

By: Representatives Criswell, Byrd

To: Judiciary B

HOUSE BILL NO. 1068

1 AN ACT RELATING TO THE SEIZURE AND FORFEITURE OF PROPERTY IN
2 CERTAIN CRIMINAL ACTIONS; TO DEFINE CERTAIN TERMS; TO STATE
3 CERTAIN DECLARATIONS BY THE LEGISLATURE AND TO PRONOUNCE THE
4 PURPOSE OF THIS ACT; TO AUTHORIZE A COURT TO ISSUE AN EX PARTE
5 PRELIMINARY ORDER FOR THE SEIZURE OF PERSONAL PROPERTY FOR WHICH
6 FORFEITURE IS SOUGHT; TO AUTHORIZE PERSONAL PROPERTY TO BE SEIZED
7 WITHOUT A COURT ORDER OR WARRANT UNDER CERTAIN CONDITIONS; TO
8 REQUIRE A COURT ORDER FOR THE SEIZURE OR RESTRAINT OF REAL
9 PROPERTY; TO EXEMPT HOMESTEAD PROPERTY AND OTHER SPECIFIED
10 PROPERTY HAVING A CERTAIN VALUE FROM SEIZURE AND FORFEITURE; TO
11 DECLARE THAT CONTRABAND IS SUBJECT TO SEIZURE; TO PROHIBIT THE
12 WAIVER OF A PERSON'S INTEREST IN SEIZED PROPERTY; TO REQUIRE LAW
13 ENFORCEMENT TO ISSUE A RECEIPT FOR SEIZED PROPERTY; TO AUTHORIZE A
14 COURT TO ORDER THE FORFEITURE OF PROPERTY WHEN A PERSON IS
15 CONVICTED OF AN OFFENSE AUTHORIZING FORFEITURE; TO PROHIBIT CIVIL
16 FORFEITURE OF PROPERTY UNDER THIS ACT; TO LIMIT FORFEITURE OF
17 PROPERTY TO CASES WHERE THERE IS A CONVICTION OF A STATE CRIMINAL
18 STATUTE THAT AUTHORIZES FORFEITURE OF PROPERTY; TO ESTABLISH THE
19 PROCEDURE FOR FILING A CRIMINAL COMPLAINT FOR THE FORFEITURE OF
20 PROPERTY; TO AUTHORIZE A PROSECUTING ATTORNEY TO FILE AN
21 INDICTMENT WHEN THE STATE SEEKS FORFEITURE OF PROPERTY OTHER THAN
22 THROUGH A COMPLAINT; TO STATE WHEN TITLE TO FORFEITED PROPERTY
23 VESTS WITH THE STATE; TO AUTHORIZE A PRETRIAL HEARING TO DETERMINE
24 THE VALIDITY OF A SEIZURE AND TO REQUIRE THE ISSUANCE OF A WRIT OF
25 REPLEVIN IF CERTAIN FINDINGS ARE MADE; TO DECLARE THAT DISCOVERY
26 IN SEIZURE AND FORFEITURE CASES IS SUBJECT TO THE MISSISSIPPI
27 RULES OF CIVIL PROCEDURE; TO ESTABLISH JURISDICTION OVER
28 FORFEITURE PROCEEDINGS IN THE COURT THAT HAS JURISDICTION OVER THE
29 RELATED CRIMINAL MATTER; TO AUTHORIZE A DEFENDANT, DURING A
30 HEARING RELATING TO THE SEIZURE AND FORFEITURE OF PROPERTY, TO
31 PETITION THE COURT FOR A DETERMINATION ON WHETHER THE FORFEITURE
32 IS UNCONSTITUTIONALLY EXCESSIVE; TO PROHIBIT THE FORFEITURE OF
33 PROPERTY ENCUMBERED BY A BONA FIDE SECURITY INTEREST; TO AUTHORIZE
34 AN INNOCENT OWNER OF PROPERTY SUBJECT TO FORFEITURE TO PETITION



