

By: Representatives Baker, Brown

To: Judiciary A

HOUSE BILL NO. 812
(As Passed the House)

1 AN ACT TO REQUIRE THE MISSISSIPPI BUREAU OF NARCOTICS TO
2 ESTABLISH AND MAINTAIN A SEARCHABLE PUBLIC WEBSITE WHICH INCLUDES
3 CERTAIN INFORMATION REGARDING PROPERTY THAT IS SEIZED BY A LAW
4 ENFORCEMENT AGENCY; TO PROVIDE THAT EACH SEIZING LAW ENFORCEMENT
5 AGENCY SHALL PROVIDE THE APPLICABLE INFORMATION REQUIRED BY THIS
6 ACT TO THE DISTRICT ATTORNEY; TO REQUIRE EACH DISTRICT ATTORNEY TO
7 UPLOAD THE APPLICABLE INFORMATION REQUIRED BY THIS ACT TO THE
8 MISSISSIPPI BUREAU OF NARCOTICS WEBSITE; TO REQUIRE THE WEBSITE TO
9 BE DESIGNED IN A MANNER THAT ALLOWS THE INFORMATION TO BE UPLOADED
10 TO THE WEBSITE; TO OUTLINE THE INFORMATION REQUIRED TO BE UPLOADED
11 TO THE WEBSITE; TO PROVIDE THAT THE WEBSITE SHALL BE CREATED AND
12 FUNCTIONAL NO MORE THAN 12 MONTHS FROM THE DATE THAT THE
13 LEGISLATURE APPROPRIATES SUFFICIENT FUNDS FOR SUCH PURPOSES; TO
14 PROVIDE A REQUIRED TIME PERIOD FOR A SEIZING LAW ENFORCEMENT
15 AGENCY TO PROVIDE THE APPLICABLE INFORMATION TO THE DISTRICT
16 ATTORNEY OF THE COUNTY IN WHICH THE PROPERTY WAS SEIZED; TO
17 PROVIDE THE TIME PERIOD REQUIRED FOR A DISTRICT ATTORNEY TO UPLOAD
18 THE REQUIRED INFORMATION ON THE WEBSITE; TO AUTHORIZE THE
19 COMMANDER OF A MULTIJURISDICTIONAL TASKFORCE TO APPOINT ONE AGENCY
20 TO REPORT ITS SEIZURES TO THE DISTRICT ATTORNEY OF THE COUNTY IN
21 WHICH THE PROPERTY WAS SEIZED; TO PROVIDE THE DEFINITION FOR LAW
22 ENFORCEMENT AGENCY; TO PROVIDE THAT FAILURE TO SUBSTANTIALLY
23 COMPLY WITH THIS ACT SHALL DISQUALIFY THE SEIZING LAW ENFORCEMENT
24 AGENCY FROM APPLYING FOR OR RECEIVING FEDERAL OR STATE GRANTS; TO
25 REQUIRE THE SEIZING LAW ENFORCEMENT AGENCY TO REQUEST THE DISTRICT
26 ATTORNEY OF THE COUNTY IN WHICH THE PROPERTY IS SEIZED OR THE
27 MISSISSIPPI BUREAU OF NARCOTICS TO PROSECUTE CASES INVOLVING
28 SEIZED PROPERTY; TO AMEND SECTION 41-29-153, MISSISSIPPI CODE OF
29 1972, TO PROVIDE THE PROCEDURE FOR OBTAINING A SEIZURE WARRANT; TO
30 REQUIRE THE SEIZING LAW ENFORCEMENT AGENCY TO OBTAIN A SEIZURE
31 WARRANT FROM A CIRCUIT OR COUNTY JUDGE HAVING JURISDICTION WITHIN
32 72 HOURS OF ANY SEIZURE; TO AMEND SECTIONS 41-29-157, 41-29-176,
33 41-29-177, 41-29-183 AND 41-29-179, MISSISSIPPI CODE OF 1972, TO
34 CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED PURPOSES.



