

By: Representatives Baker, Brown

To: Judiciary A

HOUSE BILL NO. 812

1 AN ACT TO REQUIRE THE MISSISSIPPI BUREAU OF NARCOTICS TO
2 ESTABLISH AND MAINTAIN A SEARCHABLE PUBLIC WEBSITE WHICH INCLUDES
3 CERTAIN INFORMATION REGARDING PROPERTY THAT IS SEIZED BY A LAW
4 ENFORCEMENT AGENCY; TO PROVIDE THAT EACH SEIZING LAW ENFORCEMENT
5 AGENCY SHALL PROVIDE THE APPLICABLE INFORMATION REQUIRED BY THIS
6 ACT TO THE DISTRICT ATTORNEY; TO REQUIRE EACH DISTRICT ATTORNEY TO
7 UPLOAD THE APPLICABLE INFORMATION REQUIRED BY THIS ACT TO THE
8 MISSISSIPPI BUREAU OF NARCOTICS WEBSITE; TO REQUIRE THE WEBSITE TO
9 BE DESIGNED IN A MANNER THAT ALLOWS THE INFORMATION TO BE UPLOADED
10 TO THE WEBSITE; TO OUTLINE THE INFORMATION REQUIRED TO BE UPLOADED
11 TO THE WEBSITE; TO PROVIDE THAT THE WEBSITE SHALL BE CREATED AND
12 FUNCTIONAL NO MORE THAN 12 MONTHS FROM THE DATE THAT THE
13 LEGISLATURE APPROPRIATES SUFFICIENT FUNDS FOR SUCH PURPOSES; TO
14 PROVIDE A REQUIRED TIME PERIOD FOR A SEIZING LAW ENFORCEMENT
15 AGENCY TO PROVIDE THE APPLICABLE INFORMATION TO THE DISTRICT
16 ATTORNEY OF THE COUNTY IN WHICH THE PROPERTY WAS SEIZED; TO
17 PROVIDE THE TIME PERIOD REQUIRED FOR A DISTRICT ATTORNEY TO UPLOAD
18 THE REQUIRED INFORMATION ON THE WEBSITE; TO AUTHORIZE THE
19 COMMANDER OF A MULTIJURISDICTIONAL TASKFORCE TO APPOINT ONE AGENCY
20 TO REPORT ITS SEIZURES TO THE DISTRICT ATTORNEY OF THE COUNTY IN
21 WHICH THE PROPERTY WAS SEIZED; TO PROVIDE THE DEFINITION FOR LAW
22 ENFORCEMENT AGENCY; TO PROVIDE THAT FAILURE TO SUBSTANTIALLY
23 COMPLY WITH THIS ACT SHALL DISQUALIFY THE SEIZING LAW ENFORCEMENT
24 AGENCY FROM APPLYING FOR OR RECEIVING FEDERAL OR STATE GRANTS; TO
25 REQUIRE THE SEIZING LAW ENFORCEMENT AGENCY TO REQUEST THE DISTRICT
26 ATTORNEY OF THE COUNTY IN WHICH THE PROPERTY IS SEIZED OR THE
27 MISSISSIPPI BUREAU OF NARCOTICS TO PROSECUTE CASES INVOLVING
28 SEIZED PROPERTY; TO AMEND SECTION 41-29-153, MISSISSIPPI CODE OF
29 1972, TO PROVIDE THE PROCEDURE FOR OBTAINING A SEIZURE WARRANT; TO
30 REQUIRE THE SEIZING LAW ENFORCEMENT AGENCY TO OBTAIN A SEIZURE
31 WARRANT FROM A CIRCUIT OR COUNTY JUDGE HAVING JURISDICTION WITHIN
32 72 HOURS OF ANY SEIZURE; TO AMEND SECTIONS 41-29-157, 41-29-176,
33 41-29-177, 41-29-183 AND 41-29-179, MISSISSIPPI CODE OF 1972, TO
34 CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED PURPOSES.