35 THE COURT FOR A HEARING ON THE PERSON'S ALLEGED INTEREST IN THE
36 PROPERTY; TO REQUIRE THE COURT TO EITHER DISMISS THE FORFEITURE
37 PROCEEDING OR ORDER FORFEITURE OF THE PROPERTY FOLLOWING AFTER A
38 HEARING ON THE MATTER OR PURSUANT TO A PLEA AGREEMENT; TO
39 AUTHORIZE THE COURT TO ORDER FORFEITURE OF SUBSTITUTE PROPERTY
40 WHENEVER THE PROPERTY SUBJECT TO FORFEITURE IS UNREACHABLE; TO
41 PROHIBIT THE STATE FROM SEEKING PERSONAL MONEY JUDGMENTS RELATED
42 TO THE FORFEITURE OF PROPERTY OTHER THAN PROVIDED FOR IN THIS ACT;
43 TO PROHIBIT A COURT FROM HOLDING DEFENDANTS JOINTLY AND SEVERALLY
44 LIABLE FOR FORFEITURE AWARDS; TO AUTHORIZE AN APPEAL OF A COURT'S
45 DECISION IN FORFEITURE LITIGATION; TO REQUIRE A SEIZING AGENCY TO
46 PAY ATTORNEY FEES WHENEVER A PROPERTY OWNER PREVAILS ON A CLAIM;
47 TO REQUIRE A LAW ENFORCEMENT AGENCY TO RETURN PROPERTY WHEN SO
48 ORDERED BY THE COURT; TO REQUIRE THE DESTRUCTION OF CONTRABAND NO
49 LONGER NEEDED FOR EVIDENTIARY PURPOSES; TO REQUIRE ABANDONED
50 PROPERTY NO LONGER NEEDED FOR EVIDENTIARY PURPOSES TO BE DELIVERED
51 TO THE STATE TREASURER; TO PROHIBIT A LAW ENFORCEMENT AGENCY FROM
52 RETAINING FORFEITED OR ABANDONED PROPERTY FOR ITS OWN USE; TO
53 PROHIBIT A LAW ENFORCEMENT AGENCY FROM RELINQUISHING SEIZED
54 PROPERTY TO A FEDERAL AGENCY FOR THE PURPOSE OF THE PROPERTY'S
55 FORFEITURE UNDER THE CONTROLLED SUBSTANCES ACT; TO ESTABLISH
56 CERTAIN REQUIREMENTS RELATING TO PROPERTY SEIZED THROUGH A
57 MULTIJURISDICTIONAL COLLABORATION WITH THE FEDERAL GOVERNMENT; TO
58 DECLARE THAT THIS ACT PREEMPTS ANY LOCAL GOVERNMENTAL LAW THAT
59 REGULATES CIVIL AND CRIMINAL FORFEITURE; TO AMEND SECTIONS
60 49-1-43, 49-5-115, 49-7-81 AND 49-7-91, MISSISSIPPI CODE OF 1972,
61 WHICH RELATE TO THE PROTECTION OF GAME AND FISH AND HUNTING AND
62 FISHING, IN CONFORMITY TO THE PRECEDING PROVISIONS OF THIS ACT; TO
63 REPEAL SECTIONS 49-7-103 AND 49-7-251 THROUGH 49-7-259,
64 MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES THE SEIZURE AND
65 CONFISCATION OF PROPERTY USED IN ILLEGAL HUNTING OR FISHING; TO
66 REPEAL SECTION 59-21-33, MISSISSIPPI CODE OF 1972, WHICH
67 AUTHORIZES THE SEIZURE AND FORFEITURE OF BOATS AND TRAILERS WITH
68 ALTERED IDENTIFICATION NUMBERS; AND FOR RELATED PURPOSES.

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

70 **SECTION 1.** As used in this act, the following words and
71 phrases have the meanings ascribed in this section unless the
72 context clearly indicates otherwise:

73 (a) "Abandoned property" means personal property left
74 by an owner who relinquishes all rights to its control. The term
75 "abandoned property" does not include real property, which cannot
76 be abandoned.



77 (b) "Actual knowledge" means direct and clear awareness
78 of information, a fact or a condition.

79 (c) "Contraband" means goods that, in themselves, are
80 unlawful to possess, including scheduled drugs without a valid
81 prescription and a firearm that is illegal to possess. The term
82 "contraband" does not include proceeds derived from an alleged
83 crime or an instrumentality used in an alleged crime.

84 (d) "Conveyance" means a device used for
85 transportation, including a motor vehicle, trailer, all terrain
86 vehicle, airplane, vessel or any equipment attached to one of
87 these devices. The term "conveyance" does not include property
88 that is stolen or taken in violation of the law.

89 (e) "Court" means the criminal division of the circuit
90 court.

91 (f) "Instrumentality" means property otherwise lawful
92 to possess which is used in the commission of an offense of a law
93 authorizing forfeiture. The term "instrumentality" includes land,
94 buildings, a container, a conveyance, equipment, materials,
95 products, a tool, a computer, computer software, a
96 telecommunications device, a firearm and ammunition.

97 (g) "Law authorizing forfeiture of property" means a
98 state law that includes forfeiture of property as a punishment or
99 sanction for the offense.

100 (h) "Law enforcement agency" means an agency,
101 department, bureau, office or other entity, regardless of its



102 name, of the state, a municipality, county or other local
103 governmental entity which has the authority under state law to
104 engage in seizure and forfeiture. The term "law enforcement
105 agency" does not include a federal police force or other entity of
106 the federal government.

107 (i) "Proceeds" means money, securities, negotiable
108 instruments or other means of exchange obtained by the sale of
109 property.

110 (j) "Prosecuting authority" means the government
111 attorney who is prosecuting a criminal case.

112 **SECTION 2.** The Legislature declares that forfeiture is
113 disfavored in the State of Mississippi. It is the purpose of this
114 act to:

115 (a) Deter criminal activity by reducing its economic
116 incentives;

117 (b) Confiscate property used in the violation of the
118 law and disgorge the fruits of illegal conduct; and

119 (c) Protect property and due process rights of
120 defendants and innocent owners.

121 **SECTION 3.** At the request of the state at any time, a court
122 may issue an ex parte preliminary order or warrant to attach,
123 seize or secure personal property for which forfeiture is sought
124 and to provide for its custody. The application, issuance,
125 execution and return of a court order or warrant issued pursuant



126 to this section are subject to applicable state statutes and court
127 rules.

128 **SECTION 4.** (1) Personal property may be seized without a
129 court order or warrant whenever one or more of the following
130 conditions exists:

131 (a) The personal property subject to forfeiture is
132 seized incident to a lawful arrest;

133 (b) The state has probable cause to believe the person
134 committed an offense that authorizes the forfeiture of property
135 and the search was lawfully conducted;

136 (c) The state has probable cause to believe that the
137 delay caused by the necessity of obtaining process would result in
138 the removal or destruction of the personal property and that the
139 personal property is forfeitable under this act; or

140 (d) The personal property is the subject of a prior
141 judgment of forfeiture in favor of the state.

142 (2) The mere presence or possession of U.S. currency,
143 without other indicia of an offense that authorizes forfeiture of
144 property, is insufficient probable cause for seizure of U.S.
145 currency.

146 **SECTION 5.** (1) Seizure or restraint of real property
147 requires a court order. A court may issue an order to seize or
148 secure real property for which forfeiture is sought only after
149 proper notice and an opportunity for a contested hearing to



150 determine the sufficiency of probable cause for the seizure has
151 been provided to the property owners.

