

By: Representative Calvert

To: Judiciary A

HOUSE BILL NO. 1634

1 AN ACT TO AMEND SECTION 41-29-179, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE A PROCEDURE THAT ALLOWS ANY PERSON WHOSE ASSETS ARE  
3 SUBJECT TO FORFEITURE TO CHALLENGE THE FORFEITURE FOR CERTAIN  
4 REASONS; TO AMEND SECTIONS 41-29-153, 41-29-176.1 AND 41-29-177,  
5 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS;  
6 AND FOR RELATED PURPOSES.

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

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

10 41-29-179. (1) (a) A defendant may petition the court at  
11 any time to determine whether his or her seized property should be  
12 subject to forfeiture, and whether such forfeiture is excessive  
13 under state and/or federal law.

14 (b) The defendant has the burden of establishing that  
15 the forfeiture is disproportional to the seriousness of the  
16 offense by a preponderance of the evidence at a hearing conducted  
17 by the court without a jury.

18 (c) In determining whether the forfeiture is  
19 unconstitutionally excessive, the court may consider all relevant  
20 factors, including:



21                   (i) The seriousness of the offense and its impact  
22 on the community, including the duration of the activity and the  
23 harm caused by the defendant;

24                   (ii) The extent to which the defendant  
25 participated in the offense;

26                   (iii) The extent to which the property was used in  
27 committing the offense;

28                   (iv) The sentence imposed for committing the crime  
29 authorizing forfeiture;

30                   (v) Whether the offense was completed or  
31 attempted;

32                   (vi) The hardship to the defendant if the  
33 forfeiture is realized and if the forfeiture would deprive the  
34 property owner of the owner's livelihood; and

35                   (vii) The hardship from the loss of a primary  
36 residence, motor vehicle or other property to the defendant's  
37 family members or others if the property is forfeited.

38                   (d) In determining the value of the instrumentality  
39 subject to forfeiture, the court may consider all relevant factors  
40 relating to the fair market value of the property.

41                   (e) The court may not consider the value of the  
42 instrumentality to the state in determining whether the forfeiture  
43 of an instrumentality is constitutionally excessive.

44                   (f) If the court determines that the forfeiture is  
45 disproportionate, the agency in possession of such property shall



46 return the property to the defendant no more than fifteen (15)  
47 days from the date of the hearing.

48 ( \* \* \*2) Except as otherwise provided in Section 41-29-176  
49 and Section 41-29-107.1, an owner of property, other than a  
50 controlled substance, raw material or paraphernalia, that has been  
51 seized shall file an answer within thirty (30) days after the  
52 completion of service of process. If an answer is not filed, the  
53 court shall hear evidence that the property is subject to  
54 forfeiture and forfeit the property to the Mississippi Bureau of  
55 Narcotics or the local law enforcement agency. If an answer is  
56 filed, a time for hearing on forfeiture shall be set within thirty  
57 (30) days of filing the answer or at the succeeding term of court  
58 if court would not be in progress within thirty (30) days after  
59 filing the answer. Provided, however, that upon request by the  
60 Bureau of Narcotics, the local law enforcement agency or the owner  
61 of the property, the court may postpone \* \* \* the forfeiture  
62 hearing to a date past the time any criminal action is pending  
63 against \* \* \* the owner.

64 ( \* \* \*3) If the owner of the property has filed an answer  
65 denying that the property is subject to forfeiture, then the  
66 burden is on the petitioner to prove that the property is subject  
67 to forfeiture. However, if an answer has not been filed by the  
68 owner of the property, the petition for forfeiture may be  
69 introduced into evidence and is prima facie evidence that the  
70 property is subject to forfeiture. The standard of proof placed



71 upon the petitioner in regard to property forfeited under the  
72 provisions of this article shall be by a preponderance of the  
73 evidence.

74 ( \* \* \*4) At the hearing any claimant of any right, title or  
75 interest in the property may prove his lien, encumbrance, security  
76 interest, other interest in the nature of a security interest,  
77 mortgage or deed of trust to be bona fide and created without  
78 knowledge or consent that the property was to be used so as to  
79 cause the property to be subject to forfeiture.