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

36 **SECTION 1.** (1) The Mississippi Bureau of Narcotics shall
37 establish and maintain a public website that is searchable by case
38 numbers created by the bureau which tracks seized property from
39 the time of seizure to final disposition of the property. The
40 website shall be designed in a manner that allows the information
41 required by this section to be uploaded to the website. The
42 website shall include the following information regarding property
43 that is seized by a law enforcement agency pursuant to Section
44 41-29-153:

45 (a) The name of the law enforcement agency that seized
46 the property;

47 (b) A description of each item seized, including the
48 approximate value of the property;

49 (c) A copy of the notice of intent to forfeit as
50 described in Section 41-29-176 or the petition for forfeiture as
51 described in Section 41-29-177, whichever is applicable;

52 (d) A copy of any petition to contest forfeiture filed
53 as described in Section 41-29-176;

54 (e) If a forfeiture was obtained because no petition to
55 contest forfeiture was timely filed as provided in Section
56 41-29-176, a copy of the written declaration of forfeiture as
57 required by Section 41-29-176;



58 (f) If a forfeiture is obtained under Section
59 41-29-177, a copy of any final judgment or dispositive order
60 regarding the merits of the petition for forfeiture; and

61 (g) If the forfeiture was initiated under Section
62 41-29-176 and a petition to contest is filed, a copy of any final
63 order or other dispositive order regarding the forfeiture.

64 (2) (a) Except as otherwise provided in this section for
65 the bureau, upon seizure of any property by a law enforcement
66 agency pursuant to Section 41-29-153, the seizing law enforcement
67 agency shall provide the applicable information required by
68 subsection (1) of this section to the district attorney of the
69 county in which the property was seized within thirty (30) days of
70 such seizure. However, if the bureau is conducting the seizure of
71 property on behalf of a law enforcement agency, the provisions of
72 paragraph (b) of this section shall apply. Within thirty (30)
73 days of service of notice of intent to forfeit as described in
74 Section 41-29-176 or the filing of a petition for forfeiture as
75 described in Section 41-29-177 in a court of competent
76 jurisdiction, the district attorney shall upload the information
77 required by this section to the bureau's website. Within thirty
78 (30) days of service of a petition to contest forfeiture as
79 described by Section 41-29-176, the district attorney shall upload
80 the information required by the section to the bureau's website.
81 Within thirty (30) days of dispositive actions regarding any
82 seized property, the District Attorney shall upload the applicable



83 information required by subsection (1) of this section to the
84 bureau's website. The commander of a multijurisdictional
85 taskforce may appoint one (1) agency to report its seizures to the
86 district attorney of the county in which the property was seized.
87 Any law enforcement agency that fails to provide the information
88 required by this section shall be disqualified from applying for
89 or receiving state grants.

90 (b) Upon seizure of any property by the bureau pursuant
91 to Section 41-29-153 or pursuant to a request by a law enforcement
92 agency for the bureau to seize property on behalf of the law
93 enforcement agency, the bureau shall upload the information
94 required by this subsection on its website within thirty (30) days
95 of the seizure, or from the time of the receipt of the request
96 from the law enforcement agency.

97 (3) Failure to upload the information required by this
98 section shall not invalidate the seizure or otherwise preclude the
99 same.

100 (4) The Mississippi Bureau of Narcotics shall adopt rules
101 and regulations that are necessary to implement this section.

102 (5) For purposes of this section, the term "law enforcement
103 agency" includes any person or entity having seizure authority
104 under Section 41-29-159.

105 (6) Failure to substantially comply with the provisions of
106 this section shall disqualify the seizing law enforcement agency



107 from applying for or receiving federal or state grants until such
108 time as in compliance with this section.

109 (7) The provisions of this section shall be required only at
110 such time as the Legislature has appropriated funds for the bureau
111 to create and maintain the required website. The website shall be
112 created and functionally operational, not more than twelve (12)
113 months from the date that sufficient funds have been appropriated
114 for that purpose. The bureau shall provide at least thirty (30)
115 days notice in advance of the date when the website will be
116 operational to each district attorney in the state.

117 **SECTION 2.** The seizing law enforcement agency shall within
118 thirty (30) days of a seizure, request either the district
119 attorney of the county in which property is seized or the
120 Mississippi Bureau of Narcotics to prosecute any cases involving
121 seized property. No one other than the district attorney of the
122 county in which the seizure occurred or an attorney from the
123 Mississippi Bureau of Narcotics shall have authority to prosecute
124 the forfeiture of the seized property. If the district attorney
125 and the Mississippi Bureau of Narcotics decline to prosecute the
126 forfeiture of the seized property, the seizing law enforcement
127 agency shall notify the person from whom the property was seized
128 that the property will not be forfeited, within thirty (30) days
129 of receiving the notice not to prosecute, and shall provide
130 written instructions advising the person how to retrieve the
131 seized property.