152 (2) This section does not prohibit the prosecuting authority
153 from seeking a lis pendens or restraining order to hinder the sale
154 or destruction of the real property. However, if the prosecuting
155 authority obtains a lis pendens or restraining order, then the
156 prosecuting authority must notify any party with an interest in
157 any real property within thirty (30) days of receiving the lis
158 pendens or restraining order.

159 (3) Application, filing, issuance, execution and return of
160 any order are subject to applicable state statutes.

161 **SECTION 6.** The following are exempt from seizure and
162 forfeiture:

163 (a) Homestead real property.

164 (b) U.S. currency totaling Two Thousand Five Hundred
165 Dollars (\$2,500.00) or less; however, the prosecuting authority of
166 a criminal court district may establish an exemption with a
167 maximum dollar amount greater than Two Thousand Five Hundred
168 Dollars (\$2,500.00) for U.S. currency seized within that district.

169 (c) A motor vehicle having a market value equal to or
170 less than Two Thousand Five Hundred Dollars (\$2,500.00); however,
171 the prosecuting authority of a criminal court district may
172 establish an exemption with a maximum dollar amount greater than
173 Two Thousand Five Hundred Dollars (\$2,500.00) for a motor vehicle
174 seized within that district.



175 **SECTION 7.** A property right does not exist in contraband.
176 Contraband is subject to seizure and must be disposed of according
177 to state law.

178 **SECTION 8.** (1) A police officer, sheriff or other member of
179 law enforcement, other than the prosecuting authority, may not
180 request, require or in any manner induce a person to execute a
181 document purporting to waive, for purpose of forfeiture under this
182 act, the person's interest in or rights to property seized.

183 (2) Any document purporting to waive a person's interest in
184 or right to property seized under this act is null, void and
185 inadmissible in court.

186 **SECTION 9.** When property is seized, the law enforcement
187 officer shall give an itemized receipt to the person possessing
188 the property. If the person possessing the property is not
189 present, the law enforcement officer must leave a receipt in the
190 place where the property was found, if reasonably possible.

191 **SECTION 10.** When a person is convicted of an offense that
192 authorizes the forfeiture of property, the court, consistent with
193 this act, may order the person to forfeit:

194 (a) Any property constituting, or derived directly
195 from, proceeds of the underlying offense for which the person is
196 convicted; or

197 (b) Any of the person's property used in any manner or
198 part to commit or to facilitate the commission of the offense for
199 which the person is convicted.



200 **SECTION 11.** (1) There may be no civil forfeiture under this
201 act.

202 (2) Except as otherwise provided by law, property may be
203 forfeited if the following conditions are met:

204 (a) The offense is of a state criminal law that
205 authorizes the forfeiture of property;

206 (b) Guilt of the offense is established by proof of a
207 criminal conviction, except as otherwise provided under subsection
208 (4); and

209 (c) The state establishes that the property is subject
210 to forfeiture under Section 10 of this act by clear and convincing
211 evidence.

212 (3) This act does not prevent property from being forfeited
213 by plea agreement approved by the presiding criminal court;
214 however, the court may not accept a plea agreement or other
215 arrangement that prevents the claims of any person who filed a
216 statement of interest or ownership pursuant to Sections 18 and 19
217 of this act from being adjudicated.

218 (4) The court may waive the conviction requirement and grant
219 title to the property to the state if the prosecuting authority
220 files a motion no less than one hundred eighty (180) days after
221 seizure and shows by clear and convincing evidence that, before
222 conviction, the defendant:

223 (a) Died;

224 (b) Was deported by the federal government;



225 (c) Is granted immunity or reduced punishment in
226 exchange for testifying or assisting a law enforcement
227 investigation or prosecution;

228 (d) Fled the jurisdiction; or

229 (e) Abandoned the property.

230 (5) Property that either is seized from a person who flees
231 the jurisdiction or is abandoned must be delivered to the State
232 Treasurer within thirty (30) days without further
233 forfeiture-related litigation. The State Treasurer shall sell all
234 noncurrency property. The sale proceeds and any currency seized
235 from a person who flees the jurisdiction or abandons the currency
236 must be deposited into the State General Fund.

237 **SECTION 12.** (1) In any case in which the state seeks
238 forfeiture of property, except when the state seeks forfeiture
239 through indictment or information as provided in Section 13 of
240 this act, the prosecuting authority shall file a criminal
241 complaint that includes: (a) criminal charges; and (b) the
242 information identified in subsection (2) of this section before
243 the defendant's first appearance in court. Upon motion by the
244 prosecuting authority, a court may permit the filing of an amended
245 criminal complaint within seven (7) days of the first appearance
246 for good cause shown. Service of an amended criminal complaint on
247 a represented party must be made on the defendant's attorney.
248 Service on the attorney or party must be made in the manner
249 provided by the rules of practice of the court, including by



250 electronic means as authorized by that court. The court shall
251 verify service at the defendant's next appearance.

252 (2) A complaint in any case in which the state seeks
253 forfeiture of property must include the following:

254 (a) A description of the property seized;

255 (b) The date and place of the seizure;

256 (c) The name and address of the appropriate agency
257 responsible for the seizure;

258 (d) A statement of facts establishing probable cause to
259 believe that the charged offense has been committed, that the
260 defendant committed it, and that the seized property is an
261 instrument or represents the proceeds of the underlying offense;

262 (e) The name of any person known to the prosecuting
263 authority to have an interest in the property and the nature of
264 that interest; and

265 (f) References to the relevant statutory provisions
266 required to show that the property is the type of property that
267 may be forfeited under Section 10 of this act.

