

By: Representative Tullos

To: Conservation and Water Resources

HOUSE BILL NO. 764

1 AN ACT TO AMEND SECTION 51-1-4, MISSISSIPPI CODE OF 1972, TO
2 CLASSIFY A THIRD OR SUBSEQUENT VIOLATION OF THE LAW PROHIBITING
3 THE OPERATION OF CERTAIN MOTOR VEHICLES IN THE BED OF PUBLIC
4 WATERWAYS AS A CLASS I VIOLATION; TO AMEND SECTIONS 49-7-141,
5 49-7-251, 49-7-253 AND 49-7-257, WHICH RELATE TO CLASS I
6 VIOLATIONS AND FORFEITURES, IN CONFORMITY WITH THE PROVISIONS OF
7 THIS ACT; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 51-1-4, Mississippi Code of 1972, is
10 amended as follows:

11 51-1-4. (1) * * * The portions of all natural flowing
12 streams in this state having a mean annual flow of not less than
13 one hundred (100) cubic feet per second, as determined and
14 designated on appropriate maps by the Mississippi Department of
15 Environmental Quality, shall be public waterways of the state on
16 which the citizens of this state and other states shall have the
17 right of free transport in the stream and the right to fish and
18 engage in water sports.

19 Persons exercising the rights granted by this section shall
20 do so at their own risk, and such persons, their heirs or others



21 on their behalf shall not be entitled to recover any damages
22 against any owner of property or an interest in property on or
23 along such public waterways or against anyone using such property
24 with permission of the owner for any injury to or death of persons
25 or damage to property arising out of the exercise of rights
26 granted by this section, other than those damages which may be
27 recovered for intentional or malicious torts or for gross or
28 willful negligence against the owner of property or an interest
29 therein or against anyone using such property with permission of
30 the owner.

31 (2) Nothing contained in this section shall authorize anyone
32 utilizing public waterways, under the authority granted by this
33 section, to trespass upon adjacent lands or to launch or land any
34 commercial or pleasure craft along or from the shore of such
35 waterways except at places established by public or private
36 entities for such purposes.

37 (3) Nothing contained in this section shall authorize any
38 person utilizing those public waterways, under the authority
39 granted by this section, to disturb the banks or beds of such
40 waterways or the discharge of any object or substance into such
41 waters or upon or across any lands adjacent thereto or to hunt or
42 fish or go on or across any adjacent lands under floodwaters
43 beyond the natural banks of the bed of the public waterway.
44 Floodwater which has overflowed the banks of a public waterway is
45 not a part of the public waterway.



46 (4) The right of the public to use public waterways does not
47 include the use of motorized vehicles in the beds of a public
48 waterway without the written permission of the landowner. Any
49 person who uses a motorized vehicle in the bed of a public
50 waterway without the written permission of the landowner may be
51 punished as provided in Section 97-17-93.

52 (a) It shall be unlawful for any person to operate any
53 all-terrain vehicle, four-wheel-drive motorized vehicle, or other
54 wheeled or tracked conveyance within the bed of a public waterway
55 and following the meanders thereof in such a way as to cause
56 damage to the streambed.

57 (b) It shall be unlawful for any person to offer a
58 permission or a license for a fee for the operation of any of the
59 conveyances prohibited in this subsection within the bed of a
60 public waterway.

61 (c) A first or second violation of this subsection
62 shall be a Class II violation and, upon conviction thereof, may be
63 punished as provided in Section 49-7-143. A third or subsequent
64 violation of paragraph (a) of this subsection (4) shall be a Class
65 I violation, and upon conviction, may be punished as provided in
66 Section 49-7-141(3).

67 (d) Nothing in this subsection shall be construed as
68 prohibiting the normal, usual and ordinary fording of streams by
69 persons authorized to do so for legitimate recreational,
70 agricultural, forestry or other lawful purposes.



71 (5) Nothing contained in this section shall be construed to
72 prohibit the construction of dams and reservoirs by the State of
73 Mississippi or any of its agencies or political subdivisions, or
74 riparian owners, in the manner now or hereafter authorized by law,
75 or in any way to affect the rights of riparian landowners along
76 such waterways except as specifically provided hereinabove or to
77 amend or repeal any law relating to pollution or water
78 conservation, or to affect in any manner the title to the banks
79 and beds of any such stream or the title to any minerals
80 thereunder, or to restrict the mining or extraction of such
81 minerals or the right of ingress and egress thereto.

