

By: Representatives Smith (39th), Chism

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1035

1 AN ACT TO CREATE THE CRIME OF FLEEING OR ELUDING A LAW
2 ENFORCEMENT OFFICER IN A MOTOR VEHICLE; TO PROVIDE FOR THE
3 FORFEITURE OF PROPERTY USED IN COMMITTING A VIOLATION OF THIS ACT;
4 TO PROVIDE FORFEITURE PROCEDURES AND PROCEEDINGS; TO PROVIDE FOR
5 THE LIQUIDATION OF FORFEITED PROPERTY; TO ALLOW THE USE OF
6 FORFEITED PROPERTY BY SEIZING LAW ENFORCEMENT AGENCIES; TO PROVIDE
7 FOR THE DISTRIBUTION OF PROCEEDS; TO PROVIDE FOR ADMINISTRATIVE
8 FORFEITURE PROCEDURES; TO AMEND SECTION 97-9-73, MISSISSIPPI CODE
9 OF 1972, IN CONFORMITY; TO REQUIRE STATE, COUNTY AND LOCAL LAW
10 ENFORCEMENT AGENCIES THAT CONDUCT EMERGENCY RESPONSE AND VEHICULAR
11 PURSUITS TO ADOPT WRITTEN POLICIES THAT SET FORTH THE MANNER IN
12 WHICH THESE OPERATIONS SHALL BE CONDUCTED; AND FOR RELATED
13 PURPOSES.

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

15 **SECTION 1.** (1) The driver of a motor vehicle who is given a
16 visible or audible signal by a law enforcement officer by hand,
17 voice, emergency light or siren directing the driver to bring his
18 motor vehicle to a stop when such signal is given by a law
19 enforcement officer acting in the lawful performance of duty who
20 has a reasonable suspicion to believe that the driver in question
21 has committed a crime, and who willfully fails to obey such
22 direction and flees in a motor vehicle shall be guilty of a
23 felony, and upon conviction shall be punished by a fine not to
24 exceed Two Thousand Five Hundred Dollars (\$2,500.00) or imprisoned
25 in the county jail for a term not to exceed three (3) years, or
26 both.

27 (2) Any person who is guilty of violating subsection (1) of
28 this section by operating a motor vehicle in such a manner as to
29 indicate a reckless or willful disregard for the safety of persons
30 or property, or who so operates a motor vehicle in a manner
31 manifesting extreme indifference to the value of human life, shall
32 be guilty of a felony, and upon conviction thereof, shall be

33 punished by a fine not to exceed Five Thousand Dollars
34 (\$5,000.00), or by commitment to the custody of the Mississippi
35 Department of Corrections for not more than five (5) years, or
36 both.

37 (3) Any person who is guilty of violating subsection (1) of
38 this section, which violation results in serious bodily injury of
39 another, upon conviction shall be committed to the custody of the
40 Department of Corrections for not less than three (3) nor more
41 than twenty (20) years of imprisonment.

42 (4) Any person who is guilty of violating subsection (1) of
43 this section, which violation results in the death of another,
44 upon conviction shall be committed to the custody of the
45 Department of Corrections for not less than five (5) nor more than
46 forty (40) years.

47 (5) It is a defense to prosecution under this section:

48 (a) That the law enforcement officer was not in uniform
49 or that no law enforcement vehicle used in the attempted stop was
50 clearly marked as a law enforcement vehicle; or

51 (b) That the driver proceeded in a safe manner to a
52 reasonably near well-lit public place before stopping.

53 (6) Property used to violate subsections (2), (3) or (4) of
54 this section shall be subject to seizure and forfeiture as
55 provided in Sections 2 through 5 of this act.

56 (7) Any person convicted of a second or subsequent violation
57 of this section shall be subject to twice the amount of penalties
58 for the specific violation.