268 (3) If notice is not served in accordance with subsections
269 (1) and (2) to all persons appearing to have an interest in the
270 property and no time extension is granted or the extension period
271 has expired, the appropriate agency, upon the owner's request,
272 must return the property to the person from whom the property was
273 seized or another owner if another owner made the request. The
274 agency may not return contraband.



275 (4) Unless otherwise provided by law, the prosecuting
276 authority shall provide notice of the forfeiture proceeding to the
277 registered owner of any vehicle and any other individual known to
278 have an interest in any property subject to forfeiture under this
279 section who is not charged with a crime in the complaint. Notice
280 must be given within seven (7) days of the filing of the complaint
281 pursuant to subsection (1) or, if an interest was not known at the
282 time of the filing, within seven (7) days of discovery of an
283 individual with an interest in the property. Notice may be made
284 by personal service if the owner is a resident of this state or by
285 certified mail if the person is the resident of another state.

286 (5) The notice must be in writing and contain the following:

287 (a) A description of the property seized;

288 (b) The date of seizure; and

289 (c) A copy of the complaint filed pursuant to

290 subsection (1).

291 (6) The following language must appear conspicuously in the
292 notice: "WARNING: You may lose the right to be heard in court if
293 you do not file a statement of interest or ownership within
294 _____ days. You must file in ___[NAME OF COURT]___ court.
295 You do not have to pay a filing fee to file your notice."

296 **SECTION 13.** (1) In any case in which the state seeks
297 forfeiture of property other than through a complaint filed under
298 Section 12 of this act, the prosecuting authority shall file an
299 indictment or information that includes:



300 (a) A criminal charge; and
301 (b) A charge for which forfeiture of property under
302 this act may be ordered, which charge must identify the specific
303 assets to be forfeited, if known, or the relevant forfeiture
304 statutes if specific assets to be forfeited are not known at the
305 time the prosecuting authority requests the issuance of the
306 indictment.

307 (2) Upon application of the prosecuting authority, the court
308 may enter a restraining order or injunction or take other action
309 to preserve the availability of property only:

310 (a) Upon the issuance of an indictment or information
311 according to subsection (1); or

312 (b) Before the issuance of the indictment or
313 information if the court determines there is a substantial
314 probability the state will prevail on the issue of criminal
315 forfeiture and that failure to enter the order will result in
316 property being destroyed, removed from the jurisdiction or
317 otherwise made unavailable for forfeiture.

318 (3) Any order entered under subsection (2)(b) may not be
319 effective for a period greater than ninety (90) days unless
320 extended by the court for good cause shown or unless an indictment
321 or information described in subsection (2)(a) has been issued
322 subsequently.

323 (4) Notice must be provided as required under subsections
324 (4) through (6) of Section 12 of this act to all persons known to



325 have an interest in the property who are not named in the
326 indictment or information.

327 **SECTION 14.** (1) Except as otherwise provided in subsection
328 (3), title to property subject to forfeiture vests with the state
329 when the court issues a forfeiture judgment and relates back to
330 the time when the state seizes or restrains the property.

331 (2) Except as otherwise provided in subsection (3), title to
332 substitute assets vests when the court issues an order forfeiting
333 substitute assets.

334 (3) Notwithstanding the provisions of subsections (1) and
335 (2), title to property subject to forfeiture and to substitute
336 assets is subject to claims by third parties adjudicated under
337 this act.

338 **SECTION 15.** (1) Following the seizure of property, a
339 defendant has a right to a pretrial hearing to determine the
340 validity of the seizure.

341 (2) The court shall hold the hearing at the time of a
342 defendant's first appearance in court.

343 (3) Either party, by agreement or for good cause, may move
344 the court for one (1) extension of no more than ten (10) days. A
345 motion under this subsection may be supported by affidavits or
346 other submissions.

347 (4) The court shall issue a writ of replevin if it finds any
348 of the following:



349 (a) It is likely that the final judgment will be that
350 the state must return the property to the defendant;

351 (b) The property is not reasonably required to be held
352 for evidentiary reasons; or

353 (c) The property is the only reasonable means for the
354 defendant to pay for legal representation in the forfeiture or
355 criminal proceeding and minimum living expenses, unless the
356 prosecuting authority shows by clear and convincing evidence that
357 the property is the instrument or proceeds of an offense for which
358 the defendant is charged. The court, in its discretion, may order
359 the return of funds and property not needed for evidentiary
360 reasons which are sufficient to obtain counsel of choice but less
361 than the total amount seized.

362 **SECTION 16.** Discovery is subject to the Mississippi Rules of
363 Criminal Procedure.

364 **SECTION 17.** (1) The court with jurisdiction over the
365 related criminal matter has jurisdiction over the forfeiture
366 proceeding.

367 (2) The litigation related to the forfeiture of property
368 must be held in a proceeding following the trial of the related
369 alleged offense. The timing of the litigation of the forfeiture
370 proceeding is at the discretion of the court. The litigation
371 associated with the forfeiture of property of less than Ten
372 Thousand Dollars (\$10,000.00) in value must be held before a judge
373 without a jury.



374 (3) If the property owner engages in pro se representation
375 in a case before a judge, the court is not bound by the common
376 law, court rules of evidence, statutory rules of evidence,
377 technical or formal rules of pleading or procedure in the
378 litigation related to the forfeiture of property.

379 (4) If the defendant in the related criminal matter was
380 represented by a public defender, the state public defender or
381 chief public defender of the criminal court may authorize
382 representation of the defendant in the forfeiture proceeding.

383 **SECTION 18.** (1) At any time during a hearing pursuant to
384 Section 15 or 17 of this act, the defendant may petition the court
385 to determine whether the forfeiture is unconstitutionally
386 excessive under the state constitution.