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

36 **SECTION 1.** (1) The Mississippi Bureau of Narcotics shall
37 establish and maintain a public website that is searchable by case
38 numbers created by the bureau which tracks seized property from
39 the time of seizure to final disposition of the property. The
40 website shall be designed in a manner that allows the information
41 required by this section to be uploaded to the website. The
42 website shall include the following information regarding property
43 that is seized by a law enforcement agency pursuant to Section
44 41-29-153:

45 (a) The name of the law enforcement agency that seized
46 the property;

47 (b) A description of each item seized, including the
48 approximate value of the property;

49 (c) A copy of the notice of intent to forfeit as
50 described in Section 41-29-176 or the petition for forfeiture as
51 described in Section 41-29-177, whichever is applicable;

52 (d) A copy of any petition to contest forfeiture filed
53 as described in Section 41-29-176;

54 (e) If a forfeiture was obtained because no petition to
55 contest forfeiture was timely filed as provided in Section
56 41-29-176, a copy of the written declaration of forfeiture as
57 required by Section 41-29-176;



58 (f) If a forfeiture is obtained under Section
59 41-29-177, a copy of any final judgment or dispositive order
60 regarding the merits of the petition for forfeiture; and

61 (g) If the forfeiture was initiated under Section
62 41-29-176 and a petition to contest is filed, a copy of any final
63 order or other dispositive order regarding the forfeiture.

64 (2) (a) Except as otherwise provided in this section for
65 the bureau, upon seizure of any property by a law enforcement
66 agency pursuant to Section 41-29-153, the seizing law enforcement
67 agency shall provide the applicable information required by
68 subsection (1) of this section to the district attorney of the
69 county in which the property was seized within thirty (30) days of
70 such seizure. However, if the bureau is conducting the seizure of
71 property on behalf of a law enforcement agency, the provisions of
72 paragraph (b) of this section shall apply. Within thirty (30)
73 days of receipt of notice of intent to forfeit as described in
74 Section 41-29-176 or the filing of a petition for forfeiture as
75 described in Section 41-29-177 in a court of competent
76 jurisdiction, the district attorney shall upload the information
77 required by this section to the bureau's website. Within thirty
78 (30) days of service of a petition to contest forfeiture as
79 described by Section 41-29-176, the district attorney shall upload
80 the information required by the section to the bureau's website.
81 Within thirty (30) days of dispositive actions regarding any
82 seized property, the district attorney shall upload the applicable



83 information required by subsection (1) of this section to the
84 bureau's website. The commander of a multijurisdictional
85 taskforce may appoint one (1) agency to report its seizures to the
86 district attorney of the county in which the property was seized.
87 Any law enforcement agency that fails to provide the information
88 required by this section shall be disqualified from applying for
89 or receiving state grants.

90 (b) Upon seizure of any property by the bureau pursuant
91 to Section 41-29-153 or pursuant to a request by a law enforcement
92 agency for the bureau to seize property on behalf of the law
93 enforcement agency, the bureau shall upload the information
94 required by this subsection on its website within thirty (30) days
95 of the seizure, or from the time of the receipt of the request
96 from the law enforcement agency.

97 (3) Failure to upload the information required by this
98 section shall not invalidate the seizure or otherwise preclude the
99 same.

100 (4) The Mississippi Bureau of Narcotics shall adopt rules
101 and regulations that are necessary to implement this section.

102 (5) For purposes of this section, the term "law enforcement
103 agency" includes any person or entity having seizure authority
104 under Section 41-29-159.

105 (6) Failure to substantially comply with the provisions of
106 this section shall disqualify the seizing law enforcement agency



107 from applying for or receiving federal or state grants until such
108 time as in compliance with this section.