59 **SECTION 2.** (1) Except as otherwise provided in Section 5 of
60 this act, when any property is seized pursuant to Section 1 of
61 this act, proceedings under this section shall be instituted
62 promptly. Provided, however, that the seizing law enforcement
63 agency may, in the sound exercise of discretion, decide not to
64 bring a forfeiture action if the interests of bona fide
65 lienholders or secured creditors equal or exceed the value of the

66 seized property, or if other factors would produce a negative
67 economic result. Provided further, that no property shall be
68 subject to forfeiture which has been stolen from its owner if the
69 owner can be identified and prosecution for the theft has been
70 initiated. Provided, further, that no property shall be subject
71 to forfeiture when the vehicle being used at the time of the
72 fleeing by someone other than the owner.

73 (2) A petition for forfeiture shall be filed promptly in the
74 name of the State of Mississippi, the county or the municipality
75 and may be filed in the county in which the seizure is made, the
76 county in which the criminal prosecution is brought or the county
77 in which the owner of the seized property is found. Forfeiture
78 proceedings may be brought in the circuit court or the county
79 court if a county court exists in the county and the value of the
80 seized property is within the jurisdictional limits of the county
81 court as set forth in Section 9-9-21. A copy of such petition
82 shall be served upon the following persons by service of process
83 in the same manner as in civil cases:

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

85 (b) Any secured party who has registered his lien or
86 filed a financing statement as provided by law, if the identity of
87 such secured party can be ascertained by the law enforcement
88 agency by making a good faith effort to ascertain the identity of
89 such secured party as described in subsections (3), (4), (5) and
90 (6) of this section;

91 (c) Any other bona fide lienholder or secured party or
92 other person holding an interest in the property in the nature of
93 a security interest of whom the law enforcement agency has actual
94 knowledge; and

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

97 (3) If the property is a motor vehicle susceptible of
98 titling under the Mississippi Motor Vehicle Title Law and if there

99 is any reasonable cause to believe that the vehicle has been
100 titled, the law enforcement agency shall make inquiry of the State
101 Tax Commission as to what the records of the State Tax Commission
102 show as to who is the record owner of the vehicle and who, if
103 anyone, holds any lien or security interest which affects the
104 vehicle.

105 (4) If the property is a motor vehicle and is not titled in
106 the State of Mississippi, then the law enforcement agency shall
107 attempt to ascertain the name and address of the person in whose
108 name the vehicle is licensed, and if the vehicle is licensed in a
109 state which has in effect a certificate of title law, the law
110 enforcement agency shall make inquiry of the appropriate agency of
111 that state as to what the records of the agency show as to who is
112 the record owner of the vehicle and who, if anyone, holds any
113 lien, security interest or other instrument in the nature of a
114 security device which affects the vehicle.

115 (5) If the property is of a nature that a financing
116 statement is required by the laws of this state to be filed to
117 perfect a security interest affecting the property and if there is
118 any reasonable cause to believe that a financing statement
119 covering the security interest has been filed under the laws of
120 this state, the law enforcement agency shall make inquiry of the
121 appropriate office designated in Section 75-9-501, as to what the
122 records show as to who is the record owner of the property and
123 who, if anyone, has filed a financing statement affecting the
124 property.

125 (6) In the case of all other personal property subject to
126 forfeiture, if there is any reasonable cause to believe that an
127 instrument in the nature of a security device affects the
128 property, then the law enforcement agency shall make a good faith
129 inquiry to identify the holder of any such instrument.

130 (7) In the event the answer to an inquiry states that the
131 record owner of the property is any person other than the person

132 who was in possession of it when it was seized, or states that any
133 person holds any lien, encumbrance, security interest, other
134 interest in the nature of a security interest, mortgage or deed of
135 trust which affects the property, the law enforcement agency shall
136 cause any record owner and also any lienholder, secured party,
137 other person who holds an interest in the property in the nature
138 of a security interest which affects the property to be named in
139 the petition of forfeiture and to be served with process in the
140 same manner as in civil cases.