387 (2) The defendant has the burden of establishing the
388 forfeiture is disproportional to the seriousness of the offense by
389 clear and convincing evidence at a hearing conducted by the court
390 without a jury.

391 (3) In determining whether the forfeiture is
392 unconstitutionally excessive, the court may consider all relevant
393 factors, including, but not limited to, the following:

394 (a) The seriousness of the offense and its impact on
395 the community, including the duration of the activity and the harm
396 caused by the defendant;

397 (b) The extent to which the defendant participated in
398 the offense;



399 (c) The extent to which the property was used in
400 committing the offense;

401 (d) The sentence imposed for committing the crime
402 authorizing forfeiture;

403 (e) Whether the offense was completed or attempted;

404 (f) The hardship to the defendant if the forfeiture is
405 realized and if the forfeiture would deprive the property owner of
406 the owner's livelihood; and

407 (g) The hardship from the loss of a primary residence,
408 motor vehicle or other property to the defendant's family members
409 or others if the property is forfeited.

410 (4) In determining the value of the instrumentality subject
411 to forfeiture, the court may consider all relevant factors related
412 to the fair market value of the property.

413 (5) The court may not consider the value of the
414 instrumentality to the state in determining whether the forfeiture
415 of an instrumentality is constitutionally excessive.

416 **Section 19.** (1) Property encumbered by a bona fide security
417 interest is not subject to forfeiture. A person claiming a
418 security interest must establish by clear and convincing evidence
419 the validity of the interest perfected under Chapter 9, Title 75,
420 Mississippi Code of 1972, or a lease or rental agreement.

421 (2) The prosecuting authority summarily shall return seized
422 property to the person with a bona fide security interest, up to
423 the value of the secured interest.



424 (3) If the person alleges a valid security interest but the
425 state seeks to proceed with the forfeiture against the property,
426 the state must prove by clear and convincing evidence that the
427 person had actual knowledge of the underlying crime giving rise to
428 the forfeiture. Either party may petition the court for a hearing
429 at any time before the court enters judgment in the criminal
430 prosecution or grants the motion in subsection (4) of Section 11
431 of this act.

432 **SECTION 19.** (1) Any person, including an heir but excluding
433 the defendant or a secured-interest holder, asserting a legal
434 interest in property that has been seized or restrained may
435 petition the court, at any time before the court enters final
436 judgment in the criminal prosecution or grants a motion pursuant
437 to subsection (4) of Section 11 of this act, for a hearing to
438 adjudicate the validity of the person's alleged interest in the
439 property. The hearing must be held before the court alone,
440 without a jury.

441 (2) The petitioner shall file with the court a simple
442 statement of interest or ownership. The petitioner must sign the
443 petition under penalty of perjury and set forth the nature and
444 extent of the petitioner's right, title or interest in the
445 property, the time and circumstances of the petitioner's
446 acquisition of the right, title or interest in the property, any
447 additional facts supporting the petitioner's claim, and the relief
448 sought.



449 (3) The filing fee for the statement under this section is
450 waived.

451 (4) To the extent practicable and consistent with the
452 interests of justice, the hearing on the petition must be held
453 within thirty (30) days of the filing of the petition. The court
454 may consolidate the hearing on the petition with a hearing on any
455 other petition filed by a person other than the defendant under
456 this subsection.

457 (5) At the hearing, the petitioner may testify and present
458 evidence and witnesses on the petitioner's own behalf and may
459 cross-examine witnesses who appear at the hearing. The state may
460 present evidence and witnesses in rebuttal and in defense of its
461 claim to the property and may cross-examine witnesses who appear
462 at the hearing.

463 (6) A petitioner who has an ownership interest in property
464 subject to forfeiture at the time of the commission of the crime
465 giving rise to the forfeiture and who claims to be an innocent
466 owner bears the burden of proving by clear and convincing evidence
467 that the person has a legal right, title or interest in the
468 property seized under this act.

469 (7) If subsection (6) is satisfied and the state seeks to
470 proceed with the forfeiture of the property, the state must prove
471 by clear and convincing evidence that the petitioner had actual
472 knowledge of the underlying crime giving rise to the forfeiture.



473 (8) A petitioner who acquires an ownership interest in
474 property subject to forfeiture after the commission of the crime
475 giving rise to the forfeiture and who claims to be an innocent
476 owner bears the burden of proving by clear and convincing evidence
477 that the person has legal right, title or interest in the property
478 seized under this act.

479 (9) If subsection (8) is satisfied and the state seeks to
480 proceed with the forfeiture of the property, the state must prove
481 by clear and convincing evidence that at the time the petitioner
482 acquired the property, the person:

483 (a) Had actual knowledge that the property was subject
484 to forfeiture; or

485 (b) Was not a bona fide purchaser without notice of any
486 defect in title and for valuable consideration.

487 (10) If the state fails to meet its burden in subsection (7)
488 or (9), the court must find that the petitioner is an innocent
489 owner and order the state to relinquish all claims of title to the
490 property.

491 (11) Information in the statement of interest or ownership
492 filed under this section may not be used as evidence in the
493 criminal matter. This section does not prohibit a petitioner who
494 has filed a statement of interest or ownership under this section
495 from providing information to any prosecuting authority or
496 defendant involved in the related criminal matter or their



497 representatives or from testifying in any criminal trial as to
498 facts within the petitioner's knowledge.

499 (12) A defendant or convicted offender may invoke the right
500 against self-incrimination or the marital privilege during the
501 forfeiture-related litigation. The trier of fact at the hearing
502 may draw an adverse inference from the invocation of the right or
503 privilege.