109 (7) The provisions of this section shall be required only at
110 such time as the Legislature has appropriated funds for the bureau
111 to create and maintain the required website. The website shall be
112 created and functionally operational, not more than twelve (12)
113 months from the date that sufficient funds have been appropriated
114 for that purpose. The bureau shall provide at least thirty (30)
115 days notice in advance of the date when the website will be
116 operational to each district attorney in the state.

117 **SECTION 2.** The seizing law enforcement agency shall within
118 thirty (30) days of a seizure, request either the district
119 attorney of the county in which property is seized or the
120 Mississippi Bureau of Narcotics to prosecute any cases involving
121 seized property. No one other than the district attorney of the
122 county in which the seizure occurred or an attorney from the
123 Mississippi Bureau of Narcotics shall have authority to prosecute
124 the forfeiture of the seized property. If the district attorney
125 and the Mississippi Bureau of Narcotics decline to prosecute the
126 forfeiture of the seized property, the seizing law enforcement
127 agency shall notify the person from whom the property was seized
128 that the property will not be forfeited, within thirty (30) days
129 of receiving the notice not to prosecute, and shall provide
130 written instructions advising the person how to retrieve the
131 seized property.



132 **SECTION 3.** Section 41-29-153, Mississippi Code of 1972, is
133 amended as follows:

134 41-29-153. (a) The following are subject to forfeiture:

135 (1) All controlled substances which have been
136 manufactured, distributed, dispensed or acquired in violation of
137 this article or in violation of Article 5 of this chapter;

138 (2) All raw materials, products and equipment of any
139 kind which are used, or intended for use, in manufacturing,
140 compounding, processing, delivering, importing, or exporting any
141 controlled substance in violation of this article or in violation
142 of Article 5 of this chapter;

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

146 (4) All conveyances, including aircraft, vehicles or
147 vessels, which are used, or intended for use, to transport, or in
148 any manner to facilitate the transportation, sale, receipt,
149 possession or concealment of property described in paragraph (1)
150 or (2) of this subsection, however:

151 A. No conveyance used by any person as a common
152 carrier in the transaction of business as a common carrier is
153 subject to forfeiture under this section unless it appears that
154 the owner or other person in charge of the conveyance is a
155 consenting party or privy to a violation of this article;



156 B. No conveyance is subject to forfeiture under
157 this section by reason of any act or omission proved by the owner
158 thereof to have been committed or omitted without his knowledge or
159 consent; if the confiscating authority has reason to believe that
160 the conveyance is a leased or rented conveyance, then the
161 confiscating authority shall notify the owner of the conveyance
162 within five (5) days of the confiscation;

163 C. A forfeiture of a conveyance encumbered by a
164 bona fide security interest is subject to the interest of the
165 secured party if he neither had knowledge of nor consented to the
166 act or omission;

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

170 (5) All money, deadly weapons, books, records, and
171 research products and materials, including formulas, microfilm,
172 tapes and data which are used, or intended for use, in violation
173 of this article or in violation of Article 5 of this chapter;

174 (6) All drug paraphernalia as defined in Section
175 41-29-105(v); and

176 (7) Everything of value, including real estate,
177 furnished, or intended to be furnished, in exchange for a
178 controlled substance in violation of this article, all proceeds
179 traceable to such an exchange, and all monies, negotiable
180 instruments, businesses or business investments, securities, and



181 other things of value used, or intended to be used, to facilitate
182 any violation of this article. All monies, coin and currency
183 found in close proximity to forfeitable controlled substances, to
184 forfeitable drug manufacturing or distributing paraphernalia, or
185 to forfeitable records of the importation, manufacture or
186 distribution of controlled substances are presumed to be
187 forfeitable under this paragraph; the burden of proof is upon
188 claimants of the property to rebut this presumption.

189 A. No property shall be forfeited under the
190 provisions of subsection (a)(7) of this section, to the extent of
191 the interest of an owner, by reason of any act or omission
192 established by him to have been committed or omitted without his
193 knowledge or consent.