80 ( \* \* \*5) If it is found that the property is subject to  
81 forfeiture, then the judge shall forfeit the property to the  
82 Mississippi Bureau of Narcotics or the local law enforcement  
83 agency. However, if proof at the hearing discloses that the  
84 interest of any bona fide lienholder, secured party, other person  
85 holding an interest in the property in the nature of a security  
86 interest, or any holder of a bona fide encumbrance, mortgage or  
87 deed of trust is greater than or equal to the present value of the  
88 property, the court shall order the property released to him. If  
89 such interest is less than the present value of the property and  
90 if the proof shows that the property is subject to forfeiture, the  
91 court shall order the property forfeited to the Mississippi Bureau  
92 of Narcotics or the local law enforcement agency.

93 ( \* \* \*6) Upon a petition filed in the name of the State of  
94 Mississippi, the county or the municipality with the clerk of the  
95 circuit court of the county in which the seizure of any controlled



96 substance or raw material is made, the circuit court having  
97 jurisdiction may order the controlled substance or raw material  
98 summarily forfeited except when lawful possession and title can be  
99 ascertained. If a person is found to have had lawful possession  
100 and title prior to seizure, the court shall order the controlled  
101 substance or raw material returned to the owner, if the owner so  
102 desires. Upon a petition filed in the name of the State of  
103 Mississippi, the county or the municipality with the clerk of the  
104 circuit court of the county in which the seizure of any purported  
105 paraphernalia is made, the circuit court having jurisdiction may  
106 order such seized property summarily forfeited when the court has  
107 determined the seized property to be paraphernalia as defined in  
108 Section 41-29-105(v).

109 **SECTION 2.** Section 41-29-153, Mississippi Code of 1972, is  
110 amended as follows:

111 41-29-153. (a) The following are subject to forfeiture:

112 (1) All controlled substances which have been  
113 manufactured, distributed, dispensed or acquired in violation of  
114 this article or in violation of Article 5 of this chapter or  
115 Chapter 137 of this title;

116 (2) All raw materials, products and equipment of any  
117 kind which are used, or intended for use, in manufacturing,  
118 compounding, processing, delivering, importing, or exporting any  
119 controlled substance in violation of this article or in violation  
120 of Article 5 of this chapter or Chapter 137 of this title;



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

124           (4) All conveyances, including aircraft, vehicles or  
125 vessels, which are used, or intended for use, to transport, or in  
126 any manner to facilitate the transportation, sale, receipt,  
127 possession or concealment of property described in paragraph (1)  
128 or (2) of this subsection, however:

129           A. No conveyance used by any person as a common  
130 carrier in the transaction of business as a common carrier is  
131 subject to forfeiture under this section unless it appears that  
132 the owner or other person in charge of the conveyance is a  
133 consenting party or privy to a violation of this article;

134           B. No conveyance is subject to forfeiture under  
135 this section by reason of any act or omission proved by the owner  
136 thereof to have been committed or omitted without his knowledge or  
137 consent; if the confiscating authority has reason to believe that  
138 the conveyance is a leased or rented conveyance, then the  
139 confiscating authority shall notify the owner of the conveyance  
140 within five (5) days of the confiscation;

141           C. A forfeiture of a conveyance encumbered by a  
142 bona fide security interest is subject to the interest of the  
143 secured party if he neither had knowledge of nor consented to the  
144 act or omission;



145                   D. A conveyance is not subject to forfeiture for a  
146 violation of Section 41-29-139(c) (2) (A) 1, 2 or (B)1 or (C)1, 2,  
147 3;

148                   (5) All money, deadly weapons, books, records, and  
149 research products and materials, including formulas, microfilm,  
150 tapes and data which are used, or intended for use, in violation  
151 of this article or in violation of Article 5 of this chapter or  
152 Chapter 137 of this title;

153                   (6) All drug paraphernalia as defined in Section  
154 41-29-105(v); and