504 **SECTION 20.** (1) If the prosecuting authority fails to meet
505 its burden as to any claimant, the court must enter judgment
506 dismissing the forfeiture proceeding and delivering the property
507 to the prevailing owner unless the owner's possession of the
508 property is illegal.

509 (2) If the prosecuting authority meets its burden as to all
510 claimants, the court must enter judgment forfeiting the seized
511 property.

512 (3) A court may enter judgment following a hearing or
513 pursuant to a stipulation or plea agreement.

514 **SECTION 21.** Upon the state's motion following conviction,
515 the court may order the forfeiture of substitute property owned by
516 the defendant up to the value of unreachable property that is
517 beyond the court's jurisdiction or cannot be located through due
518 diligence only if the state proves by clear and convincing
519 evidence that the defendant intentionally:

520 (a) Dissipated the property;



521 (b) Transferred, sold or deposited property with a
522 third party to avoid forfeiture;

523 (c) Diminished substantially the value of property; or

524 (d) Commingled the property with other property that
525 cannot be divided without difficulty.

526 **SECTION 22.** The state may not seek personal money judgments
527 or other remedies related to the forfeiture of property not
528 provided for in this act.

529 **SECTION 23.** A defendant is not jointly and severally liable
530 for forfeiture awards owed by other defendants. When ownership is
531 unclear, a court may order each defendant to forfeit property on a
532 pro rata basis or by another means the court finds equitable.

533 **SECTION 24.** (1) A party to forfeiture litigation, other
534 than the defendant, may appeal the court's decision on an
535 interlocutory basis.

536 (2) The defendant may appeal the court's decision regarding
537 the seizure or forfeiture of property following final judgement in
538 the forfeiture litigation.

539 **SECTION 25.** In a proceeding in which a property owner's
540 claims prevail by recovering at least one-half (1/2), by value, of
541 the property or currency claimed, the seizing agency is liable
542 for:

543 (a) Reasonable attorney fees and other litigation costs
544 reasonably incurred by the claimant;

545 (b) Post-judgment interest; and



546 (c) In cases involving currency, other negotiable
547 instruments or the proceeds of an interlocutory sale, any interest
548 actually paid from the date of seizure.

549 **SECTION 26.** (1) If the court orders the return of property,
550 the law enforcement agency that holds the property must return the
551 property to the owner or other prevailing claimant within a
552 reasonable period of time, not to exceed five (5) days after entry
553 of judgment.

554 (2) An owner to whom property is returned is not responsible
555 for any charges for storage of the property or expenses incurred
556 in the preservation of the property.

557 (3) The law enforcement agency that holds the property is
558 responsible for any damages, storage fees and related costs
559 applicable to property that is returned under this section.

560 **SECTION 27.** (1) Whenever contraband held for evidentiary
561 purposes is no longer needed for that purpose, the court may order
562 the contraband to be destroyed pursuant to state law.

563 (2) Whenever abandoned property held for evidentiary
564 purposes is no longer needed for that purpose, the court may order
565 the property to be delivered to the State Treasurer within thirty
566 (30) days of the order.

567 (3) If forfeiture is granted, the court, upon motion, may
568 order that a portion of the currency seized or proceeds from the
569 sale of forfeited property be used to:



570 (a) Pay the victim of the crime for which the defendant
571 is convicted;

572 (b) Pay reasonable nonpersonnel expenses for the
573 seizure, storage and maintenance of any forfeited property found
574 to be related to the crime for which the defendant is convicted;
575 and

576 (c) Reimburse the seizing agency for nonpersonnel
577 operating costs, including controlled-drug buy money, related to
578 investigating the crime for which the defendant is convicted.

579 (4) If forfeiture is granted, the court must order currency
580 and all other property to be delivered to the State Treasurer
581 within thirty (30) days.

582 (5) The State Treasurer shall sell all noncurrency forfeited
583 property. The sale proceeds and forfeited currency must be used
584 first to pay all outstanding recorded liens on the forfeited
585 property and then to comply with an order of the court under
586 subsection (3). The State Treasurer shall deposit all remaining
587 funds into the State General Fund.

588 **SECTION 28.** A law enforcement agency may not retain
589 forfeited or abandoned property for its own use or sell it
590 directly or indirectly to any employee of the agency, a person
591 related to an employee by blood or marriage, or another law
592 enforcement agency.

593 **SECTION 29.** A law enforcement agency may not refer, transfer
594 or otherwise relinquish possession of property seized under state



595 law to a federal agency by way of adoption of the seized property
596 or other means by the federal agency for the purpose of the
597 property's forfeiture under the Controlled Substances Act, Public
598 Law 91-513-Oct. 27, 1970, or other federal law.

599 **SECTION 30.** (1) In a case in which the aggregate net equity
600 value of the property and currency seized is Fifty Thousand
601 Dollars (\$50,000.00) or less, excluding the value of contraband, a
602 law enforcement agency or participant in a joint task force or
603 other multijurisdictional collaboration with the federal
604 government must transfer responsibility for the seized property to
605 the state prosecuting authority for forfeiture under state law.

606 (2) If the federal government prohibits the transfer of
607 seized property and currency to the state prosecuting authority as
608 required under subsection (1) and instead requires the property to
609 be transferred to the federal government for forfeiture under
610 federal law, the law enforcement agency may not accept payment of
611 any kind or distribution of forfeiture proceeds from the federal
612 government.

613 (3) Neither subsection (1) or (2) may be construed to
614 restrict a law enforcement agency from transferring responsibility
615 to the federal government for forfeiture of seized property and
616 currency that has an aggregate net equity value of greater than
617 Fifty Thousand Dollars (\$50,000.00), excluding the value of
618 contraband.