194 B. Neither personal property encumbered by a bona
195 fide security interest nor real estate encumbered by a bona fide
196 mortgage, deed of trust, lien or encumbrance shall be forfeited
197 under the provisions of subsection (a)(7) of this section, to the
198 extent of the interest of the secured party or the interest of the
199 mortgagee, holder of a deed of trust, lien or encumbrance by
200 reason of any act or omission established by him to have been
201 committed or omitted without his knowledge or consent.

202 (b) Property subject to forfeiture may be seized by the
203 bureau, local law enforcement officers, enforcement officers of
204 the Mississippi Department of Transportation, highway patrolmen,
205 the board, or the State Board of Pharmacy upon process issued by



206 any appropriate court having jurisdiction over the property.

207 Seizure without process may be made if:

208 (1) The seizure is incident to an arrest or a search
209 under a search warrant or an inspection under an administrative
210 inspection warrant;

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

214 (3) The bureau, the board, local law enforcement
215 officers, enforcement officers of the Mississippi Department of
216 Transportation, or highway patrolmen, or the State Board of
217 Pharmacy have probable cause to believe that the property is
218 directly or indirectly dangerous to health or safety; * * *

219 (4) The bureau, local law enforcement officers,
220 enforcement officers of the Mississippi Department of
221 Transportation, highway patrolmen, the board, or the State Board
222 of Pharmacy have probable cause to believe that the property was
223 used or is intended to be used in violation of this article * * *;

224 or

225 (5) The seizing law enforcement agency obtained a
226 seizure warrant as described in paragraph (f) of this section.

227 (c) Controlled substances listed in Schedule I of Section
228 41-29-113 that are possessed, transferred, sold, or offered for
229 sale in violation of this article are contraband and shall be
230 seized and summarily forfeited to the state. Controlled



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

234 (d) Species of plants from which controlled substances in
235 Schedules I and II of Sections 41-29-113 and 41-29-115 may be
236 derived which have been planted or cultivated in violation of this
237 article, or of which the owners or cultivators are unknown, or
238 which are wild growths, may be seized and summarily forfeited to
239 the state.

240 (e) The failure, upon demand by the bureau and/or local law
241 enforcement officers, or their authorized agents, or highway
242 patrolmen designated by the bureau, the board, or the State Board
243 of Pharmacy, of the person in occupancy or in control of land or
244 premises upon which the species of plants are growing or being
245 stored, to produce an appropriate registration, or proof that he
246 is the holder thereof, constitutes authority for the seizure and
247 forfeiture of the plants.

248 (f) (1) When any property is seized under the Uniform
249 Controlled Substances Law, except as otherwise provided in
250 subsection (3) of this section, by a law enforcement agency with
251 the intent to be forfeited, the law enforcement agency that seized
252 the property shall obtain a seizure warrant from the county or
253 circuit court having jurisdiction of such property within
254 seventy-two (72) hours of any seizure, excluding weekends and
255 holidays. Any law enforcement agency that fails to obtain a



256 seizure warrant within seventy-two (72) hours as required by this
257 section shall notify the person from whom the property was seized
258 that it will not be forfeited and shall provide written
259 instructions advising the person how to retrieve the seized
260 property.

261 (2) A circuit or county judge having jurisdiction of
262 any property other than a controlled substance, raw material or
263 paraphernalia, may issue a seizure warrant upon proper oath or
264 affirmation from a law enforcement agency. The law enforcement
265 agency that is seeking a seizure warrant shall provide the
266 following information to the judge:

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

269 B. The name of the person from whom the property
270 was seized; and

271 C. A detailed description of the property which is
272 seized, including the value of the property.

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

276 **SECTION 4.** Section 41-29-157, Mississippi Code of 1972, is
277 amended as follows:

278 41-29-157. (a) Except as otherwise provided in Section 1 of
279 House Bill No. 812, 2017 Regular Session, issuance and execution



