (ii) In the event more than one (1) law  
33 enforcement agency participates in the underlying criminal case  
34 out of which the forfeiture arises, eighty percent (80%) of the  
35 proceeds shall be deposited and credited to the budget of the law  
36 enforcement agency whose officers initiated the criminal case,  
37 with the exception of the Mississippi Bureau of Narcotics, and  
38 twenty percent (20%) shall be divided equitably between or among  
39 the other participating law enforcement agencies, and shall be  
40 deposited and credited to the budgets of the participating law  
41 enforcement agencies. In the event that the other participating  
42 law enforcement agencies cannot agree on the division of their  
43 twenty percent (20%), a petition shall be filed by any one of them  
44 in the court in which the civil forfeiture case is brought and the  
45 court shall make an equitable division.

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

60                 (b) For the purposes of this subsection (2), the  
61 Mississippi Department of Corrections shall be considered a law



62        enforcement agency when it assists with law enforcement operations  
63        leading to the forfeiture of seized property or assets and is  
64        entitled to an equitable share of the proceeds.

65            (3) All money which is forfeited under this article, except  
66        as otherwise provided by Section 41-29-185, shall be divided,  
67        deposited and credited in the same manner as set forth in  
68        subsection (2) of this section.

69            (4) All property forfeited, deposited and credited to the  
70        Mississippi Bureau of Narcotics under this article shall be  
71        forwarded to the State Treasurer and deposited in a special fund  
72        for use by the Mississippi Bureau of Narcotics upon appropriation  
73        by the Legislature.

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

87            (6) All other property that has been forfeited shall, except  
88        as otherwise provided, be sold at a public auction for cash by the  
89        chief law enforcement officer of the initiating law enforcement  
90        agency, or his designee, to the highest and best bidder after  
91        advertising the sale for at least once each week for three (3)  
92        consecutive weeks, the last notice to appear not more than ten  
93        (10) days nor less than five (5) days prior to such sale, in a  
94        newspaper having a general circulation in the jurisdiction in



95 which said law enforcement agency is located. Such notices shall  
96 contain a description of the property to be sold and a statement  
97 of the time and place of sale. It shall not be necessary to the  
98 validity of such sale either to have the property present at the  
99 place of sale or to have the name of the owner thereof stated in  
100 such notice. The proceeds of the sale shall be disposed of as  
101 follows:

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

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

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

124                 (8) The Mississippi Bureau of Narcotics may maintain,  
125 repair, use and operate for official purposes all property, other  
126 than real property, money or such property as is described in  
127 subsection (1) of this section, that has been forfeited to the



128 bureau if it is free from any interest of a bona fide lienholder,  
129 secured party, or other party who holds an interest in the  
130 property in the nature of a security interest. In such case, the  
131 bureau may purchase the interest of a bona fide lienholder,  
132 secured party, or other party who holds an interest so that such  
133 property can be released for use by the bureau.

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

140       (9) The State Tax Commission shall issue a certificate of  
141 title to any person who purchases property under the provisions of  
142 this section when a certificate of title is required under the  
143 laws of this state.

144       **SECTION 2.** This act shall take effect and be in force from  
145 and after July 1, 2002.