132 **SECTION 3.** Section 41-29-153, Mississippi Code of 1972, is
133 amended as follows:

134 41-29-153. (a) The following are subject to forfeiture:

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

138 (2) All raw materials, products and equipment of any
139 kind which are used, or intended for use, in manufacturing,
140 compounding, processing, delivering, importing, or exporting any
141 controlled substance in violation of this article or in violation
142 of Article 5 of this chapter;

143 (3) All property which is used, or intended for use, as
144 a container for property described in paragraph (1) or (2) of this
145 subsection;

146 (4) All conveyances, including aircraft, vehicles or
147 vessels, which are used, or intended for use, to transport, or in
148 any manner to facilitate the transportation, sale, receipt,
149 possession or concealment of property described in paragraph (1)
150 or (2) of this subsection, however:

151 A. No conveyance used by any person as a common
152 carrier in the transaction of business as a common carrier is
153 subject to forfeiture under this section unless it appears that
154 the owner or other person in charge of the conveyance is a
155 consenting party or privy to a violation of this article;



156 B. No conveyance is subject to forfeiture under
157 this section by reason of any act or omission proved by the owner
158 thereof to have been committed or omitted without his knowledge or
159 consent; if the confiscating authority has reason to believe that
160 the conveyance is a leased or rented conveyance, then the
161 confiscating authority shall notify the owner of the conveyance
162 within five (5) days of the confiscation;

163 C. A forfeiture of a conveyance encumbered by a
164 bona fide security interest is subject to the interest of the
165 secured party if he neither had knowledge of nor consented to the
166 act or omission;

167 D. A conveyance is not subject to forfeiture for a
168 violation of Section 41-29-139(c) (2) (A) * * * 1,2 or (C)1,2,3;

169 (5) All money, deadly weapons, books, records, and
170 research products and materials, including formulas, microfilm,
171 tapes and data which are used, or intended for use, in violation
172 of this article or in violation of Article 5 of this chapter;

173 (6) All drug paraphernalia as defined in Section
174 41-29-105(v); and

175 (7) Everything of value, including real estate,
176 furnished, or intended to be furnished, in exchange for a
177 controlled substance in violation of this article, all proceeds
178 traceable to such an exchange, and all monies, negotiable
179 instruments, businesses or business investments, securities, and
180 other things of value used, or intended to be used, to facilitate



181 any violation of this article. All monies, coin and currency
182 found in close proximity to forfeitable controlled substances, to
183 forfeitable drug manufacturing or distributing paraphernalia, or
184 to forfeitable records of the importation, manufacture or
185 distribution of controlled substances are presumed to be
186 forfeitable under this paragraph; the burden of proof is upon
187 claimants of the property to rebut this presumption.

188 A. No property shall be forfeited under the
189 provisions of subsection (a)(7) of this section, to the extent of
190 the interest of an owner, by reason of any act or omission
191 established by him to have been committed or omitted without his
192 knowledge or consent.

193 B. Neither personal property encumbered by a bona
194 fide security interest nor real estate encumbered by a bona fide
195 mortgage, deed of trust, lien or encumbrance shall be forfeited
196 under the provisions of subsection (a)(7) of this section, to the
197 extent of the interest of the secured party or the interest of the
198 mortgagee, holder of a deed of trust, lien or encumbrance by
199 reason of any act or omission established by him to have been
200 committed or omitted without his knowledge or consent.

201 (b) Property subject to forfeiture may be seized by the
202 bureau, local law enforcement officers, enforcement officers of
203 the Mississippi Department of Transportation, highway patrolmen,
204 the board, or the State Board of Pharmacy upon process issued by



205 any appropriate court having jurisdiction over the property.

206 Seizure without process may be made if:

207 (1) The seizure is incident to an arrest or a search
208 under a search warrant or an inspection under an administrative
209 inspection warrant;

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

213 (3) The bureau, the board, local law enforcement
214 officers, enforcement officers of the Mississippi Department of
215 Transportation, or highway patrolmen, or the State Board of
216 Pharmacy have probable cause to believe that the property is
217 directly or indirectly dangerous to health or safety; * * *

218 (4) The bureau, local law enforcement officers,
219 enforcement officers of the Mississippi Department of
220 Transportation, highway patrolmen, the board, or the State Board
221 of Pharmacy have probable cause to believe that the property was
222 used or is intended to be used in violation of this article * * *;

223 or

224 (5) The seizing law enforcement agency obtained a
225 seizure warrant as described in paragraph (f) of this section.

226 (c) Controlled substances listed in Schedule I of Section
227 41-29-113 that are possessed, transferred, sold, or offered for
228 sale in violation of this article are contraband and shall be
229 seized and summarily forfeited to the state. Controlled



230 substances listed in the said Schedule I, which are seized or come
231 into the possession of the state, the owners of which are unknown,
232 are contraband and shall be summarily forfeited to the state.