280 of administrative inspection warrants and search warrants shall be
281 as follows, except as provided in subsection (c) of this section:

282 (1) A judge of any state court of record, or any
283 justice court judge within his jurisdiction, and upon proper oath
284 or affirmation showing probable cause, may issue warrants for the
285 purpose of conducting administrative inspections authorized by
286 this article or rules thereunder, and seizures of property
287 appropriate to the inspections. For purposes of the issuance of
288 administrative inspection warrants, probable cause exists upon
289 showing a valid public interest in the effective enforcement of
290 this article or rules thereunder, sufficient to justify
291 administrative inspection of the area, premises, building or
292 conveyance in the circumstances specified in the application for
293 the warrant. All such warrants shall be served during normal
294 business hours;

295 (2) A search warrant shall issue only upon an affidavit
296 of a person having knowledge or information of the facts alleged,
297 sworn to before the judge or justice court judge and establishing
298 the grounds for issuing the warrant. If the judge or justice
299 court judge is satisfied that grounds for the application exist or
300 that there is probable cause to believe they exist, he shall issue
301 a warrant identifying the area, premises, building or conveyance
302 to be searched, the purpose of the search, and, if appropriate,
303 the type of property to be searched, if any. The warrant shall:



304 (A) State the grounds for its issuance and the
305 name of each person whose affidavit has been taken in support
306 thereof;

307 (B) Be directed to a person authorized by Section
308 41-29-159 to execute it;

309 (C) Command the person to whom it is directed to
310 inspect the area, premises, building or conveyance identified for
311 the purpose specified, and if appropriate, direct the seizure of
312 the property specified;

313 (D) Identify the item or types of property to be
314 seized, if any;

315 (E) Direct that it be served and designate the
316 judge or magistrate to whom it shall be returned;

317 (3) A warrant issued pursuant to this section must be
318 executed and returned within ten (10) days of its date unless,
319 upon a showing of a need for additional time, the court orders
320 otherwise. If property is seized pursuant to a warrant, a copy
321 shall be given to the person from whom or from whose premises the
322 property is taken, together with a receipt for the property taken.
323 The return of the warrant shall be made promptly, accompanied by a
324 written inventory of any property taken. The inventory shall be
325 made in the presence of the person executing the warrant and of
326 the person from whose possession or premises the property was
327 taken, if present, or in the presence of at least one (1) credible
328 person other than the person executing the warrant. A copy of the



329 inventory shall be delivered to the person from whom or from whose
330 premises the property was taken and to the applicant for the
331 warrant;

332 (4) The judge or justice court judge who has issued a
333 warrant shall attach thereto a copy of the return and all papers
334 returnable in connection therewith and file them with the clerk of
335 the appropriate state court for the judicial district in which the
336 inspection was made.

337 (b) The Mississippi Bureau of Narcotics, the State Board of
338 Pharmacy, the State Board of Medical Licensure, the State Board of
339 Dental Examiners, the Mississippi Board of Nursing or the State
340 Board of Optometry may make administrative inspections of
341 controlled premises in accordance with the following provisions:

342 (1) For purposes of this section only, "controlled
343 premises" means:

344 (A) Places where persons registered or exempted
345 from registration requirements under this article are required to
346 keep records; and

347 (B) Places including factories, warehouses,
348 establishments and conveyances in which persons registered or
349 exempted from registration requirements under this article are
350 permitted to hold, manufacture, compound, process, sell, deliver,
351 or otherwise dispose of any controlled substance.

352 (2) When authorized by an administrative inspection
353 warrant issued in accordance with the conditions imposed in this



354 section, an officer or employee designated by the Mississippi
355 Bureau of Narcotics, the State Board of Pharmacy, the State Board
356 of Medical Licensure, the State Board of Dental Examiners, the
357 Mississippi Board of Nursing or the State Board of Optometry, upon
358 presenting the warrant and appropriate credentials to the owner,
359 operator or agent in charge, may enter controlled premises for the
360 purpose of conducting an administrative inspection.

