

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.