233 (d) Species of plants from which controlled substances in
234 Schedules I and II of Sections 41-29-113 and 41-29-115 may be
235 derived which have been planted or cultivated in violation of this
236 article, or of which the owners or cultivators are unknown, or
237 which are wild growths, may be seized and summarily forfeited to
238 the state.

239 (e) The failure, upon demand by the bureau and/or local law
240 enforcement officers, or their authorized agents, or highway
241 patrolmen designated by the bureau, the board, or the State Board
242 of Pharmacy, of the person in occupancy or in control of land or
243 premises upon which the species of plants are growing or being
244 stored, to produce an appropriate registration, or proof that he
245 is the holder thereof, constitutes authority for the seizure and
246 forfeiture of the plants.

247 (f) (1) When any property is seized under the Uniform
248 Controlled Substances Law, except as otherwise provided in
249 subsection (3) of this section, by a law enforcement agency with
250 the intent to be forfeited, the law enforcement agency that seized
251 the property shall obtain a seizure warrant from the county or
252 circuit court having jurisdiction of such property within
253 seventy-two (72) hours of any seizure, excluding weekends and
254 holidays. Any law enforcement agency that fails to obtain a



255 seizure warrant within seventy-two (72) hours as required by this
256 section shall notify the person from whom the property was seized
257 that it will not be forfeited and shall provide written
258 instructions advising the person how to retrieve the seized
259 property.

260 (2) A circuit or county judge having jurisdiction of
261 any property other than a controlled substance, raw material or
262 paraphernalia, may issue a seizure warrant upon proper oath or
263 affirmation from a law enforcement agency. The law enforcement
264 agency that is seeking a seizure warrant shall provide the
265 following information to the judge:

266 A. Probable cause to believe that the property was
267 used or intended to be used in violation of this article;

268 B. The name of the person from whom the property
269 was seized; and

270 C. A detailed description of the property which is
271 seized, including the value of the property.

272 (3) This subsection does not apply to seizures
273 performed pursuant to Section 41-29-157 when property is
274 specifically set forth in a search and seizure warrant.

275 **SECTION 4.** Section 41-29-157, Mississippi Code of 1972, is
276 amended as follows:

277 41-29-157. (a) Except as otherwise provided in Section 1 of
278 House Bill No. 812, 2017 Regular Session, issuance and execution



279 of administrative inspection warrants and search warrants shall be
280 as follows, except as provided in subsection (c) of this section:

281 (1) A judge of any state court of record, or any
282 justice court judge within his jurisdiction, and upon proper oath
283 or affirmation showing probable cause, may issue warrants for the
284 purpose of conducting administrative inspections authorized by
285 this article or rules thereunder, and seizures of property
286 appropriate to the inspections. For purposes of the issuance of
287 administrative inspection warrants, probable cause exists upon
288 showing a valid public interest in the effective enforcement of
289 this article or rules thereunder, sufficient to justify
290 administrative inspection of the area, premises, building or
291 conveyance in the circumstances specified in the application for
292 the warrant. All such warrants shall be served during normal
293 business hours;

294 (2) A search warrant shall issue only upon an affidavit
295 of a person having knowledge or information of the facts alleged,
296 sworn to before the judge or justice court judge and establishing
297 the grounds for issuing the warrant. If the judge or justice
298 court judge is satisfied that grounds for the application exist or
299 that there is probable cause to believe they exist, he shall issue
300 a warrant identifying the area, premises, building or conveyance
301 to be searched, the purpose of the search, and, if appropriate,
302 the type of property to be searched, if any. The warrant shall:



303 (A) State the grounds for its issuance and the
304 name of each person whose affidavit has been taken in support
305 thereof;

306 (B) Be directed to a person authorized by Section
307 41-29-159 to execute it;

308 (C) Command the person to whom it is directed to
309 inspect the area, premises, building or conveyance identified for
310 the purpose specified, and if appropriate, direct the seizure of
311 the property specified;

312 (D) Identify the item or types of property to be
313 seized, if any;

314 (E) Direct that it be served and designate the
315 judge or magistrate to whom it shall be returned;

316 (3) A warrant issued pursuant to this section must be
317 executed and returned within ten (10) days of its date unless,
318 upon a showing of a need for additional time, the court orders
319 otherwise. If property is seized pursuant to a warrant, a copy
320 shall be given to the person from whom or from whose premises the
321 property is taken, together with a receipt for the property taken.
322 The return of the warrant shall be made promptly, accompanied by a
323 written inventory of any property taken. The inventory shall be
324 made in the presence of the person executing the warrant and of
325 the person from whose possession or premises the property was
326 taken, if present, or in the presence of at least one (1) credible
327 person other than the person executing the warrant. A copy of the



328 inventory shall be delivered to the person from whom or from whose
329 premises the property was taken and to the applicant for the
330 warrant;

331 (4) The judge or justice court judge who has issued a
332 warrant shall attach thereto a copy of the return and all papers
333 returnable in connection therewith and file them with the clerk of
334 the appropriate state court for the judicial district in which the
335 inspection was made.