361 (3) When authorized by an administrative inspection
362 warrant, an officer or employee designated by the Mississippi
363 Bureau of Narcotics, the State Board of Pharmacy, the State Board
364 of Medical Licensure, the State Board of Dental Examiners, the
365 Mississippi Board of Nursing or the State Board of Optometry may:

366 (A) Inspect and copy records required by this
367 article to be kept;

368 (B) Inspect, within reasonable limits and in a
369 reasonable manner, controlled premises and all pertinent
370 equipment, finished and unfinished material, containers and
371 labeling found therein, and, except as provided in paragraph (5)
372 of this subsection, all other things therein, including records,
373 files, papers, processes, controls and facilities bearing on
374 violation of this article; and

375 (C) Inventory any stock of any controlled
376 substance therein and obtain samples thereof.

377 (4) This section does not prevent the inspection
378 without a warrant of books and records pursuant to an



379 administrative subpoena, nor does it prevent entries and
380 administrative inspections, including seizures of property,
381 without a warrant:

382 (A) If the owner, operator or agent in charge of
383 the controlled premises consents;

384 (B) In situations presenting imminent danger to
385 health or safety;

386 (C) In situations involving inspection of
387 conveyances if there is reasonable cause to believe that the
388 mobility of the conveyance makes it impracticable to obtain a
389 warrant;

390 (D) In any other exceptional or emergency
391 circumstance where time or opportunity to apply for a warrant is
392 lacking; or

393 (E) In all other situations in which a warrant is
394 not constitutionally required.

395 (5) An inspection authorized by this section shall not
396 extend to financial data, sales data, other than shipment data, or
397 pricing data unless the owner, operator or agent in charge of the
398 controlled premises consents in writing.

399 (c) Any agent of the bureau authorized to execute a search
400 warrant involving controlled substances, the penalty for which is
401 imprisonment for more than one (1) year, may, without notice of
402 his authority and purpose, break open an outer door or inner door,



403 or window of a building, or any part of the building, if the judge
404 issuing the warrant:

405 (1) Is satisfied that there is probable cause to
406 believe that:

407 (A) The property sought may, and, if such notice
408 is given, will be easily and quickly destroyed or disposed of; or

409 (B) The giving of such notice will immediately
410 endanger the life or safety of the executing officer or another
411 person; and

412 (2) Has included in the warrant a direction that the
413 officer executing the warrant shall not be required to give such
414 notice.

415 Any officer acting under such warrant shall, as soon as
416 practical, after entering the premises, identify himself and give
417 the reasons and authority for his entrance upon the premises.

418 Search warrants which include the instruction that the
419 executing officer shall not be required to give notice of
420 authority and purpose as authorized by this subsection shall be
421 issued only by the county court or county judge in vacation,
422 chancery court or by the chancellor in vacation, by the circuit
423 court or circuit judge in vacation, or by a justice of the
424 Mississippi Supreme Court.

425 This subsection shall expire and stand repealed from and
426 after July 1, 1974, except that the repeal shall not affect the



427 validity or legality of any search authorized under this
428 subsection and conducted prior to July 1, 1974.

429 **SECTION 5.** Section 41-29-176, Mississippi Code of 1972, is
430 amended as follows:

431 * * *

432 41-29-176. (1) Except as otherwise provided in Section 1 of
433 House Bill No. 812, 2017 Regular Session, when any property other
434 than a controlled substance, raw material or paraphernalia, the
435 value of which does not exceed Twenty Thousand Dollars
436 (\$20,000.00), is seized under the Uniform Controlled Substances
437 Law, the property may be forfeited by the administrative
438 forfeiture procedures provided for in this section.

