

By: Representative Ellington

To: Conservation and Water Resources

HOUSE BILL NO. 1079

1 AN ACT TO PROVIDE PROCEDURES FOR THE FORFEITURE OF PROPERTY
2 SEIZED IN MARINE VIOLATIONS; TO PROVIDE NOTICE OF FORFEITURE TO
3 CERTAIN PERSONS; TO PROVIDE FOR A HEARING IN CONTESTED CASES; TO
4 PROVIDE THE PROCEDURE FOR DISTRIBUTION OF PROCEEDS FROM FORFEITED
5 PROPERTY; TO PROVIDE AN ADMINISTRATIVE FORFEITURE PROCEDURE FOR
6 PROPERTY WHOSE VALUE DOES NOT EXCEED A CERTAIN THRESHOLD; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** (1) Except as otherwise provided in Section 4 of
10 this act, when any property is seized pursuant to Section 49-15-21
11 or 59-21-33, proceedings under this section shall be instituted
12 promptly. The seizing law enforcement agency may, in the sound
13 exercise of discretion, decide not to bring a forfeiture action if
14 the interests of bona fide lienholders or secured creditors equal
15 or exceed the value of the seized property, or if other factors
16 would produce a negative economic result. No property shall be
17 subject to forfeiture which has been stolen from its owner if the
18 owner can be identified and prosecution for the theft has been
19 initiated.

20 (2) A petition for forfeiture shall be filed promptly in the
21 name of the State of Mississippi, the county or the municipality
22 and may be filed in the county in which the seizure is made, the
23 county in which the criminal prosecution is brought or the county
24 in which the owner of the seized property is found. Forfeiture
25 proceedings may be brought in the circuit court or the county
26 court if a county court exists in the county and the value of the
27 seized property is within the jurisdictional limits of the county
28 court as set forth in Section 9-9-21. A copy of such petition



29 shall be served upon the following persons by service of process
30 in the same manner as in civil cases:

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

32 (b) Any secured party who has registered his lien or
33 filed a financing statement as provided by law, if the identity of
34 such secured party can be ascertained by the Department of Marine
35 Resources or the local law enforcement agency by making a good
36 faith effort to ascertain the identity of such secured party as
37 described in subsections (3), (4), (5), (6) and (7) of this
38 section;

39 (c) Any other bona fide lienholder or secured party or
40 other person holding an interest in the property in the nature of
41 a security interest of whom the Department of Marine Resources or
42 the local law enforcement agency has actual knowledge; and

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

45 (3) If the property is a motor vehicle susceptible of
46 titling under the Mississippi Motor Vehicle Title Law and if there
47 is any reasonable cause to believe that the vehicle has been
48 titled, the Department of Marine Resources or the local law
49 enforcement agency shall make inquiry of the State Tax Commission
50 as to what the records of the State Tax Commission show as to who
51 is the record owner of the vehicle and who, if anyone, holds any
52 lien or security interest which affects the vehicle.

53 (4) If the property is a motor vehicle and is not titled in
54 the State of Mississippi, then the Department of Marine Resources
55 or the local law enforcement agency shall attempt to ascertain the
56 name and address of the person in whose name the vehicle is
57 licensed, and if the vehicle is licensed in a state which has in
58 effect a certificate of title law, the Department of Marine
59 Resources or the local law enforcement agency shall make inquiry
60 of the appropriate agency of that state as to what the records of
61 the agency show as to who is the record owner of the vehicle and



62 who, if anyone, holds any lien, security interest or other
63 instrument in the nature of a security device which affects the
64 vehicle.

65 (5) If the property is of a nature that a financing
66 statement is required by the laws of this state to be filed to
67 perfect a security interest affecting the property and if there is
68 any reasonable cause to believe that a financing statement
69 covering the security interest has been filed under the laws of
70 this state, the Department of Marine Resources or the local law
71 enforcement agency shall make inquiry of the appropriate office
72 designated in Section 75-9-501, as to what the records show as to
73 who is the record owner of the property and who, if anyone, has
74 filed a financing statement affecting the property.

75 (6) If the property is an aircraft or part thereof and if
76 there is any reasonable cause to believe that an instrument in the
77 nature of a security device affects the property, then the
78 Department of Marine Resources or the local law enforcement agency
79 shall make inquiry as to what the records of the Federal Aviation
80 Administration show as to who is the record owner of the property
81 and who, if anyone, holds an instrument in the nature of a
82 security device which affects the property.

83 (7) In the case of all other personal property subject to
84 forfeiture, if there is any reasonable cause to believe that an
85 instrument in the nature of a security device affects the
86 property, then the Department of Marine Resources or the local law
87 enforcement agency shall make a good faith inquiry to identify the
88 holder of any such instrument.