155                   (7) Everything of value, including real estate,  
156 furnished, or intended to be furnished, in exchange for a  
157 controlled substance in violation of this article, all proceeds  
158 traceable to such an exchange, and all monies, negotiable  
159 instruments, businesses or business investments, securities, and  
160 other things of value used, or intended to be used, to facilitate  
161 any violation of this article. All monies, coin and currency  
162 found in close proximity to forfeitable controlled substances, to  
163 forfeitable drug manufacturing or distributing paraphernalia, or  
164 to forfeitable records of the importation, manufacture or  
165 distribution of controlled substances are presumed to be  
166 forfeitable under this paragraph; the burden of proof is upon  
167 claimants of the property to rebut this presumption.

168                   A. No property shall be forfeited under the  
169 provisions of subsection (a) (7) of this section, to the extent of



170 the interest of an owner, by reason of any act or omission  
171 established by him to have been committed or omitted without his  
172 knowledge or consent.

173           B. Neither personal property encumbered by a bona  
174 fide security interest nor real estate encumbered by a bona fide  
175 mortgage, deed of trust, lien or encumbrance shall be forfeited  
176 under the provisions of subsection (a)(7) of this section, to the  
177 extent of the interest of the secured party or the interest of the  
178 mortgagee, holder of a deed of trust, lien or encumbrance by  
179 reason of any act or omission established by him to have been  
180 committed or omitted without his knowledge or consent.

181           (b) Property subject to forfeiture may be seized by the  
182 bureau, local law enforcement officers, enforcement officers of  
183 the Mississippi Department of Transportation, highway patrolmen,  
184 the board, the State Board of Pharmacy, or law enforcement  
185 officers of the Mississippi Department of Revenue or Mississippi  
186 Department of Health acting with their duties in accordance with  
187 the Mississippi Medical Cannabis Act, upon process issued by any  
188 appropriate court having jurisdiction over the property. Seizure  
189 without process may be made if:

190           (1) The seizure is incident to an arrest or a search  
191 under a search warrant or an inspection under an administrative  
192 inspection warrant;





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

196           (3) The bureau, the board, local law enforcement  
197 officers, enforcement officers of the Mississippi Department of  
198 Transportation, or highway patrolmen, the State Board of Pharmacy,  
199 or law enforcement officers of the Mississippi Department of  
200 Revenue or Mississippi Department of Health acting with their  
201 duties in accordance with the Mississippi Medical Cannabis Act,  
202 have probable cause to believe that the property is directly or  
203 indirectly dangerous to health or safety;

204           (4) The bureau, local law enforcement officers,  
205 enforcement officers of the Mississippi Department of  
206 Transportation, highway patrolmen, the board, the State Board of  
207 Pharmacy, or law enforcement officers of the Mississippi  
208 Department of Revenue or Mississippi Department of Health acting  
209 with their duties in accordance with the Mississippi Medical  
210 Cannabis Act, have probable cause to believe that the property was  
211 used or is intended to be used in violation of this article; or

212           (5) The seizing law enforcement agency obtained a  
213 seizure warrant as described in subsection (f) of this section.

214           (c) Controlled substances listed in Schedule I of Section  
215 41-29-113 that are possessed, transferred, sold, or offered for  
216 sale in violation of this article are contraband and shall be  
217 seized and summarily forfeited to the state. Controlled



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

221 (d) Species of plants from which controlled substances in  
222 Schedules I and II of Sections 41-29-113 and 41-29-115 may be  
223 derived which have been planted or cultivated in violation of this  
224 article, or of which the owners or cultivators are unknown, or  
225 which are wild growths, may be seized and summarily forfeited to  
226 the state.

227 (e) The failure, upon demand by the bureau and/or local law  
228 enforcement officers, or their authorized agents, or highway  
229 patrolmen designated by the bureau, the board, the State Board of  
230 Pharmacy, or law enforcement officers of the Mississippi  
231 Department of Revenue or Mississippi Department of Health acting  
232 with their duties in accordance with the Mississippi Medical  
233 Cannabis Act, of the person in occupancy or in control of land or  
234 premises upon which the species of plants are growing or being  
235 stored, to produce an appropriate registration, or proof that he  
236 is the holder thereof, constitutes authority for the seizure and  
237 forfeiture of the plants.

