

By: Representative Moak

To: Wildlife, Fisheries and  
Parks; Judiciary B

HOUSE BILL NO. 83

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 in justice court if the value

29 of the seized property is within the jurisdictional limits of the  
30 justice court as set forth in Section 9-11-9. A copy of such  
31 petition shall be served upon the following persons by service of  
32 process 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, 2005.