82 (6) The provisions of this section limiting the liability of
83 owners of property along public waterways and persons using such
84 property with permission of the owners shall not be construed to
85 limit any rights of claimants for damages under federal statutes
86 or acts applying to navigable streams or waterways or any other
87 civil causes of action subject to admiralty or maritime
88 jurisdiction, nor shall those provisions be construed to limit the
89 rights of any parties involved in litigation founded upon the
90 commercial or business usage of any navigable streams or
91 waterways.

92 (7) This section shall apply only to natural flowing
93 streams.

94 (8) Any lake hydrologically connected to a natural flowing
95 stream and listed as a public waterway under subsection (1) on



96 July 1, 2000, and subsequently removed from that list before July
97 1, 2001, by the Commission on Environmental Quality because the
98 lake did not meet the requirements of subsection (1), shall be
99 presumed to be a public waterway until a court of competent
100 jurisdiction determines otherwise. Nothing in this subsection
101 shall be construed to determine the property rights in the bed or
102 banks of the lake, the right of ingress or egress across private
103 property to the lake, or mineral interests.

104 **SECTION 2.** Section 49-7-141, Mississippi Code of 1972, is
105 amended as follows:

106 49-7-141. (1) Any person who has been convicted of a Class
107 I violation shall be fined not less than Two Thousand Dollars
108 (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00) and
109 shall be imprisoned in the county jail for five (5) days. The
110 person shall also forfeit all hunting, trapping and fishing
111 privileges for a period of not less than twelve (12) consecutive
112 months from the date of conviction.

113 (2) In addition to the penalty provided in subsection (1) of
114 this section, any person convicted of a violation of Section
115 49-7-51 or 49-7-53, Mississippi Code of 1972, may, in the
116 discretion of the court, be fined One Hundred Dollars (\$100.00)
117 for each game animal, game bird or game fish, or part thereof,
118 bought, sold, offered for sale, exchanged for merchandise or other
119 consideration, received for shipment, shipped, transported,
120 carried or possessed with the intent to ship, transport or carry.



121 (3) Any person convicted of a third or subsequent violation
122 of Section 51-1-4(4)(a) shall be fined not less than Three
123 Thousand Dollars (\$3,000.00) nor more than Five Thousand Dollars
124 (\$5,000.00), shall be imprisoned in the county jail for six (6)
125 months, and shall forfeit the all-terrain vehicle,
126 four-wheel-drive motorized vehicle or other wheeled or tracked
127 conveyance that was used at the time of the third or subsequent
128 violation, in accordance with the provisions of Sections 49-7-251
129 through 49-7-257.

130 **SECTION 3.** Section 49-7-251, Mississippi Code of 1972, is
131 amended as follows:

132 49-7-251. (1) Except as otherwise provided in Section
133 49-7-257, when any property is seized pursuant to Section
134 49-7-103, 49-7-141(3), 49-15-21(2) or 59-21-33, Mississippi Code
135 of 1972, proceedings under this section shall be instituted
136 promptly. Provided, however, that the seizing law enforcement
137 agency may, in the sound exercise of discretion, decide not to
138 bring a forfeiture action if the interests of bona fide
139 lienholders or secured creditors equal or exceed the value of the
140 seized property, or if other factors would produce a negative
141 economic result. Provided further, that no property shall be
142 subject to forfeiture which has been stolen from its owner if the
143 owner can be identified and prosecution for the theft has been
144 initiated.



145 (2) A petition for forfeiture shall be filed promptly in the
146 name of the State of Mississippi, the county or the municipality
147 and may be filed in the county in which the seizure is made, the
148 county in which the criminal prosecution is brought or the county
149 in which the owner of the seized property is found. Forfeiture
150 proceedings may be brought in the circuit court or the county
151 court if a county court exists in the county and the value of the
152 seized property is within the jurisdictional limits of the county
153 court as set forth in Section 9-9-21, Mississippi Code of 1972. A
154 copy of such petition shall be served upon the following persons
155 by service of process in the same manner as in civil cases:

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

157 (b) Any secured party who has registered his lien or
158 filed a financing statement as provided by law, if the identity of
159 such secured party can be ascertained by the Department of
160 Wildlife Conservation or the local law enforcement agency by
161 making a good faith effort to ascertain the identity of such
162 secured party as described in subsections (3), (4), (5), (6) and
163 (7) of this section;

164 (c) Any other bona fide lienholder or secured party or
165 other person holding an interest in the property in the nature of
166 a security interest of whom the Department of Wildlife
167 Conservation or the local law enforcement agency has actual
168 knowledge; and



169 (d) Any person in possession of property subject to
170 forfeiture at the time that it was seized.