336 (b) The Mississippi Bureau of Narcotics, the State Board of
337 Pharmacy, the State Board of Medical Licensure, the State Board of
338 Dental Examiners, the Mississippi Board of Nursing or the State
339 Board of Optometry may make administrative inspections of
340 controlled premises in accordance with the following provisions:

341 (1) For purposes of this section only, "controlled
342 premises" means:

343 (A) Places where persons registered or exempted
344 from registration requirements under this article are required to
345 keep records; and

346 (B) Places including factories, warehouses,
347 establishments and conveyances in which persons registered or
348 exempted from registration requirements under this article are
349 permitted to hold, manufacture, compound, process, sell, deliver,
350 or otherwise dispose of any controlled substance.

351 (2) When authorized by an administrative inspection
352 warrant issued in accordance with the conditions imposed in this



353 section, an officer or employee designated by the Mississippi
354 Bureau of Narcotics, the State Board of Pharmacy, the State Board
355 of Medical Licensure, the State Board of Dental Examiners, the
356 Mississippi Board of Nursing or the State Board of Optometry, upon
357 presenting the warrant and appropriate credentials to the owner,
358 operator or agent in charge, may enter controlled premises for the
359 purpose of conducting an administrative inspection.

360 (3) When authorized by an administrative inspection
361 warrant, an officer or employee designated by the Mississippi
362 Bureau of Narcotics, the State Board of Pharmacy, the State Board
363 of Medical Licensure, the State Board of Dental Examiners, the
364 Mississippi Board of Nursing or the State Board of Optometry may:

365 (A) Inspect and copy records required by this
366 article to be kept;

367 (B) Inspect, within reasonable limits and in a
368 reasonable manner, controlled premises and all pertinent
369 equipment, finished and unfinished material, containers and
370 labeling found therein, and, except as provided in paragraph (5)
371 of this subsection, all other things therein, including records,
372 files, papers, processes, controls and facilities bearing on
373 violation of this article; and

374 (C) Inventory any stock of any controlled
375 substance therein and obtain samples thereof.

376 (4) This section does not prevent the inspection
377 without a warrant of books and records pursuant to an



378 administrative subpoena, nor does it prevent entries and
379 administrative inspections, including seizures of property,
380 without a warrant:

381 (A) If the owner, operator or agent in charge of
382 the controlled premises consents;

383 (B) In situations presenting imminent danger to
384 health or safety;

385 (C) In situations involving inspection of
386 conveyances if there is reasonable cause to believe that the
387 mobility of the conveyance makes it impracticable to obtain a
388 warrant;

389 (D) In any other exceptional or emergency
390 circumstance where time or opportunity to apply for a warrant is
391 lacking; or

392 (E) In all other situations in which a warrant is
393 not constitutionally required.

394 (5) An inspection authorized by this section shall not
395 extend to financial data, sales data, other than shipment data, or
396 pricing data unless the owner, operator or agent in charge of the
397 controlled premises consents in writing.

398 (c) Any agent of the bureau authorized to execute a search
399 warrant involving controlled substances, the penalty for which is
400 imprisonment for more than one (1) year, may, without notice of
401 his authority and purpose, break open an outer door or inner door,



402 or window of a building, or any part of the building, if the judge
403 issuing the warrant:

404 (1) Is satisfied that there is probable cause to
405 believe that:

406 (A) The property sought may, and, if such notice
407 is given, will be easily and quickly destroyed or disposed of; or

408 (B) The giving of such notice will immediately
409 endanger the life or safety of the executing officer or another
410 person; and

411 (2) Has included in the warrant a direction that the
412 officer executing the warrant shall not be required to give such
413 notice.

414 Any officer acting under such warrant shall, as soon as
415 practical, after entering the premises, identify himself and give
416 the reasons and authority for his entrance upon the premises.

417 Search warrants which include the instruction that the
418 executing officer shall not be required to give notice of
419 authority and purpose as authorized by this subsection shall be
420 issued only by the county court or county judge in vacation,
421 chancery court or by the chancellor in vacation, by the circuit
422 court or circuit judge in vacation, or by a justice of the
423 Mississippi Supreme Court.