89 (8) If the answer to an inquiry states that the record owner
90 of the property is any person other than the person who was in
91 possession of it when it was seized, or states that any person
92 holds any lien, encumbrance, security interest, other interest in
93 the nature of a security interest, mortgage or deed of trust which
94 affects the property, the Department of Marine Resources or the



95 local law enforcement agency shall cause any record owner and also
96 any lienholder, secured party, other person who holds an interest
97 in the property in the nature of a security interest which affects
98 the property to be named in the petition of forfeiture and to be
99 served with process in the same manner as in civil cases.

100 (9) If the owner of the property cannot be found and served
101 with a copy of the petition of forfeiture, or if no person was in
102 possession of the property subject to forfeiture at the time that
103 it was seized and the owner of the property is unknown, the
104 Department of Marine Resources or the local law enforcement agency
105 shall file with the clerk of the court in which the proceeding is
106 pending an affidavit to such effect, whereupon the clerk of the
107 court shall publish notice of the hearing addressed to "the
108 Unknown Owner of _____," filling in the blank space with
109 a reasonably detailed description of the property subject to
110 forfeiture. Service by publication shall contain the other
111 requisites prescribed in Section 11-33-41, and shall be served as
112 provided in Section 11-33-37, for publication of notice for
113 attachments at law.

114 (10) No proceedings instituted pursuant to the provisions of
115 this section shall proceed to hearing unless the judge conducting
116 the hearing is satisfied that this section has been complied with.
117 Any answer received from an inquiry required by subsections (3)
118 through (7) of this section shall be introduced into evidence at
119 the hearing.

120 **SECTION 2.** (1) Except as otherwise provided in Section
121 49-15-207, an owner of property that has been seized pursuant to
122 Section 49-15-21 or 59-21-33, shall file an answer within thirty
123 (30) days after the completion of service of process. If an
124 answer is not filed, the court shall hear evidence that the
125 property is subject to forfeiture and forfeit the property to the
126 Department of Marine Resources or the local law enforcement
127 agency. If an answer is filed, a time for hearing on forfeiture



128 shall be set within thirty (30) days of filing the answer or at
129 the succeeding term of court, if court would not be in progress
130 within thirty (30) days after filing the answer. Provided,
131 however, that upon request by the Department of Marine Resources,
132 the local law enforcement agency or the owner of the property, the
133 court may postpone said forfeiture hearing to a date past the time
134 any criminal action is pending against said owner.

135 (2) If the owner of the property has filed an answer denying
136 that the property is subject to forfeiture, then the burden is on
137 the petitioner to prove that the property is subject to
138 forfeiture. However, if an answer has not been filed by the owner
139 of the property, the petition for forfeiture may be introduced
140 into evidence and is prima facie evidence that the property is
141 subject to forfeiture. The standard of proof placed upon the
142 petitioner in regard to property forfeited under the provisions of
143 this article shall be by a preponderance of the evidence.

144 (3) At the hearing any claimant of any right, title or
145 interest in the property may prove his lien, encumbrance, security
146 interest or other interest in the nature of a security interest to
147 be bona fide and created without knowledge or consent that the
148 property was to be used so as to cause the property to be subject
149 to forfeiture.

150 (4) If it is found that the property is subject to
151 forfeiture, then the judge shall forfeit the property to the
152 Department of Marine Resources or the local law enforcement
153 agency. However, if proof at the hearing discloses that the
154 interest of any bona fide lienholder, secured party, other person
155 holding an interest in the property in the nature of a security
156 interest is greater than or equal to the present value of the
157 property, the court shall order the property released to him. If
158 such interest is less than the present value of the property and
159 if the proof shows that the property is subject to forfeiture, the



160 court shall order the property forfeited to the Department of
161 Marine Resources or the local law enforcement agency.

162 **SECTION 3.** (1) All other property which is forfeited under
163 Sections 1 through 4 of this act, and except as provided in
164 subsections (2), (5) and (6) of this section, shall be liquidated
165 and, after deduction of court costs and the expenses of
166 liquidation, the proceeds shall be divided and deposited as
167 follows:

168 (a) If only one (1) law enforcement agency participates
169 in the underlying criminal case out of which the forfeiture
170 arises, fifty percent (50%) of the proceeds shall be forwarded to
171 the State Treasurer and deposited in the General Fund of the state
172 and fifty percent (50%) of the proceeds shall be deposited and
173 credited to the budget of the participating law enforcement
174 agency.

175 (b) If more than one (1) law enforcement agency
176 participates in the underlying criminal case out of which the
177 forfeiture arises, fifty percent (50%) of the proceeds shall be
178 deposited and credited to the budget of the law enforcement agency
179 whose officers initiated the criminal case and fifty percent (50%)
180 shall be divided equitably between or among the other
181 participating law enforcement agencies, and shall be deposited and
182 credited to the budgets of the participating law enforcement
183 agencies. If the other participating law enforcement agencies
184 cannot agree on the division of their fifty percent (50%), a
185 petition shall be filed by any one of them in the court in which
186 the civil forfeiture case is brought and the court shall make an
187 equitable division.

188 (2) All money which is forfeited under Sections 1 through 4
189 of this act shall be divided, deposited and credited in the same
190 manner as set forth in subsection (1) of this section.

