

By: Representative Moak

To: Wildlife, Fisheries and
Parks; Judiciary B

HOUSE BILL NO. 602

1 AN ACT TO AMEND SECTION 49-7-251, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE JUSTICE COURT WITH JURISDICTION OVER FORFEITURE OF
3 PROPERTY FOR VIOLATIONS OF GAME AND FISH LAWS; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 49-7-251, Mississippi Code of 1972, is
7 amended as follows:

8 49-7-251. (1) Except as otherwise provided in Section
9 49-7-257, when any property is seized pursuant to Section
10 49-7-103, 49-15-21(2) or 59-21-33, Mississippi Code of 1972,
11 proceedings under this section shall be instituted promptly.
12 Provided, however, that the seizing law enforcement agency may, in
13 the sound exercise of discretion, decide not to bring a forfeiture
14 action if the interests of bona fide lienholders or secured
15 creditors equal or exceed the value of the seized property, or if
16 other factors would produce a negative economic result. Provided
17 further, that no property shall be subject to forfeiture which has
18 been stolen from its owner if the owner can be identified and
19 prosecution for the theft has been initiated.

20 (2) A petition for forfeiture shall be filed promptly in the
21 name of the State of Mississippi, the county or the municipality
22 and may be filed in the county in which the seizure is made, the
23 county in which the criminal prosecution is brought or the county
24 in which the owner of the seized property is found. Forfeiture
25 proceedings may be brought in the circuit court, the county court
26 if a county court exists in the county and the value of the seized
27 property is within the jurisdictional limits of the county court
28 as set forth in Section 9-9-21, or justice court if the value of

29 the seized property is within the jurisdictional limits of justice
30 court as set forth in Section 9-11-9. A copy of such petition
31 shall be served upon the following persons by service of process
32 in the same manner as in civil cases:

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

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

41 (c) Any other bona fide lienholder or secured party or
42 other person holding an interest in the property in the nature of
43 a security interest of whom the Department of Wildlife
44 Conservation or the local law enforcement agency has actual
45 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 Wildlife Conservation 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 Wildlife
58 Conservation or the local law enforcement agency shall attempt to
59 ascertain the name and address of the person in whose name the
60 vehicle is licensed, and if the vehicle is licensed in a state
61 which has in effect a certificate of title law, the Department of

62 Wildlife Conservation or the local law enforcement agency shall
63 make inquiry of the appropriate agency of that state as to what
64 the records of the agency show as to who is the record owner of
65 the vehicle and who, if anyone, holds any lien, security interest
66 or other instrument in the nature of a security device which
67 affects the 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 Wildlife Conservation or the local
74 law enforcement agency shall make inquiry of the appropriate
75 office designated in Section 75-9-501, Mississippi Code of 1972,
76 as to 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 Wildlife Conservation or the local law enforcement
83 agency shall make inquiry of the Administrator of the Mississippi
84 Aeronautics Commission as to what the records of the Federal
85 Aviation Administration show as to who is the record owner of the
86 property and who, if anyone, holds an instrument in the nature of
87 a security device which affects the property.

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

94 (8) In the event the answer to an inquiry states that the
95 record owner of the property is any person other than the person
96 who was in possession of it when it was seized, or states that any
97 person holds any lien, encumbrance, security interest, other
98 interest in the nature of a security interest, mortgage or deed of
99 trust which affects the property, the Department of Wildlife
100 Conservation or the local law enforcement agency shall cause any
101 record owner and also any lienholder, secured party, other person
102 who holds an interest in the property in the nature of a security
103 interest which affects the property to be named in the petition of
104 forfeiture and to be served with process in the same manner as in
105 civil cases.

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

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

127 **SECTION 2.** This act shall take effect and be in force from
128 and after July 1, 2004.