424 This subsection shall expire and stand repealed from and
425 after July 1, 1974, except that the repeal shall not affect the



426 validity or legality of any search authorized under this
427 subsection and conducted prior to July 1, 1974.

428 **SECTION 5.** Section 41-29-176, Mississippi Code of 1972, is
429 amended as follows:

430 * * *

431 41-29-176. (1) Except as otherwise provided in Section 1 of
432 House Bill No. 812, 2017 Regular Session, when any property other
433 than a controlled substance, raw material or paraphernalia, the
434 value of which does not exceed Twenty Thousand Dollars
435 (\$20,000.00), is seized under the Uniform Controlled Substances
436 Law, the property may be forfeited by the administrative
437 forfeiture procedures provided for in this section.

438 (2) The * * * district attorney, his or her designee, or an
439 attorney from the Mississippi Bureau of Narcotics shall provide
440 notice of intention to forfeit the seized property
441 administratively, either by certified mail, return receipt
442 requested, or by personal delivery, to all persons who are
443 required to be notified pursuant to Section 41-29-177(2).

444 (3) If notice of intention to forfeit the seized property
445 administratively cannot be given as provided in subsection (2) of
446 this section because of refusal, failure to claim, insufficient
447 address or any other reason, the attorney for or representative of
448 the seizing law enforcement agency shall provide notice by
449 publication in a newspaper of general circulation in the county in
450 which the seizure occurred for once a week for three (3)



451 consecutive weeks. However, if the value of the property seized
452 does not exceed Ten Thousand Dollars (\$10,000.00), substitute
453 notice under this subsection (3) of intention to administratively
454 forfeit the property may be made by posting a notice on an
455 official state government forfeiture site for at least thirty (30)
456 consecutive days. The site shall be created and maintained by the
457 Mississippi Bureau of Narcotics. Should other seizing law
458 enforcement agencies choose to utilize the site for Internet
459 publication, the bureau may charge a reasonable fee for such
460 usage.

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

463 (a) A description of the property;

464 (b) The approximate value of the property;

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

466 (d) The connection between the property and the
467 violation of the Uniform Controlled Substances Law;

468 (e) The instructions for filing a request for judicial
469 review; and

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

473 (5) Any person claiming an interest in property which is the
474 subject of a notice under this section may, within thirty (30)
475 days after receipt of the notice or of the date of the first



476 publication of the notice, file a petition to contest forfeiture
477 signed by the claimant in the county court, if a county court
478 exists, or otherwise in the circuit court of the county in which
479 the seizure is made or the county in which the criminal
480 prosecution is brought, in order to claim an interest in the
481 property. Upon the filing of the petition and the payment of the
482 filing fees, service of the petition shall be made on the attorney
483 for or representative of the seizing law enforcement agency, and
484 the proceedings shall thereafter be governed by the rules of civil
485 procedure.

486 (6) If no petition to contest forfeiture is timely filed and
487 a seizure warrant was properly obtained, the district attorney or
488 his or her designee or the attorney for the * * * bureau, as
489 applicable, for the shall prepare a written declaration of
490 forfeiture of the subject property and the forfeited property
491 shall be used, distributed or disposed of in accordance with the
492 provisions of Section 41-29-181.

493 * * *

494 **SECTION 6.** Section 41-29-177, Mississippi Code of 1972, is
495 amended as follows:

496 41-29-177. (1) Except as otherwise provided in Section
497 41-29-176, Mississippi Code of 1972, and in Section 1 of House
498 Bill No. 812, 2017 Regular Session, when any property, other than
499 a controlled substance, raw material or paraphernalia, is seized
500 under the Uniform Controlled Substances Law, proceedings under



501 this section shall be instituted within thirty (30) days from the
502 date of seizure or the subject property shall be immediately
503 returned to the party from whom seized.

