

By: Senator(s) DeBar

To: Accountability,
Efficiency, Transparency;
Judiciary, Division A

SENATE BILL NO. 2833

1 AN ACT TO AMEND SECTION 41-29-179, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE MISSISSIPPI BUREAU OF NARCOTICS TO DISPOSE OF
3 UNCLAIMED NONFORFEITED PROPERTY IN THE SAME MANNER AS SURPLUS
4 PROPERTY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 41-29-179, Mississippi Code of 1972, is
7 amended as follows:

8 41-29-179. (1) Except as otherwise provided in Section
9 41-29-176 and Section 41-29-107.1, an owner of property, other
10 than a controlled substance, raw material or paraphernalia, that
11 has been seized shall file an answer within thirty (30) days after
12 the completion of service of process. If an answer is not filed,
13 the court shall hear evidence that the property is subject to
14 forfeiture and forfeit the property to the Mississippi Bureau of
15 Narcotics or the local law enforcement agency. If an answer is
16 filed, a time for hearing on forfeiture shall be set within thirty
17 (30) days of filing the answer or at the succeeding term of court
18 if court would not be in progress within thirty (30) days after
19 filing the answer. Provided, however, that upon request by the



20 Bureau of Narcotics, the local law enforcement agency or the owner
21 of the property, the court may postpone said forfeiture hearing to
22 a date past the time any criminal action is pending against said
23 owner.

24 (2) If the owner of the property has filed an answer denying
25 that the property is subject to forfeiture, then the burden is on
26 the petitioner to prove that the property is subject to
27 forfeiture. However, if an answer has not been filed by the owner
28 of the property, the petition for forfeiture may be introduced
29 into evidence and is prima facie evidence that the property is
30 subject to forfeiture. The standard of proof placed upon the
31 petitioner in regard to property forfeited under the provisions of
32 this article shall be by a preponderance of the evidence.

33 (3) At the hearing any claimant of any right, title or
34 interest in the property may prove his lien, encumbrance, security
35 interest, other interest in the nature of a security interest,
36 mortgage or deed of trust to be bona fide and created without
37 knowledge or consent that the property was to be used so as to
38 cause the property to be subject to forfeiture.

39 (4) If it is found that the property is subject to
40 forfeiture, then the judge shall forfeit the property to the
41 Mississippi Bureau of Narcotics or the local law enforcement
42 agency. If it is found that the property is not subject to
43 forfeiture, then the judge shall order the property released to
44 the claimant. The claimant shall have thirty (30) days from the



45 date that the order is signed to retrieve the property. If the
46 property has not been retrieved from the Mississippi Bureau of
47 Narcotics within the allowable thirty-day period, the bureau shall
48 consider the property abandoned and shall sell the property in
49 accordance with the provisions of state law regulating the
50 disposition of surplus property. After the deduction of expenses
51 of sale, the remaining balance shall be forwarded to the State
52 Treasurer as unclaimed property. However, if proof at the hearing
53 discloses that the interest of any bona fide lienholder, secured
54 party, other person holding an interest in the property in the
55 nature of a security interest, or any holder of a bona fide
56 encumbrance, mortgage or deed of trust is greater than or equal to
57 the present value of the property, the court shall order the
58 property released to him. If such interest is less than the
59 present value of the property and if the proof shows that the
60 property is subject to forfeiture, the court shall order the
61 property forfeited to the Mississippi Bureau of Narcotics or the
62 local law enforcement agency.

63 (5) Upon a petition filed in the name of the State of
64 Mississippi, the county or the municipality with the clerk of the
65 circuit court of the county in which the seizure of any controlled
66 substance or raw material is made, the circuit court having
67 jurisdiction may order the controlled substance or raw material
68 summarily forfeited except when lawful possession and title can be
69 ascertained. If a person is found to have had lawful possession



70 and title prior to seizure, the court shall order the controlled
71 substance or raw material returned to the owner, if the owner so
72 desires. Upon a petition filed in the name of the State of
73 Mississippi, the county or the municipality with the clerk of the
74 circuit court of the county in which the seizure of any purported
75 paraphernalia is made, the circuit court having jurisdiction may
76 order such seized property summarily forfeited when the court has
77 determined the seized property to be paraphernalia as defined in
78 Section 41-29-105(v).

79 **SECTION 2.** This act shall take effect and be in force from
80 and after July 1, 2018.