619 (4) Neither subsection (1) or (2) may be construed to
620 restrict a law enforcement agency from acting alone or
621 collaborating with a federal agency or other agency to seize
622 contraband or property that a law enforcement agent has probable
623 cause to believe is the proceeds or instruments of a crime that
624 subjects property to forfeiture.

625 (5) Neither subsection (1) or (2) may be construed to
626 prohibit the federal government, acting without the involvement of
627 a law enforcement agency, from seizing property and seeking
628 forfeiture under federal law.

629 **SECTION 31.** This act preempts any laws by a municipal,
630 county and other local government in the state which regulate
631 civil and criminal forfeiture.

632 **SECTION 32.** Section 49-1-43, Mississippi Code of 1972, is
633 amended as follows:

634 49-1-43. (1) The director shall have general supervision
635 and control of all conservation officers, and shall enforce all
636 the laws and regulations of the state relating to wild animals,
637 birds and fish, and shall exercise all necessary powers incident
638 thereto not specifically conferred on the department.

639 (2) The director, with the approval of the commission, shall
640 make to the Governor and the Legislature a report covering the
641 operation of the department for the preceding fiscal year.

642 (3) It shall be the duty of all conservation officers to
643 enforce, and to obey and carry out all instructions and directions



644 of the department with respect to the enforcement of the laws and
645 regulations relating to wild animals, birds and fish.

646 (4) The director and each conservation officer shall have
647 power, and it shall be the duty of the director and of each
648 conservation officer:

649 (a) To execute all warrants and search warrants for a
650 violation of the laws and regulations relating to wild animals,
651 birds and fish and to serve subpoenas issued for the examination
652 and investigation or trial of offenses against any of the laws or
653 regulations;

654 (b) To search where the conservation officer has cause
655 to believe and does believe that animals, birds or fish, or any
656 parts thereof, or the nest or eggs of birds, or spawn or eggs of
657 fish are possessed in violation of law or regulation and in such
658 case to examine, without warrant, the contents of any boat, car,
659 automobile or other vehicle, box, locker, basket, creel, crate,
660 game bag or other package, to ascertain whether any law or
661 regulation for the protection of animals, birds or fish have been
662 or are being violated, and to use such force as may be necessary
663 for the purpose of such examination and inspection;

664 (c) With a search warrant, to search and examine the
665 contents of any dwelling house, room, building or premises of any
666 person suspected of violating any law or regulation, to seize all
667 animals, birds or fish, or parts thereof, or nests or eggs of
668 birds taken in violation of law or regulation, or showing evidence



669 of illegal taking and to seize and confiscate all devices
670 illegally used in taking animals, birds or fish, which devices may
671 be forfeited only upon conviction of the alleged violation of law
672 or regulation in the manner prescribed under Sections 1 through 32
673 of House Bill No. _____, 2020 Regular Session;

674 (d) To arrest, without warrant, any person committing
675 or attempting to commit a misdemeanor, felony or a breach of the
676 peace within his presence or view and to pursue and so arrest any
677 person committing an offense in any place in the state where the
678 person may go or be; to aid and assist any peace officer of this
679 state or any other state if requested, in manhunts or natural
680 disasters within the state; and

681 (e) To exercise other powers of peace officers in the
682 enforcement of game laws or regulations or of a judgment for the
683 violation thereof, as are not herein specifically provided.

684 (5) In all cases of arrest without warrant, the person
685 making such arrest must inform the accused of the object and cause
686 of the arrest, except when he is in the actual commission of the
687 offense or is arrested on pursuit.

688 (6) No conservation officer shall compromise or settle out
689 of court any violation of this chapter, or any law or regulation
690 for the protection of wild animals, birds or fish.

691 (7) Nothing in this section shall be construed as granting
692 conservation officers general police powers.



693 (8) Citations issued by a conservation officer for any
694 violation of the laws for the protection of wild animals, birds
695 and fish, the trespass laws, the litter laws, and the boating laws
696 shall be issued on a uniform citation form consisting of an
697 original and at least two (2) copies. Such citation shall show,
698 among other necessary information, the name of the issuing
699 officer, the name of the court in which the cause is to be heard,
700 and the date and time the person charged with a violation is to
701 appear to answer the charge. The uniform citation form shall make
702 a provision on it for information that will constitute a complaint
703 charging the offense for which the citation was issued and, when
704 duly sworn to and filed with a court of competent jurisdiction,
705 prosecution may proceed under that complaint.

706 **SECTION 33.** Section 49-5-115, Mississippi Code of 1972, is
707 amended as follows:

708 49-5-115. (a) Any person who violates the provisions of
709 subsection (c) of Section 49-5-107, or any regulations issued
710 under Section 49-5-107 or whoever fails to procure or violates the
711 terms of any permit issued thereunder shall be guilty of a Class I
712 violation and punished as provided in Section 49-7-141.

713 (b) Any person who violates the provisions of subsection (c)
714 of Section 49-5-109, or any regulations issued pursuant thereto or
715 whoever fails to procure or violates the terms of any permit
716 issued under subsections (d) and (e) of Section 49-5-111 is guilty



717 of a Class I violation and is punishable as provided under Section
718 49-7-141.

719 (c) All law enforcement and management officers of the
720 commission and other law enforcement officers authorized to
721 enforce the laws of the State of Mississippi are authorized to
722 carry out the provisions of Sections 49-5-101 through 49-5-119.
723 Any officer or agent may, without warrant, arrest any person who
724 the officer or agent has probable cause to believe is violating,
725 in his presence or view, any section, regulation or permit
726 provided for by Sections 49-5-101 through 49-5-119. An officer or
727 agent who has made an arrest of a person for any such violation
728 may search the person or business records at the time of
729 arrest * * *.