238 (f) (1) When any property is seized under the Uniform  
239 Controlled Substances Law, except as otherwise provided in  
240 paragraph (3) of this subsection, by a law enforcement agency with  
241 the intent to be forfeited, the law enforcement agency that seized  
242 the property shall obtain a seizure warrant from the county or



243 circuit court having jurisdiction of such property within  
244 seventy-two (72) hours of any seizure, excluding weekends and  
245 holidays. Any law enforcement agency that fails to obtain a  
246 seizure warrant within seventy-two (72) hours as required by this  
247 section shall notify the person from whom the property was seized  
248 that it will not be forfeited and shall provide written  
249 instructions advising the person how to retrieve the seized  
250 property.

251 (2) A circuit or county judge having jurisdiction of  
252 any property other than a controlled substance, raw material or  
253 paraphernalia, may issue a seizure warrant upon proper oath or  
254 affirmation from a law enforcement agency. The law enforcement  
255 agency that is seeking a seizure warrant shall provide the  
256 following information to the judge:

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

259 B. The name of the person from whom the property  
260 was seized; and

261 C. A detailed description of the property which is  
262 seized, including the value of the property.

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

266 **SECTION 3.** Section 41-29-176.1, Mississippi Code of 1972, is  
267 amended as follows:



268 41-29-176.1. The seizing law enforcement agency shall within  
269 thirty (30) days of a seizure, request either the district  
270 attorney of the county in which property is seized or the  
271 Mississippi Bureau of Narcotics to prosecute any cases involving  
272 seized property. No one other than the district attorney of the  
273 county in which the seizure occurred or an attorney from the  
274 Mississippi Bureau of Narcotics shall have authority to prosecute  
275 the forfeiture of the seized property. If the district attorney  
276 and the Mississippi Bureau of Narcotics decline to prosecute the  
277 forfeiture of the seized property, the seizing law enforcement  
278 agency shall notify the person from whom the property was seized  
279 that the property will not be forfeited, within \* \* \* fifteen (15)  
280 days of receiving the notice not to prosecute, and shall provide  
281 written instructions advising the person how to retrieve the  
282 seized property. If the district attorney and/or the Mississippi  
283 Bureau of Narcotics decide to prosecute, the person shall have the  
284 rights provided in Section 41-29-179.

285 **SECTION 4.** Section 41-29-177, Mississippi Code of 1972, is  
286 amended as follows:

287 41-29-177. (1) Except as otherwise provided in Section  
288 41-29-176, Mississippi Code of 1972, and in Section 41-29-107.1,  
289 when any property, other than a controlled substance, raw material  
290 or paraphernalia, is seized under the Uniform Controlled  
291 Substances Law, proceedings under this section shall be instituted  
292 within thirty (30) days from the date of seizure or the subject



293 property shall be immediately returned to the party from whom  
294 seized.

295 (2) A petition for forfeiture shall be filed by the district  
296 attorney or his or her designee, or an attorney for the bureau, as  
297 applicable, in the name of the State of Mississippi, the county or  
298 the municipality and may be filed in the county in which the  
299 seizure is made, the county in which the criminal prosecution is  
300 brought or the county in which the owner of the seized property is  
301 found. Forfeiture proceedings may be brought in the circuit court  
302 or the county court if a county court exists in the county and the  
303 value of the seized property is within the jurisdictional limits  
304 of the county court as set forth in Section 9-9-21, Mississippi  
305 Code of 1972. A copy of such petition shall be served upon the  
306 following persons by service of process in the same manner as in  
307 civil cases:

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

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

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



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

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

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

325 (3) If the property is a motor vehicle susceptible of  
326 titling under the Mississippi Motor Vehicle Title Law and if there  
327 is any reasonable cause to believe that the vehicle has been  
328 titled, the Bureau of Narcotics or the local law enforcement  
329 agency shall make inquiry of the Department of Revenue as to what  
330 the records of the Department of Revenue show as to who is the  
331 record owner of the vehicle and who, if anyone, holds any lien or  
332 security interest which affects the vehicle.

