

By: Representative Beckett

To: Judiciary A

HOUSE BILL NO. 1122

1 AN ACT TO AMEND SECTION 41-29-181, MISSISSIPPI CODE OF 1972,
2 REGARDING DRUG FORFEITURES AND THE DISPOSITION OF THE PROCEEDS OF
3 SEIZED PROPERTY; TO PROVIDE THAT WHEN ONLY ONE LAW ENFORCEMENT
4 AGENCY PARTICIPATES IN THE UNDERLYING CRIMINAL CASE OUT OF WHICH
5 THE FORFEITURE ARISES, 10% OF THE PROCEEDS SHALL BE CREDITED TO
6 THE MISSISSIPPI BUREAU OF NARCOTICS AND 10% TO THE MISSISSIPPI
7 CRIME LABORATORY; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 41-29-181, Mississippi Code of 1972, is
10 amended as follows:

11 41-29-181. (1) Regarding all controlled substances, raw
12 materials and paraphernalia which have been forfeited, the circuit
13 court shall by its order direct the Bureau of Narcotics to:

14 (a) Retain the property for its official purposes;

15 (b) Deliver the property to a government agency or
16 department for official purposes;

17 (c) Deliver the property to a person authorized by the
18 court to receive it; or

19 (d) Destroy the property that is not otherwise
20 disposed, pursuant to the provisions of Section 41-29-154.

21 (2) All other property, real or personal, which is forfeited
22 under this article, except as otherwise provided in Section
23 41-29-185, and except as provided in subsections (3), (7) and (8)
24 of this section, shall be liquidated and, after deduction of court
25 costs and the expenses of liquidation, the proceeds shall be
26 divided and deposited as follows:

27 (a) In the event only one (1) law enforcement agency
28 participates in the underlying criminal case out of which the
29 forfeiture arises, ten percent (10%) of the proceeds shall

30 be * * * deposited and credited to the Mississippi Bureau of
31 Narcotics, ten percent (10%) shall be deposited and credited to
32 the Mississippi Crime Laboratory, and eighty percent (80%) of the
33 proceeds shall be deposited and credited to the budget of the
34 participating law enforcement agency.

35 (b) In the event more than one (1) law enforcement
36 agency participates in the underlying criminal case out of which
37 the forfeiture arises, eighty percent (80%) of the proceeds shall
38 be deposited and credited to the budget of the law enforcement
39 agency whose officers initiated the criminal case, with the
40 exception of the Mississippi Bureau of Narcotics, and twenty
41 percent (20%) shall be divided equitably between or among the
42 other participating law enforcement agencies, and shall be
43 deposited and credited to the budgets of the participating law
44 enforcement agencies. In the event that the other participating
45 law enforcement agencies cannot agree on the division of their
46 twenty percent (20%), a petition shall be filed by any one of them
47 in the court in which the civil forfeiture case is brought and the
48 court shall make an equitable division.

49 If the criminal case is initiated by an officer of the
50 Mississippi Bureau of Narcotics and more than one (1) law
51 enforcement agency participates in the underlying criminal case
52 out of which the forfeiture arises, only twenty percent (20%) of
53 the proceeds shall be deposited and credited to the budget of the
54 Mississippi Bureau of Narcotics and eighty percent (80%) shall be
55 divided equitably between or among the other participating law
56 enforcement agencies and shall be deposited and credited to the
57 budgets of the participating law enforcement agencies. In the
58 event that the other participating law enforcement agencies cannot
59 agree on the division of their eighty percent (80%), a petition
60 shall be filed by any one of them in the court in which the civil
61 forfeiture case is brought and the court shall make an equitable
62 division.

63 (3) All money which is forfeited under this article, except
64 as otherwise provided by Section 41-29-185, shall be divided,
65 deposited and credited in the same manner as set forth in
66 subsection (2) of this section.

67 (4) All property forfeited, deposited and credited to the
68 Mississippi Bureau of Narcotics under this article shall be
69 forwarded to the State Treasurer and deposited in a special fund
70 for use by the Mississippi Bureau of Narcotics upon appropriation
71 by the Legislature.

