

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; AND FOR RELATED PURPOSES.

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

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

22 (2) Any person who is guilty of violating subsection (1) of
 23 this section by operating a motor vehicle in such a manner as to
 24 indicate a reckless or willful disregard for the safety of persons
 25 or property, or who so operates a motor vehicle in a manner
 26 manifesting extreme indifference to the value of human life, shall
 27 be guilty of a felony, and upon conviction thereof, shall be
 28 punished by a fine not to exceed Five Thousand Dollars
 29 (\$5,000.00), or by commitment to the custody of the Mississippi

30 Department of Corrections for not more than five (5) years, or
31 both.

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

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

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

43 (a) That the law enforcement officer was not in uniform
44 or that no law enforcement vehicle used in the attempted stop was
45 clearly marked as a law enforcement vehicle; or

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

48 (6) Property used to violate the provisions of this act
49 shall be subject to seizure and forfeiture as provided in Sections
50 2 through 5 of this act.

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

54 **SECTION 2.** (1) Except as otherwise provided in Section 5 of
55 this act, when any property is seized pursuant to Section 1 of
56 this act, proceedings under this section shall be instituted
57 promptly. Provided, however, that the seizing law enforcement
58 agency may, in the sound exercise of discretion, decide not to
59 bring a forfeiture action if the interests of bona fide
60 lienholders or secured creditors equal or exceed the value of the
61 seized property, or if other factors would produce a negative
62 economic result. Provided further, that no property shall be

63 subject to forfeiture which has been stolen from its owner if the
64 owner can be identified and prosecution for the theft has been
65 initiated.

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

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

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

84 (c) Any other bona fide lienholder or secured party or
85 other person holding an interest in the property in the nature of
86 a security interest of whom the law enforcement agency has actual
87 knowledge; and

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

90 (3) If the property is a motor vehicle susceptible of
91 titling under the Mississippi Motor Vehicle Title Law and if there
92 is any reasonable cause to believe that the vehicle has been
93 titled, the law enforcement agency shall make inquiry of the State
94 Tax Commission as to what the records of the State Tax Commission
95 show as to who is the record owner of the vehicle and who, if

96 anyone, holds any lien or security interest which affects the
97 vehicle.

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

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

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

123 (7) In the event the answer to an inquiry states that the
124 record owner of the property is any person other than the person
125 who was in possession of it when it was seized, or states that any
126 person holds any lien, encumbrance, security interest, other
127 interest in the nature of a security interest, mortgage or deed of
128 trust which affects the property, the law enforcement agency shall

129 cause any record owner and also any lienholder, secured party,
130 other person who holds an interest in the property in the nature
131 of a security interest which affects the property to be named in
132 the petition of forfeiture and to be served with process in the
133 same manner as in civil cases.

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

147 (9) No proceedings instituted pursuant to the provisions of
148 this section shall proceed to hearing unless the judge conducting
149 the hearing is satisfied that this section has been complied with.
150 Any answer received from an inquiry required by subsections (3)
151 through (7) of this section shall be introduced into evidence at
152 the hearing.

153 **SECTION 3.** (1) Except as otherwise provided in Section 5 of
154 this act, an owner of property that has been seized pursuant to
155 Section 1 of this act, shall file an answer within thirty (30)
156 days after the completion of service of process. If an answer is
157 not filed, the court shall hear evidence that the property is
158 subject to forfeiture and forfeit the property to the law
159 enforcement agency. If an answer is filed, a time for hearing on
160 forfeiture shall be set within thirty (30) days of filing the
161 answer or at the succeeding term of court, if court would not be

162 in progress within thirty (30) days after filing the answer.
163 Provided, however, that upon request by the law enforcement agency
164 or the owner of the property, the court may postpone said
165 forfeiture hearing to a date past the time any criminal action is
166 pending against said owner.

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

176 (3) At the hearing any claimant of any right, title or
177 interest in the property may prove his lien, encumbrance, security
178 interest or other interest in the nature of a security interest to
179 be bona fide and created without knowledge or consent that the
180 property was to be used so as to cause the property to be subject
181 to forfeiture.

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

193 **SECTION 4.** (1) All other property which is forfeited under
194 Sections 2 through 5 of this act, and except as provided in

195 subsection (3) of this section, shall be liquidated and, after
196 deduction of court costs and the expenses of liquidation, the
197 proceeds shall be divided and deposited as follows:

198 (a) In the event only one (1) law enforcement agency
199 participates in the underlying criminal case out of which the
200 forfeiture arises, all of the proceeds shall be deposited and
201 credited to the budget of the participating law enforcement
202 agency.

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

216 (2) All property that has been forfeited shall, except as
217 otherwise provided, be sold at a public auction for cash by the
218 chief law enforcement officer of the initiating law enforcement
219 agency, or his designee, to the highest and best bidder after
220 advertising the sale for at least once each week for three (3)
221 consecutive weeks, the last notice to appear not more than ten
222 (10) days nor less than five (5) days prior to such sale, in a
223 newspaper having a general circulation in the jurisdiction in
224 which said law enforcement agency is located. Such notices shall
225 contain a description of the property to be sold and a statement
226 of the time and place of sale. It shall not be necessary to the
227 validity of such sale either to have the property present at the

228 place of sale or to have the name of the owner thereof stated in
229 such notice. The proceeds of the sale shall be disposed of as
230 follows:

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

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

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

251 (4) The State Tax Commission shall issue a certificate of
252 title to any person who purchases property under the provisions of
253 this section when a certificate of title is required under the
254 laws of this state.

255 **SECTION 5.** (1) When any property the value of which does
256 not exceed Five Thousand Dollars (\$5,000.00), is seized pursuant
257 to Section 1 of this act, the property may be forfeited by the
258 administrative forfeiture procedures provided for in this section.

259 (2) The attorney for the seizing law enforcement agency
260 shall provide notice of intention to forfeit the seized property

261 administratively, by certified mail, return receipt requested, to
262 all persons who are required to be notified pursuant to subsection
263 (2) of Section 2 of this act.

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

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

274 (a) A description of the property;

275 (b) The approximate value of the property;

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

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

279 (e) The instructions for filing a request for judicial
280 review; and

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

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

290 (6) If no request for judicial review is timely filed, the
291 attorney for the seizing law enforcement agency shall prepare a
292 written declaration of forfeiture of the subject property and the

293 forfeited property shall be used, distributed or disposed of in
294 accordance with the provisions of Section 4 of this act.

295 (7) Upon receipt of a timely request for judicial review,
296 the attorney for the seizing law enforcement agency shall promptly
297 file a petition for forfeiture and proceed as provided in Section
298 2 of this act.

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

301 97-9-73. * * *

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

310 (2) The offense of fleeing or eluding a law enforcement
311 officer in a motor vehicle shall be subject to the provisions of
312 Sections 1 through 5 of House Bill No. 1035, 2004 Regular Session.

313 **SECTION 7.** This act shall take effect and be in force from
314 and after July 1, 2004.