730 (d) * * * Upon conviction of a violation of Sections
731 49-5-101 through 49-5-119, equipment, merchandise, wildlife, or
732 records subject to being seized and forfeited under * * * Sections
733 1 through 32 of House Bill No. _____, 2020 Regular Session, shall
734 be held by an officer or agent of the commission pending
735 disposition of * * * forfeiture proceedings, and may be forfeited
736 to the state for destruction or disposition as the * * * court may
737 deem appropriate. Prior to forfeiture, the * * * court may direct
738 the transfer of wildlife so seized to a qualified zoological,
739 educational, or scientific institution for safekeeping, costs
740 thereof to be assessable to the defendant. The commission is
741 authorized to issue regulations to implement this subsection.



742 **SECTION 34.** Section 49-7-81, Mississippi Code of 1972, is
743 amended as follows:

744 49-7-81. (1) It is unlawful to take or kill game fish in
745 any manner other than by hook and line with one or more hooks, or
746 by use of a trot or troll line. Dip or landing nets may be used
747 when landing a fish caught by hook and line, trot or troll lines.
748 Shad and minnows may only be taken as bait with the aid of a dip
749 or landing net, cast nets, boat-mounted scoops and wire baskets by
750 residents for personal use in sportfishing. However, in private
751 ponds or borrow pits or overflow ponds which go dry in summer and
752 cut off from the regular streams, dip nets may be used for
753 capturing or rescuing game fish. It is unlawful to kill or take
754 fish of any species at any time or anywhere by mudding, or by the
755 use of lime, poison, dynamite, India berries, weeds and walnuts,
756 giant powder, gunpowder, or any other explosive, and no nongame
757 gross fish shall be taken by the use of nets, seines or traps for
758 personal use without a commercial fishing license. It is unlawful
759 to set any freshwater commercial fishing equipment so that it
760 extends more than halfway across the width of any stream, channel,
761 drain or other body of water, and if commercial fishing equipment
762 is placed in water, each piece of equipment shall be placed at
763 least one hundred (100) yards apart. The commission shall have
764 the authority to fix the minimum size mesh for use in barrel nets,
765 hoop nets and seines for use in the freshwaters of this state
766 regulated by the Commission on Wildlife, Fisheries and Parks.



767 This authority given the commission shall not be extended to the
768 regulation of mesh size for use in marine waters. Notwithstanding
769 anything in this or any other section to the contrary, any person
770 in Mississippi fishing with barrel nets, hoop nets or seines in
771 any waters of common boundary between Mississippi and another
772 state may use a mesh size in such nets which is the same as the
773 mesh size allowed in the other state, where the other state allows
774 a mesh size in such nets which is smaller than the mesh size
775 otherwise allowable in Mississippi.

776 (2) It is unlawful for any person to catch or destroy fish
777 by the use of dynamite, gunpowder or other explosive substance.

778 (3) It is unlawful for any person to use a telephone,
779 battery or any other electrically operated device for the purpose
780 of killing or capturing fish.

781 (4) It is unlawful for any person to use any chemical of any
782 kind in any stream or any lake where the public fishes for the
783 purpose of killing or taking fish, except that this provision
784 shall not be construed to apply to any owner of any fish pond
785 using such chemical in his own private pond.

786 (5) It is unlawful for any person to poison any fish by
787 mingling in the water any substance calculated and intended to
788 stupefy or destroy fish.

789 (6) It is unlawful for any person to fish any equipment in
790 the waters of the state of any size or type that is not allowed by
791 the commission.



792 (7) Any hoop net, barrel net, seine, gill net, slat baskets,
793 trammel net or untagged commercial fishing gear or devices being
794 fished in public waters may be seized and held as evidence and
795 upon conviction, shall be subject to forfeiture pursuant to
796 Sections 1 through 32 of House Bill No. , 2020 Regular Session.

797 (8) Any person violating the provisions of subsections (2),
798 (3), (4), (5) and (6) of this section is guilty of a Class I
799 violation and, upon conviction, shall be punished as provided in
800 Section 49-7-141.

801 **SECTION 35.** Section 49-7-91, Mississippi Code of 1972, is
802 amended as follows:

803 49-7-91. (1) It is unlawful for any person, firm, or
804 corporation to fish commercially at any time in Muddy Bayou, in
805 Warren County, Mississippi.

806 (2) The department may enforce this section and seize and
807 confiscate all commercial nets and seines used in Muddy Bayou, in
808 Warren County, Mississippi, or on any part of the bayou, either
809 along the length or at its two (2) openings in and to Eagle Lake
810 and Steele Bayou.

811 (3) Any person violating this section is guilty of a
812 misdemeanor and shall be fined not less than Ten Dollars (\$10.00),
813 nor more than One Hundred Dollars (\$100.00), or be imprisoned not
814 more than three (3) months, or both; and in addition the
815 department shall seize and confiscate all commercial nets and
816 seines used for such purpose, and upon conviction, dispose of the



817 same pursuant to Sections 1 through 32 of House Bill No. _____,
818 2020 Regular Session. The * * * proceeds of the forfeited
819 property must be deposited to the credit of the State Game and
820 Fish Fund in the State General Fund.

821 **SECTION 36.** Sections 49-7-103, 49-7-251, 49-7-253, 49-7-255
822 and 49-7-259, Mississippi Code of 1972, which authorize and
823 prescribe the procedure for the seizure and forfeiture of property
824 used in connection with violations of the state game and fish
825 laws, are repealed.

826 **SECTION 37.** Section 59-21-33, Mississippi Code of 1972,
827 which authorizes the seizure and forfeiture of boats and trailers
828 with altered identification numbers, is repealed.

829 **SECTION 38.** This act shall take effect and be in force from
830 and after July 1, 2020.