171 (3) If the property is a motor vehicle susceptible of
172 titling under the Mississippi Motor Vehicle Title Law and if there
173 is any reasonable cause to believe that the vehicle has been
174 titled, the Department of Wildlife Conservation or the local law
175 enforcement agency shall make inquiry of the State Tax Commission
176 as to what the records of the State Tax Commission show as to who
177 is the record owner of the vehicle and who, if anyone, holds any
178 lien or security interest which affects the vehicle.

179 (4) If the property is a motor vehicle and is not titled in
180 the State of Mississippi, then the Department of Wildlife
181 Conservation or the local law enforcement agency shall attempt to
182 ascertain the name and address of the person in whose name the
183 vehicle is licensed, and if the vehicle is licensed in a state
184 which has in effect a certificate of title law, the Department of
185 Wildlife Conservation or the local law enforcement agency shall
186 make inquiry of the appropriate agency of that state as to what
187 the records of the agency show as to who is the record owner of
188 the vehicle and who, if anyone, holds any lien, security interest
189 or other instrument in the nature of a security device which
190 affects the vehicle.

191 (5) If the property is of a nature that a financing
192 statement is required by the laws of this state to be filed to
193 perfect a security interest affecting the property and if there is



194 any reasonable cause to believe that a financing statement
195 covering the security interest has been filed under the laws of
196 this state, the Department of Wildlife Conservation or the local
197 law enforcement agency shall make inquiry of the appropriate
198 office designated in Section 75-9-501, Mississippi Code of 1972,
199 as to what the records show as to who is the record owner of the
200 property and who, if anyone, has filed a financing statement
201 affecting the property.

202 (6) If the property is an aircraft or part thereof and if
203 there is any reasonable cause to believe that an instrument in the
204 nature of a security device affects the property, then the
205 Department of Wildlife Conservation or the local law enforcement
206 agency shall make inquiry of the Administrator of the Mississippi
207 Aeronautics Commission as to what the records of the Federal
208 Aviation Administration show as to who is the record owner of the
209 property and who, if anyone, holds an instrument in the nature of
210 a security device which affects the property.

211 (7) In the case of all other personal property subject to
212 forfeiture, if there is any reasonable cause to believe that an
213 instrument in the nature of a security device affects the
214 property, then the Department of Wildlife Conservation or the
215 local law enforcement agency shall make a good faith inquiry to
216 identify the holder of any such instrument.

217 (8) In the event the answer to an inquiry states that the
218 record owner of the property is any person other than the person



219 who was in possession of it when it was seized, or states that any
220 person holds any lien, encumbrance, security interest, other
221 interest in the nature of a security interest, mortgage or deed of
222 trust which affects the property, the Department of Wildlife
223 Conservation or the local law enforcement agency shall cause any
224 record owner and also any lienholder, secured party, other person
225 who holds an interest in the property in the nature of a security
226 interest which affects the property to be named in the petition of
227 forfeiture and to be served with process in the same manner as in
228 civil cases.

229 (9) If the owner of the property cannot be found and served
230 with a copy of the petition of forfeiture, or if no person was in
231 possession of the property subject to forfeiture at the time that
232 it was seized and the owner of the property is unknown, the
233 Department of Wildlife Conservation or the local law enforcement
234 agency shall file with the clerk of the court in which the
235 proceeding is pending an affidavit to such effect, whereupon the
236 clerk of the court shall publish notice of the hearing addressed
237 to "the Unknown Owner of _____," filling in the blank
238 space with a reasonably detailed description of the property
239 subject to forfeiture. Service by publication shall contain the
240 other requisites prescribed in Section 11-33-41, Mississippi Code
241 of 1972, and shall be served as provided in Section 11-33-37,
242 Mississippi Code of 1972, for publication of notice for
243 attachments at law.



244 (10) No proceedings instituted pursuant to the provisions of
245 this section shall proceed to hearing unless the judge conducting
246 the hearing is satisfied that this section has been complied with.
247 Any answer received from an inquiry required by subsections (3)
248 through (7) of this section shall be introduced into evidence at
249 the hearing.