333 (4) If the property is a motor vehicle and is not titled in  
334 the State of Mississippi, then the Bureau of Narcotics or the  
335 local law enforcement agency shall attempt to ascertain the name  
336 and address of the person in whose name the vehicle is licensed,  
337 and if the vehicle is licensed in a state which has in effect a  
338 certificate of title law, the bureau or the local law enforcement  
339 agency shall make inquiry of the appropriate agency of that state  
340 as to what the records of the agency show as to who is the record  
341 owner of the vehicle and who, if anyone, holds any lien, security



342 interest or other instrument in the nature of a security device  
343 which affects the vehicle.

344 (5) If the property is of a nature that a financing  
345 statement is required by the laws of this state to be filed to  
346 perfect a security interest affecting the property and if there is  
347 any reasonable cause to believe that a financing statement  
348 covering the security interest has been filed under the laws of  
349 this state, the Bureau of Narcotics or the local law enforcement  
350 agency shall make inquiry of the appropriate office designated in  
351 Section 75-9-501, Mississippi Code of 1972, as to what the records  
352 show as to who is the record owner of the property and who, if  
353 anyone, has filed a financing statement affecting the property.

354 (6) If the property is an aircraft or part thereof and if  
355 there is any reasonable cause to believe that an instrument in the  
356 nature of a security device affects the property, then the Bureau  
357 of Narcotics or the local law enforcement agency shall make  
358 inquiry of the Mississippi Department of Transportation as to what  
359 the records of the Federal Aviation Administration show as to who  
360 is the record owner of the property and who, if anyone, holds an  
361 instrument in the nature of a security device which affects the  
362 property.

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



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

369 (8) If the property is real estate, the Bureau of Narcotics  
370 or the local law enforcement agency shall make inquiry of the  
371 chancery clerk of the county wherein the property is located to  
372 determine who is the owner of record and who, if anyone, is a  
373 holder of a bona fide mortgage, deed of trust, lien or  
374 encumbrance.

375 (9) In the event the answer to an inquiry states that the  
376 record owner of the property is any person other than the person  
377 who was in possession of it when it was seized, or states that any  
378 person holds any lien, encumbrance, security interest, other  
379 interest in the nature of a security interest, mortgage or deed of  
380 trust which affects the property, the Bureau of Narcotics or the  
381 local law enforcement agency shall cause any record owner and also  
382 any lienholder, secured party, other person who holds an interest  
383 in the property in the nature of a security interest, or holder of  
384 an encumbrance, mortgage or deed of trust which affects the  
385 property to be named in the petition of forfeiture and to be  
386 served with process in the same manner as in civil cases.

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





392 the clerk of the court in which the proceeding is pending an  
393 affidavit to such effect, whereupon the clerk of the court shall  
394 publish notice of the hearing addressed to "the Unknown Owner of  
395 \_\_\_\_\_," filling in the blank space with a reasonably  
396 detailed description of the property subject to forfeiture.  
397 Service by publication shall contain the other requisites  
398 prescribed in Section 11-33-41, and shall be served as provided in  
399 Section 11-33-37, Mississippi Code of 1972, for publication of  
400 notice for attachments at law.

401 (11) No proceedings instituted pursuant to the provisions of  
402 this article shall proceed to hearing unless the judge conducting  
403 the hearing is satisfied that this section and Section 41-29-107.1  
404 has been complied with. Any answer received from an inquiry  
405 required by subsections (3) through (8) of this section shall be  
406 introduced into evidence at the hearing.

407 (12) The owner of any property that is subject to forfeiture  
408 shall have the right to a hearing as provided in Section  
409 41-29-179.

410 **SECTION 5.** This act shall take effect and be in force from  
411 and after July 1, 2024.