504 (2) A petition for forfeiture shall be filed by the district
505 attorney or his or her designee, or an attorney for the bureau, as
506 applicable, in the name of the State of Mississippi, the county or
507 the municipality and may be filed in the county in which the
508 seizure is made, the county in which the criminal prosecution is
509 brought or the county in which the owner of the seized property is
510 found. Forfeiture proceedings may be brought in the circuit court
511 or the county court if a county court exists in the county and the
512 value of the seized property is within the jurisdictional limits
513 of the county court as set forth in Section 9-9-21, Mississippi
514 Code of 1972. A copy of such petition shall be served upon the
515 following persons by service of process in the same manner as in
516 civil cases:

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

518 (b) Any secured party who has registered his lien or
519 filed a financing statement as provided by law, if the identity of
520 such secured party can be ascertained by the Bureau of Narcotics
521 or the local law enforcement agency by making a good faith effort
522 to ascertain the identity of such secured party as described in
523 subsections (3), (4), (5), (6) and (7) of this section;

524 (c) Any other bona fide lienholder or secured party or
525 other person holding an interest in the property in the nature of



526 a security interest of whom the Mississippi Bureau of Narcotics or
527 the local law enforcement agency has actual knowledge;

528 (d) Any holder of a mortgage, deed of trust, lien or
529 encumbrance of record, if the property is real estate, by making a
530 good faith inquiry as described in subsection (8) of this section;
531 and

532 (e) Any person in possession of property subject to
533 forfeiture at the time that it was seized.

534 (3) If the property is a motor vehicle susceptible of
535 titling under the Mississippi Motor Vehicle Title Law and if there
536 is any reasonable cause to believe that the vehicle has been
537 titled, the Bureau of Narcotics or the local law enforcement
538 agency shall make inquiry of the * * * Department of Revenue as to
539 what the records of the * * * Department of Revenue show as to who
540 is the record owner of the vehicle and who, if anyone, holds any
541 lien or security interest which affects the vehicle.

542 (4) If the property is a motor vehicle and is not titled in
543 the State of Mississippi, then the Bureau of Narcotics or the
544 local law enforcement agency shall attempt to ascertain the name
545 and address of the person in whose name the vehicle is licensed,
546 and if the vehicle is licensed in a state which has in effect a
547 certificate of title law, the bureau or the local law enforcement
548 agency shall make inquiry of the appropriate agency of that state
549 as to what the records of the agency show as to who is the record
550 owner of the vehicle and who, if anyone, holds any lien, security



551 interest or other instrument in the nature of a security device
552 which affects the vehicle.

553 (5) If the property is of a nature that a financing
554 statement is required by the laws of this state to be filed to
555 perfect a security interest affecting the property and if there is
556 any reasonable cause to believe that a financing statement
557 covering the security interest has been filed under the laws of
558 this state, the Bureau of Narcotics or the local law enforcement
559 agency shall make inquiry of the appropriate office designated in
560 Section 75-9-501, Mississippi Code of 1972, as to what the records
561 show as to who is the record owner of the property and who, if
562 anyone, has filed a financing statement affecting the property.

563 (6) If the property is an aircraft or part thereof and if
564 there is any reasonable cause to believe that an instrument in the
565 nature of a security device affects the property, then the Bureau
566 of Narcotics or the local law enforcement agency shall make
567 inquiry of the Mississippi Department of Transportation as to what
568 the records of the Federal Aviation Administration show as to who
569 is the record owner of the property and who, if anyone, holds an
570 instrument in the nature of a security device which affects the
571 property.

572 (7) In the case of all other personal property subject to
573 forfeiture, if there is any reasonable cause to believe that an
574 instrument in the nature of a security device affects the
575 property, then the Bureau of Narcotics or the local law



576 enforcement agency shall make a good faith inquiry to identify the
577 holder of any such instrument.

578 (8) If the property is real estate, the Bureau of Narcotics
579 or the local law enforcement agency shall make inquiry of the
580 chancery clerk of the county wherein the property is located to
581 determine who is the owner of record and who, if anyone, is a
582 holder of a bona fide mortgage, deed of trust, lien or
583 encumbrance.

584 (9) In the event the answer to an inquiry states that the
585 record owner of the property is any person other than the person
586 who was in possession of it when it was seized, or states that any
587 person holds any lien, encumbrance, security interest, other
588 interest in the nature of a security interest, mortgage or deed of
589 trust which affects the property, the Bureau of Narcotics or the
590 local law enforcement agency shall cause any record owner and also
591 any lienholder, secured party, other person who holds an interest
592 in the property in the nature of a security interest, or holder of
593 an encumbrance, mortgage or deed of trust which affects the
594 property to be named in the petition of forfeiture and to be
595 served with process in the same manner as in civil cases.

596 (10) If the owner of the property cannot be found and served
597 with a copy of the petition of forfeiture, or if no person was in
598 possession of the property subject to forfeiture at the time that
599 it was seized and the owner of the property is unknown, the Bureau
600 of Narcotics or the local law enforcement agency shall file with



601 the clerk of the court in which the proceeding is pending an
602 affidavit to such effect, whereupon the clerk of the court shall
603 publish notice of the hearing addressed to "the Unknown Owner of
604 _____," filling in the blank space with a reasonably
605 detailed description of the property subject to forfeiture.
606 Service by publication shall contain the other requisites
607 prescribed in Section 11-33-41, and shall be served as provided in
608 Section 11-33-37, Mississippi Code of 1972, for publication of
609 notice for attachments at law.