439 (2) The * * * attorney for or any representative of the
440 seizing law enforcement agency shall provide notice of intention
441 to forfeit the seized property administratively, either by
442 certified mail, return receipt requested, or by personal delivery,
443 to all persons who are required to be notified pursuant to Section
444 41-29-177(2).

445 (3) If notice of intention to forfeit the seized property
446 administratively cannot be given as provided in subsection (2) of
447 this section because of refusal, failure to claim, insufficient
448 address or any other reason, the attorney for or representative of
449 the seizing law enforcement agency shall provide notice by
450 publication in a newspaper of general circulation in the county in
451 which the seizure occurred for once a week for three (3)



452 consecutive weeks. However, if the value of the property seized
453 does not exceed Ten Thousand Dollars (\$10,000.00), substitute
454 notice under this subsection (3) of intention to administratively
455 forfeit the property may be made by posting a notice on an
456 official state government forfeiture site for at least thirty (30)
457 consecutive days. The site shall be created and maintained by the
458 Mississippi Bureau of Narcotics. Should other seizing law
459 enforcement agencies choose to utilize the site for Internet
460 publication, the bureau may charge a reasonable fee for such
461 usage.

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

- 464 (a) A description of the property;
- 465 (b) The approximate value of the property;
- 466 (c) The date and place of the seizure;
- 467 (d) The connection between the property and the
468 violation of the Uniform Controlled Substances Law;
- 469 (e) The instructions for filing a request for judicial
470 review; and
- 471 (f) A statement that the property will be forfeited to
472 the seizing law enforcement agency if a request for judicial
473 review is not timely filed.

474 (5) Any person claiming an interest in property which is the
475 subject of a notice under this section may, within thirty (30)
476 days after receipt of the notice or of the date of the first



477 publication of the notice, file a petition to contest forfeiture
478 signed by the claimant in the county court, if a county court
479 exists, or otherwise in the circuit court of the county in which
480 the seizure is made or the county in which the criminal
481 prosecution is brought, in order to claim an interest in the
482 property. Upon the filing of the petition and the payment of the
483 filing fees, service of the petition shall be made on the attorney
484 for or representative of the seizing law enforcement agency, and
485 the proceedings shall thereafter be governed by the rules of civil
486 procedure.

487 (6) If no petition to contest forfeiture is timely filed and
488 a seizure warrant was properly obtained, the district attorney or
489 his or her designee or the attorney for the * * * bureau, as
490 applicable, shall prepare a written declaration of forfeiture of
491 the subject property and the forfeited property shall be used,
492 distributed or disposed of in accordance with the provisions of
493 Section 41-29-181.

494 * * *

495 **SECTION 6.** Section 41-29-177, Mississippi Code of 1972, is
496 amended as follows:

497 41-29-177. (1) Except as otherwise provided in Section
498 41-29-176, Mississippi Code of 1972, and in Section 1 of House
499 Bill No. 812, 2017 Regular Session, when any property, other than
500 a controlled substance, raw material or paraphernalia, is seized
501 under the Uniform Controlled Substances Law, proceedings under



502 this section shall be instituted within thirty (30) days from the
503 date of seizure or the subject property shall be immediately
504 returned to the party from whom seized.

505 (2) A petition for forfeiture shall be filed by the district
506 attorney or his or her designee, or an attorney for the bureau, as
507 applicable, in the name of the State of Mississippi, the county or
508 the municipality and may be filed in the county in which the
509 seizure is made, the county in which the criminal prosecution is
510 brought or the county in which the owner of the seized property is
511 found. Forfeiture proceedings may be brought in the circuit court
512 or the county court if a county court exists in the county and the
513 value of the seized property is within the jurisdictional limits
514 of the county court as set forth in Section 9-9-21, Mississippi
515 Code of 1972. A copy of such petition shall be served upon the
516 following persons by service of process in the same manner as in
517 civil cases:

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

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

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



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

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

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

535 (3) If the property is a motor vehicle susceptible of
536 titling under the Mississippi Motor Vehicle Title Law and if there
537 is any reasonable cause to believe that the vehicle has been
538 titled, the Bureau of Narcotics or the local law enforcement
539 agency shall make inquiry of the * * * Department of Revenue as to
540 what the records of the * * * Department of Revenue show as to who
541 is the record owner of the vehicle and who, if anyone, holds any
542 lien or security interest which affects the vehicle.