141 (8) If the owner of the property cannot be found and served
142 with a copy of the petition of forfeiture, or if no person was in
143 possession of the property subject to forfeiture at the time that
144 it was seized and the owner of the property is unknown, the law
145 enforcement agency shall file with the clerk of the court in which
146 the proceeding is pending an affidavit to such effect, whereupon
147 the clerk of the court shall publish notice of the hearing
148 addressed to "the Unknown Owner of _____," filling in
149 the blank space with a reasonably detailed description of the
150 property subject to forfeiture. Service by publication shall
151 contain the other requisites prescribed in Section 11-33-41 and
152 shall be served as provided in Section 11-33-37 for publication of
153 notice for attachments at law.

154 (9) No proceedings instituted pursuant to the provisions of
155 this section shall proceed to hearing unless the judge conducting
156 the hearing is satisfied that this section has been complied with.
157 Any answer received from an inquiry required by subsections (3)
158 through (7) of this section shall be introduced into evidence at
159 the hearing.

160 **SECTION 3.** (1) Except as otherwise provided in Section 5 of
161 this act, an owner of property that has been seized pursuant to
162 Section 1 of this act, shall file an answer within thirty (30)
163 days after the completion of service of process. If an answer is
164 not filed, the court shall hear evidence that the property is

165 subject to forfeiture and forfeit the property to the law
166 enforcement agency. If an answer is filed, a time for hearing on
167 forfeiture shall be set within thirty (30) days of filing the
168 answer or at the succeeding term of court, if court would not be
169 in progress within thirty (30) days after filing the answer.
170 Provided, however, that upon request by the law enforcement agency
171 or the owner of the property, the court may postpone said
172 forfeiture hearing to a date past the time any criminal action is
173 pending against said owner.

174 (2) If the owner of the property has filed an answer denying
175 that the property is subject to forfeiture, then the burden is on
176 the petitioner to prove that the property is subject to
177 forfeiture. However, if an answer has not been filed by the owner
178 of the property, the petition for forfeiture may be introduced
179 into evidence and is prima facie evidence that the property is
180 subject to forfeiture. The standard of proof placed upon the
181 petitioner in regard to property forfeited under the provisions of
182 this article shall be by a preponderance of the evidence.

183 (3) At the hearing any claimant of any right, title or
184 interest in the property may prove his lien, encumbrance, security
185 interest or other interest in the nature of a security interest to
186 be bona fide and created without knowledge or consent that the
187 property was to be used so as to cause the property to be subject
188 to forfeiture.

189 (4) If it is found that the property is subject to
190 forfeiture, then the judge shall forfeit the property to the law
191 enforcement agency. However, if proof at the hearing discloses
192 that the interest of any bona fide lienholder, secured party,
193 other person holding an interest in the property in the nature of
194 a security interest is greater than or equal to the present value
195 of the property, the court shall order the property released to
196 him. If such interest is less than the present value of the
197 property and if the proof shows that the property is subject to

198 forfeiture, the court shall order the property forfeited to the
199 law enforcement agency.

200 SECTION 4. (1) All other property which is forfeited under
201 Sections 2 through 5 of this act, and except as provided in
202 subsection (3) of this section, shall be liquidated and, after
203 deduction of court costs and the expenses of liquidation, the
204 proceeds shall be divided and deposited as follows:

205 (a) In the event only one (1) law enforcement agency
206 participates in the underlying criminal case out of which the
207 forfeiture arises, all of the proceeds shall be deposited and
208 credited to the budget of the participating law enforcement
209 agency.

210 (b) In the event more than one (1) law enforcement
211 agency participates in the underlying criminal case out of which
212 the forfeiture arises, fifty percent (50%) of the proceeds shall
213 be deposited and credited to the budget of the law enforcement
214 agency whose officers initiated the criminal case and fifty
215 percent (50%) shall be divided equitably between or among the
216 other participating law enforcement agencies, and shall be
217 deposited and credited to the budgets of the participating law
218 enforcement agencies. In the event that the other participating
219 law enforcement agencies cannot agree on the division of their
220 fifty percent (50%), a petition shall be filed by any one of them
221 in the court in which the civil forfeiture case is brought and the
222 court shall make an equitable division.