610 (11) No proceedings instituted pursuant to the provisions of
611 this article shall proceed to hearing unless the judge conducting
612 the hearing is satisfied that this section and Section 1 of House
613 Bill No. 812, 2017 Regular Session has been complied with. Any
614 answer received from an inquiry required by subsections (3)
615 through (8) of this section shall be introduced into evidence at
616 the hearing.

617 **SECTION 7.** Section 41-29-183, Mississippi Code of 1972, is
618 amended as follows:

619 41-29-183. Except as otherwise provided in Section 1 of
620 House Bill No. 812, 2017 Regular Session. The forfeiture
621 procedure set forth in Sections 41-29-177 through 41-29-181 is the
622 sole remedy of any claimant, and no court shall have jurisdiction
623 to interfere therewith by replevin, injunction, supersedeas or in
624 any other manner.



625 **SECTION 8.** Section 41-29-179, Mississippi Code of 1972, is
626 amended as follows:

627 41-29-179. (1) Except as otherwise provided in Section
628 41-29-176 and Section 1 of House Bill No. 812, 2017 Regular
629 Session, an owner of property, other than a controlled substance,
630 raw material or paraphernalia, that has been seized shall file an
631 answer within thirty (30) days after the completion of service of
632 process. If an answer is not filed, the court shall hear evidence
633 that the property is subject to forfeiture and forfeit the
634 property to the Mississippi Bureau of Narcotics or the local law
635 enforcement agency. If an answer is filed, a time for hearing on
636 forfeiture shall be set within thirty (30) days of filing the
637 answer or at the succeeding term of court if court would not be in
638 progress within thirty (30) days after filing the answer.
639 Provided, however, that upon request by the Bureau of Narcotics,
640 the local law enforcement agency or the owner of the property, the
641 court may postpone said forfeiture hearing to a date past the time
642 any criminal action is pending against said owner.

643 (2) If the owner of the property has filed an answer denying
644 that the property is subject to forfeiture, then the burden is on
645 the petitioner to prove that the property is subject to
646 forfeiture. However, if an answer has not been filed by the owner
647 of the property, the petition for forfeiture may be introduced
648 into evidence and is prima facie evidence that the property is
649 subject to forfeiture. The standard of proof placed upon the



650 petitioner in regard to property forfeited under the provisions of
651 this article shall be by a preponderance of the evidence.

652 (3) At the hearing any claimant of any right, title or
653 interest in the property may prove his lien, encumbrance, security
654 interest, other interest in the nature of a security interest,
655 mortgage or deed of trust to be bona fide and created without
656 knowledge or consent that the property was to be used so as to
657 cause the property to be subject to forfeiture.

658 (4) If it is found that the property is subject to
659 forfeiture, then the judge shall forfeit the property to the
660 Mississippi Bureau of Narcotics or the local law enforcement
661 agency. However, if proof at the hearing discloses that the
662 interest of any bona fide lienholder, secured party, other person
663 holding an interest in the property in the nature of a security
664 interest, or any holder of a bona fide encumbrance, mortgage or
665 deed of trust is greater than or equal to the present value of the
666 property, the court shall order the property released to him. If
667 such interest is less than the present value of the property and
668 if the proof shows that the property is subject to forfeiture, the
669 court shall order the property forfeited to the Mississippi Bureau
670 of Narcotics or the local law enforcement agency.

671 (5) Upon a petition filed in the name of the State of
672 Mississippi, the county or the municipality with the clerk of the
673 circuit court of the county in which the seizure of any controlled
674 substance or raw material is made, the circuit court having



675 jurisdiction may order the controlled substance or raw material
676 summarily forfeited except when lawful possession and title can be
677 ascertained. If a person is found to have had lawful possession
678 and title prior to seizure, the court shall order the controlled
679 substance or raw material returned to the owner, if the owner so
680 desires. Upon a petition filed in the name of the State of
681 Mississippi, the county or the municipality with the clerk of the
682 circuit court of the county in which the seizure of any purported
683 paraphernalia is made, the circuit court having jurisdiction may
684 order such seized property summarily forfeited when the court has
685 determined the seized property to be paraphernalia as defined in
686 Section 41-29-105(v).

687 **SECTION 9.** This act shall take effect and be in force from
688 and after July 1, 2017.