250 **SECTION 4.** Section 49-7-253, Mississippi Code of 1972, is
251 amended as follows:

252 49-7-253. (1) Except as otherwise provided in Section
253 49-7-257, an owner of property that has been seized pursuant to
254 Section 49-7-103, 49-7-141(3), 49-15-21(2) or 59-21-33,
255 Mississippi Code of 1972, shall file an answer within thirty (30)
256 days after the completion of service of process. If an answer is
257 not filed, the court shall hear evidence that the property is
258 subject to forfeiture and forfeit the property to the Mississippi
259 Department of Wildlife, Fisheries and Parks or the local law
260 enforcement agency. If an answer is filed, a time for hearing on
261 forfeiture shall be set within thirty (30) days of filing the
262 answer or at the succeeding term of court, if court would not be
263 in progress within thirty (30) days after filing the answer.
264 Provided, however, that upon request by the Mississippi Department
265 of Wildlife, Fisheries and Parks, the local law enforcement agency
266 or the owner of the property, the court may postpone said
267 forfeiture hearing to a date past the time any criminal action is
268 pending against said owner.



269 (2) If the owner of the property has filed an answer denying
270 that the property is subject to forfeiture, then the burden is on
271 the petitioner to prove that the property is subject to
272 forfeiture. However, if an answer has not been filed by the owner
273 of the property, the petition for forfeiture may be introduced
274 into evidence and is prima facie evidence that the property is
275 subject to forfeiture. The standard of proof placed upon the
276 petitioner in regard to property forfeited under the provisions of
277 this article shall be by a preponderance of the evidence.

278 (3) At the hearing any claimant of any right, title or
279 interest in the property may prove his lien, encumbrance, security
280 interest or other interest in the nature of a security interest to
281 be bona fide and created without knowledge or consent that the
282 property was to be used so as to cause the property to be subject
283 to forfeiture.

284 (4) If it is found that the property is subject to
285 forfeiture, then the judge shall forfeit the property to the
286 Mississippi Department of Wildlife, Fisheries and Parks or the
287 local law enforcement agency. However, if proof at the hearing
288 discloses that the interest of any bona fide lienholder, secured
289 party, other person holding an interest in the property in the
290 nature of a security interest is greater than or equal to the
291 present value of the property, the court shall order the property
292 released to him. If such interest is less than the present value
293 of the property and if the proof shows that the property is



294 subject to forfeiture, the court shall order the property
295 forfeited to the Mississippi Department of Wildlife, Fisheries and
296 Parks or the local law enforcement agency.

297 **SECTION 5.** Section 49-7-257, Mississippi Code of 1972, is
298 amended as follows:

299 49-7-257. (1) When any property the value of which does not
300 exceed Five Thousand Dollars (\$5,000.00), is seized pursuant to
301 Section 49-7-103, 49-7-141(3), 49-15-21(2) or 59-21-33,
302 Mississippi Code of 1972, the property may be forfeited by the
303 administrative forfeiture procedures provided for in this section.

304 (2) The attorney for the seizing law enforcement agency
305 shall provide notice of intention to forfeit the seized property
306 administratively, by certified mail, return receipt requested, to
307 all persons who are required to be notified pursuant to Section
308 49-7-251(2).

309 (3) In the event that notice of intention to forfeit the
310 seized property administratively cannot be given as provided in
311 subsection (2) of this section because of refusal, failure to
312 claim, insufficient address or any other reason, the attorney for
313 the seizing law enforcement agency shall provide notice by
314 publication in a newspaper of general circulation in the county in
315 which the seizure occurred for once a week for three (3)
316 consecutive weeks.

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



319 (a) A description of the property;
320 (b) The approximate value of the property;
321 (c) The date and place of the seizure;
322 (d) The connection between the property and the
323 violation of the Game and Fish Law, as set forth in Section
324 49-7-103, Mississippi Code of 1972;
325 (e) The instructions for filing a request for judicial
326 review; and
327 (f) A statement that the property will be forfeited to
328 the seizing law enforcement agency if a request for judicial
329 review is not timely filed.

330 (5) Persons claiming an interest in the seized property may
331 initiate judicial review of the seizure and proposed forfeiture by
332 filing a request for judicial review with the attorney for the
333 seizing law enforcement agency, within thirty (30) days after
334 receipt of the certified letter or within thirty (30) days after
335 the first publication of notice, whichever is applicable.

336 (6) If no request for judicial review is timely filed, the
337 attorney for the seizing law enforcement agency shall prepare a
338 written declaration of forfeiture of the subject property and the
339 forfeited property shall be used, distributed or disposed of in
340 accordance with the provisions of Section 49-7-255.

341 (7) Upon receipt of a timely request for judicial review,
342 the attorney for the seizing law enforcement agency shall promptly



343 file a petition for forfeiture and proceed as provided in Section
344 49-7-251.

345 **SECTION 6.** This act shall take effect and be in force from
346 and after July 1, 2018.