72 (5) All real estate which is forfeited under the provisions
73 of this article shall be sold to the highest and best bidder at a
74 public auction for cash, such auction to be conducted by the chief
75 law enforcement officer of the initiating law enforcement agency,
76 or his designee, at such place, on such notice and in accordance
77 with the same procedure, as far as practicable, as is required in
78 the case of sales of land under execution at law. The proceeds of
79 such sale shall first be applied to the cost and expense in
80 administering and conducting such sale, then to the satisfaction
81 of all mortgages, deeds of trust, liens and encumbrances of record
82 on such property. The remaining proceeds shall be divided,
83 forwarded and deposited in the same manner set out in subsection
84 (2) of this section.

85 (6) All other property that has been forfeited shall, except
86 as otherwise provided, be sold at a public auction for cash by the
87 chief law enforcement officer of the initiating law enforcement
88 agency, or his designee, to the highest and best bidder after
89 advertising the sale for at least once each week for three (3)
90 consecutive weeks, the last notice to appear not more than ten
91 (10) days nor less than five (5) days prior to such sale, in a
92 newspaper having a general circulation in the jurisdiction in
93 which said law enforcement agency is located. Such notices shall
94 contain a description of the property to be sold and a statement
95 of the time and place of sale. It shall not be necessary to the

96 validity of such sale either to have the property present at the
97 place of sale or to have the name of the owner thereof stated in
98 such notice. The proceeds of the sale shall be disposed of as
99 follows:

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

103 (b) The balance, if any, remaining after deduction of
104 all storage, court costs and expenses of liquidation shall be
105 divided, forwarded and deposited in the same manner set out in
106 subsection (2) of this section.

107 (7) (a) Any county or municipal law enforcement agency may
108 maintain, repair, use and operate for official purposes all
109 property, other than real property, money or such property that is
110 described in subsection (1) of this section, that has been
111 forfeited to the agency if it is free from any interest of a bona
112 fide lienholder, secured party or other party who holds an
113 interest in the property in the nature of a security interest.
114 Such county or municipal law enforcement agency may purchase the
115 interest of a bona fide lienholder, secured party or other party
116 who holds an interest so that the property can be released for its
117 use. If the property is a motor vehicle susceptible of titling
118 under the Mississippi Motor Vehicle Title Law, the law enforcement
119 agency shall be deemed to be the purchaser, and the certificate of
120 title shall be issued to it as required by subsection (9) of this
121 section.

122 (b) (i) If a vehicle is forfeited to or transferred to
123 a sheriff's department, then the sheriff may transfer the vehicle
124 to the county for official or governmental use as the board of
125 supervisors may direct.

126 (ii) If a vehicle is forfeited to or transferred
127 to a police department, then the police chief may transfer the

128 vehicle to the municipality for official or governmental use as
129 the governing authority of the municipality may direct.

130 (c) If a motor vehicle forfeited to a county or
131 municipal law enforcement agency becomes obsolete or is no longer
132 needed for official or governmental purposes, it may be disposed
133 of in accordance with Section 19-7-5 or in the manner provided by
134 law for disposing of municipal property.

135 (8) The Mississippi Bureau of Narcotics may maintain,
136 repair, use and operate for official purposes all property, other
137 than real property, money or such property as is described in
138 subsection (1) of this section, that has been forfeited to the
139 bureau if it is free from any interest of a bona fide lienholder,
140 secured party, or other party who holds an interest in the
141 property in the nature of a security interest. In such case, the
142 bureau may purchase the interest of a bona fide lienholder,
143 secured party, or other party who holds an interest so that such
144 property can be released for use by the bureau.

145 The bureau may maintain, repair, use and operate such
146 property with money appropriated to the bureau for current
147 operations. If the property is a motor vehicle susceptible of
148 titling under the Mississippi Motor Vehicle Title Law, the bureau
149 is deemed to be the purchaser and the certificate of title shall
150 be issued to it as required by subsection (9) of this section.

151 (9) The State Tax Commission shall issue a certificate of
152 title to any person who purchases property under the provisions of
153 this section when a certificate of title is required under the
154 laws of this state.

155 **SECTION 2.** This act shall take effect and be in force from
156 and after July 1, 2005.