191 (3) All property forfeited, deposited and credited to the
192 Department of Marine Resources under Sections 1 through 4 of this



193 act shall be forwarded to the State Treasurer and deposited in the
194 Seafood Fund for use by the Department of Marine Resources upon
195 appropriation by the Legislature.

196 (4) All other property that has been forfeited shall, except
197 as otherwise provided, be sold at a public auction for cash by the
198 chief law enforcement officer of the initiating law enforcement
199 agency, or his designee, to the highest and best bidder after
200 advertising the sale for at least once each week for three (3)
201 consecutive weeks, the last notice to appear not more than ten
202 (10) days nor less than five (5) days prior to such sale, in a
203 newspaper having a general circulation in the jurisdiction in
204 which said law enforcement agency is located. Such notices shall
205 contain a description of the property to be sold and a statement
206 of the time and place of sale. It shall not be necessary to the
207 validity of such sale either to have the property present at the
208 place of sale or to have the name of the owner thereof stated in
209 such notice. The proceeds of the sale shall be disposed of as
210 follows:

211 (a) To any bona fide lienholder, secured party, or
212 other party holding an interest in the property in the nature of a
213 security interest, to the extent of his interest; and

214 (b) The balance, if any, remaining after deduction of
215 all storage, court costs and expenses of liquidation shall be
216 divided, forwarded and deposited in the same manner set out in
217 subsection (1) of this section.

218 (5) Any state, county or municipal law enforcement agency
219 may maintain, repair, use and operate for official purposes all
220 property or money that has been forfeited to the agency if it is
221 free from any interest of a bona fide lienholder, secured party or
222 other party who holds an interest in the property in the nature of
223 a security interest. Such state, county or municipal law
224 enforcement agency may purchase the interest of a bona fide
225 lienholder, secured party or other party who holds an interest so



226 that the property can be released for its use. If the property is
227 a motor vehicle susceptible of titling under the Mississippi Motor
228 Vehicle Title Law, the law enforcement agency shall be deemed to
229 be the purchaser, and the certificate of title shall be issued to
230 it as required by subsection (7) of this section.

231 (6) The Department of Marine Resources may maintain, repair,
232 use and operate for official purposes all property, other than
233 money that has been forfeited to the Department of Marine
234 Resources if it is free from any interest of a bona fide
235 lienholder, secured party, or other party who holds an interest in
236 the property in the nature of a security interest. In such case,
237 the Department of Marine Resources may purchase the interest of a
238 bona fide lienholder, secured party, or other party who holds an
239 interest so that such property can be released for use by the
240 department.

241 The Department of Marine Resources may maintain, repair, use
242 and operate such property with money appropriated to the
243 department for current operations. If the property is a motor
244 vehicle susceptible of titling under the Mississippi Motor Vehicle
245 Title Law, the Department of Marine Resources is deemed to be the
246 purchaser and the certificate of title shall be issued to it as
247 required by subsection (7) of this section.

248 (7) The State Tax Commission shall issue a certificate of
249 title to any person who purchases property under the provisions of
250 this section when a certificate of title is required under the
251 laws of this state.

252 **SECTION 4.** (1) When any property the value of which does
253 not exceed Five Thousand Dollars (\$5,000.00), is seized pursuant
254 to Section 49-15-21 or 59-21-33, the property may be forfeited by
255 the administrative forfeiture procedures provided for in this
256 section.

257 (2) The attorney for the seizing law enforcement agency
258 shall provide notice of intention to forfeit the seized property



259 administratively, by certified mail, return receipt requested, to
260 all persons who are required to be notified pursuant to Section
261 1(2) of this act.

262 (3) If the notice of intention to forfeit the seized
263 property administratively cannot be given as provided in
264 subsection (2) of this section because of refusal, failure to
265 claim, insufficient address or any other reason, the attorney for
266 the seizing law enforcement agency shall provide notice by
267 publication in a newspaper of general circulation in the county in
268 which the seizure occurred for once a week for three (3)
269 consecutive weeks.

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

272 (a) A description of the property;

273 (b) The approximate value of the property;

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

275 (d) The connection between the property and the
276 violation of the laws under the jurisdiction of the Department of
277 Marine Resources;

278 (e) The instructions for filing a request for judicial
279 review; and

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

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

289 (6) If no request for judicial review is timely filed, the
290 attorney for the seizing law enforcement agency shall prepare a
291 written declaration of forfeiture of the subject property and the



292 forfeited property shall be used, distributed or disposed of in
293 accordance with the provisions of Section 3 of this act.

294 (7) Upon receipt of a timely request for judicial review,
295 the attorney for the seizing law enforcement agency shall promptly
296 file a petition for forfeiture and proceed as provided in Section
297 1 of this act.

298 **SECTION 5.** The provisions of Sections 1 through 4 of this
299 act shall be codified in Chapter 15, Title 49, Mississippi Code of
300 1972.

301 **SECTION 6.** This act shall take effect and be in force from
302 and after July 1, 2002.

