

By: Representative Moss (By Request)

To: Judiciary A

HOUSE BILL NO. 791

1 AN ACT TO AMEND SECTION 41-29-181, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE SALE OF SEIZED WEAPONS; AND FOR RELATED PURPOSES.

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

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

6 41-29-181. (1) Regarding all controlled substances, raw
7 materials and paraphernalia which have been forfeited, the circuit
8 court shall by its order direct the Bureau of Narcotics to:

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

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

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

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

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

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



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

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

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

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



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

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

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

79 (6) All other property that has been forfeited shall, except
80 as otherwise provided, be sold at a public auction for cash by the
81 chief law enforcement officer of the initiating law enforcement
82 agency, or his designee, to the highest and best bidder after
83 advertising the sale for at least once each week for three (3)
84 consecutive weeks, the last notice to appear not more than ten
85 (10) days nor less than five (5) days prior to such sale, in a
86 newspaper having a general circulation in the jurisdiction in
87 which said law enforcement agency is located; provided, however,
88 that any firearms which have been forfeited may be sold to the
89 highest bidder after the chief law enforcement officer of the
90 initiating law enforcement agency, or his designee, has solicited
91 sealed bids from at least three (3) licensed gun dealers. Such



92 notices shall contain a description of the property to be sold and
93 a statement of the time and place of sale. It shall not be
94 necessary to the validity of such sale either to have the property
95 present at the place of sale or to have the name of the owner
96 thereof stated in such notice. The proceeds of the sale shall be
97 disposed of as follows:

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

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

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

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



125 secured party, or other party who holds an interest in the
126 property in the nature of a security interest. In such case, the
127 bureau may purchase the interest of a bona fide lienholder,
128 secured party, or other party who holds an interest so that such
129 property can be released for use by the bureau.

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

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

140 **SECTION 2.** This act shall take effect and be in force from
141 and after July 1, 2003.

