

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2253

1 AN ACT TO AMEND SECTION 41-29-153, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE PROVISIONS OF THE DRUG FORFEITURE LAW TO VIOLATIONS
3 OF THE METHAMPHETAMINE PRECURSOR LAW; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 41-29-153, Mississippi Code of 1972, is
6 amended as follows:

7 41-29-153. (a) The following are subject to forfeiture:

8 (1) All controlled substances which have been
9 manufactured, distributed, dispensed or acquired in violation of
10 this article or in violation of Article 5 of this chapter;

11 (2) All raw materials, products and equipment of any
12 kind which are used, or intended for use, in manufacturing,
13 compounding, processing, delivering, importing, or exporting any
14 controlled substance in violation of this article or in violation
15 of Article 5 of this chapter;

16 (3) All property which is used, or intended for use, as
17 a container for property described in paragraph (1) or (2) of this
18 section;

19 (4) All conveyances, including aircraft, vehicles or
20 vessels, which are used, or intended for use, to transport, or in
21 any manner to facilitate the transportation, sale, receipt,
22 possession or concealment of property described in paragraph (1)
23 or (2) of this section, however:

24 A. No conveyance used by any person as a common
25 carrier in the transaction of business as a common carrier is
26 subject to forfeiture under this section unless it appears that

27 the owner or other person in charge of the conveyance is a
28 consenting party or privy to a violation of this article;

29 B. No conveyance is subject to forfeiture under
30 this section by reason of any act or omission proved by the owner
31 thereof to have been committed or omitted without his knowledge or
32 consent; if the confiscating authority has reason to believe that
33 the conveyance is a leased or rented conveyance, then the
34 confiscating authority shall notify the owner of the conveyance
35 within five (5) days of the confiscation;

36 C. A forfeiture of a conveyance encumbered by a
37 bona fide security interest is subject to the interest of the
38 secured party if he neither had knowledge of nor consented to the
39 act or omission;

40 D. A conveyance is not subject to forfeiture for a
41 violation of Section 41-29-139(c)(2)(A), (B) or (C);

42 (5) All money, deadly weapons, books, records, and
43 research products and materials, including formulas, microfilm,
44 tapes and data which are used, or intended for use, in violation
45 of this article;

46 (6) All drug paraphernalia as defined in Section
47 41-29-105(v); and

48 (7) Everything of value, including real estate,
49 furnished, or intended to be furnished, in exchange for a
50 controlled substance in violation of this article, all proceeds
51 traceable to such an exchange, and all monies, negotiable
52 instruments, businesses or business investments, securities, and
53 other things of value used, or intended to be used, to facilitate
54 any violation of this article. All monies, coin and currency
55 found in close proximity to forfeitable controlled substances, to
56 forfeitable drug manufacturing or distributing paraphernalia, or
57 to forfeitable records of the importation, manufacture or
58 distribution of controlled substances are presumed to be

59 forfeitable under this paragraph; the burden of proof is upon
60 claimants of the property to rebut this presumption.

61 A. No property shall be forfeited under the
62 provisions of paragraph (a)(7) of this section, to the extent of
63 the interest of an owner, by reason of any act or omission
64 established by him to have been committed or omitted without his
65 knowledge or consent.

66 B. Neither personal property encumbered by a bona
67 fide security interest nor real estate encumbered by a bona fide
68 mortgage, deed of trust, lien or encumbrance shall be forfeited
69 under the provisions of paragraph (a)(7) of this section, to the
70 extent of the interest of the secured party or the interest of the
71 mortgagee, holder of a deed of trust, lien or encumbrance by
72 reason of any act or omission established by him to have been
73 committed or omitted without his knowledge or consent.

74 (b) Property subject to forfeiture may be seized by the
75 bureau, local law enforcement officers, enforcement officers of
76 the Mississippi Department of Transportation, highway patrolmen,
77 the board, or the State Board of Pharmacy upon process issued by
78 any appropriate court having jurisdiction over the property.

79 Seizure without process may be made if:

80 (1) The seizure is incident to an arrest or a search
81 under a search warrant or an inspection under an administrative
82 inspection warrant;

83 (2) The property subject to seizure has been the
84 subject of a prior judgment in favor of the state in a criminal
85 injunction or forfeiture proceeding based upon this article;

86 (3) The bureau, the board, local law enforcement
87 officers, enforcement officers of the Mississippi Department of
88 Transportation, or highway patrolmen, or the State Board of
89 Pharmacy have probable cause to believe that the property is
90 directly or indirectly dangerous to health or safety; or

91 (4) The bureau, local law enforcement officers,
92 enforcement officers of the Mississippi Department of
93 Transportation, highway patrolmen, the board, or the State Board
94 of Pharmacy have probable cause to believe that the property was
95 used or is intended to be used in violation of this article.

96 (c) Controlled substances listed in Schedule I of Section
97 41-29-113 that are possessed, transferred, sold, or offered for
98 sale in violation of this article are contraband and shall be
99 seized and summarily forfeited to the state. Controlled
100 substances listed in the said Schedule I, which are seized or come
101 into the possession of the state, the owners of which are unknown,
102 are contraband and shall be summarily forfeited to the state.

103 (d) Species of plants from which controlled substances in
104 Schedules I and II of Sections 41-29-113 and 41-29-115 may be
105 derived which have been planted or cultivated in violation of this
106 article, or of which the owners or cultivators are unknown, or
107 which are wild growths, may be seized and summarily forfeited to
108 the state.

109 (e) The failure, upon demand by the bureau and/or local law
110 enforcement officers, or their authorized agents, or highway
111 patrolmen designated by the bureau, the board, or the State Board
112 of Pharmacy, of the person in occupancy or in control of land or
113 premises upon which the species of plants are growing or being
114 stored, to produce an appropriate registration, or proof that he
115 is the holder thereof, constitutes authority for the seizure and
116 forfeiture of the plants.

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