

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.