223 (2) All property that has been forfeited shall, except as
224 otherwise provided, be sold at a public auction for cash by the
225 chief law enforcement officer of the initiating law enforcement
226 agency, or his designee, to the highest and best bidder after
227 advertising the sale for at least once each week for three (3)
228 consecutive weeks, the last notice to appear not more than ten
229 (10) days nor less than five (5) days prior to such sale, in a
230 newspaper having a general circulation in the jurisdiction in

231 which said law enforcement agency is located. Such notices shall
232 contain a description of the property to be sold and a statement
233 of the time and place of sale. It shall not be necessary to the
234 validity of such sale either to have the property present at the
235 place of sale or to have the name of the owner thereof stated in
236 such notice. The proceeds of the sale shall be disposed of as
237 follows:

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

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

245 (3) Any state, county or municipal law enforcement agency
246 may maintain, repair, use and operate for official purposes all
247 property or money that has been forfeited to the agency if it is
248 free from any interest of a bona fide lienholder, secured party or
249 other party who holds an interest in the property in the nature of
250 a security interest. Such state, county or municipal law
251 enforcement agency may purchase the interest of a bona fide
252 lienholder, secured party or other party who holds an interest so
253 that the property can be released for its use. If the property is
254 a motor vehicle susceptible of titling under the Mississippi Motor
255 Vehicle Title Law, the law enforcement agency shall be deemed to
256 be the purchaser, and the certificate of title shall be issued to
257 it as required by subsection (7) of this section.

258 (4) 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 5.** (1) When any property the value of which does
263 not exceed Five Thousand Dollars (\$5,000.00), is seized pursuant

264 to Section 1 of this act, the property may be forfeited by the
265 administrative forfeiture procedures provided for in this section.

266 (2) The attorney for the seizing law enforcement agency
267 shall provide notice of intention to forfeit the seized property
268 administratively, by certified mail, return receipt requested, to
269 all persons who are required to be notified pursuant to subsection
270 (2) of Section 2 of this act.

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

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

281 (a) A description of the property;

282 (b) The approximate value of the property;

283 (c) The date and place of the seizure;

284 (d) The connection between the property and the
285 violation of Section 2 of this act;

286 (e) The instructions for filing a request for judicial
287 review; and

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

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

297 (6) If no request for judicial review is timely filed, the
298 attorney for the seizing law enforcement agency shall prepare a
299 written declaration of forfeiture of the subject property and the
300 forfeited property shall be used, distributed or disposed of in
301 accordance with the provisions of Section 4 of this act.

302 (7) Upon receipt of a timely request for judicial review,
303 the attorney for the seizing law enforcement agency shall promptly
304 file a petition for forfeiture and proceed as provided in Section
305 2 of this act.

306 **SECTION 6.** Section 97-9-73, Mississippi Code of 1972, is
307 amended as follows:

308 97-9-73. * * *

309 (1) It shall be unlawful for any person to obstruct or
310 resist by force, or violence, or threats, or in any other manner,
311 his lawful arrest or the lawful arrest of another person by any
312 state, local or federal law enforcement officer, and any person or
313 persons so doing shall be guilty of a misdemeanor, and upon
314 conviction thereof, shall be punished by a fine of not more than
315 Five Hundred Dollars (\$500.00), or by imprisonment in the county
316 jail not more than six (6) months, or both.

317 (2) The offense of fleeing or eluding a law enforcement
318 officer in a motor vehicle shall be subject to the provisions of
319 Sections 1 through 5 of House Bill No. , 2004 Regular Session.

320 **SECTION 7.** On or after January 1, 2005, each state, county
321 and local law enforcement agency that conducts emergency response
322 and vehicular pursuits shall adopt written policies that set forth
323 the manner in which these operations shall be conducted. Each law
324 enforcement agency may create their own such policies or adopt an
325 existing model. All pursuit policies created or adopted by any
326 law enforcement agency must address situations in which police
327 pursuits cross over into other jurisdictions. Law enforcement
328 agencies which do not comply with the requirements of this

329 provision are subject to the withholding of any state funding or
330 state administered federal funding.

331 **SECTION 8.** This act shall take effect and be in force from
332 and after July 1, 2004.