543 (4) If the property is a motor vehicle and is not titled in
544 the State of Mississippi, then the Bureau of Narcotics or the
545 local law enforcement agency shall attempt to ascertain the name
546 and address of the person in whose name the vehicle is licensed,
547 and if the vehicle is licensed in a state which has in effect a
548 certificate of title law, the bureau or the local law enforcement
549 agency shall make inquiry of the appropriate agency of that state
550 as to what the records of the agency show as to who is the record
551 owner of the vehicle and who, if anyone, holds any lien, security



552 interest or other instrument in the nature of a security device
553 which affects the vehicle.

554 (5) If the property is of a nature that a financing
555 statement is required by the laws of this state to be filed to
556 perfect a security interest affecting the property and if there is
557 any reasonable cause to believe that a financing statement
558 covering the security interest has been filed under the laws of
559 this state, the Bureau of Narcotics or the local law enforcement
560 agency shall make inquiry of the appropriate office designated in
561 Section 75-9-501, Mississippi Code of 1972, as to what the records
562 show as to who is the record owner of the property and who, if
563 anyone, has filed a financing statement affecting the property.

564 (6) If the property is an aircraft or part thereof and if
565 there is any reasonable cause to believe that an instrument in the
566 nature of a security device affects the property, then the Bureau
567 of Narcotics or the local law enforcement agency shall make
568 inquiry of the Mississippi Department of Transportation as to what
569 the records of the Federal Aviation Administration show as to who
570 is the record owner of the property and who, if anyone, holds an
571 instrument in the nature of a security device which affects the
572 property.

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



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

579 (8) If the property is real estate, the Bureau of Narcotics
580 or the local law enforcement agency shall make inquiry of the
581 chancery clerk of the county wherein the property is located to
582 determine who is the owner of record and who, if anyone, is a
583 holder of a bona fide mortgage, deed of trust, lien or
584 encumbrance.

585 (9) In the event the answer to an inquiry states that the
586 record owner of the property is any person other than the person
587 who was in possession of it when it was seized, or states that any
588 person holds any lien, encumbrance, security interest, other
589 interest in the nature of a security interest, mortgage or deed of
590 trust which affects the property, the Bureau of Narcotics or the
591 local law enforcement agency shall cause any record owner and also
592 any lienholder, secured party, other person who holds an interest
593 in the property in the nature of a security interest, or holder of
594 an encumbrance, mortgage or deed of trust which affects the
595 property to be named in the petition of forfeiture and to be
596 served with process in the same manner as in civil cases.

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



602 the clerk of the court in which the proceeding is pending an
603 affidavit to such effect, whereupon the clerk of the court shall
604 publish notice of the hearing addressed to "the Unknown Owner of
605 _____," filling in the blank space with a reasonably
606 detailed description of the property subject to forfeiture.
607 Service by publication shall contain the other requisites
608 prescribed in Section 11-33-41, and shall be served as provided in
609 Section 11-33-37, Mississippi Code of 1972, for publication of
610 notice for attachments at law.

611 (11) No proceedings instituted pursuant to the provisions of
612 this article shall proceed to hearing unless the judge conducting
613 the hearing is satisfied that this section and Section 1 of House
614 Bill No. 812, 2017 Regular Session has been complied with. Any
615 answer received from an inquiry required by subsections (3)
616 through (8) of this section shall be introduced into evidence at
617 the hearing.

618 **SECTION 7.** Section 41-29-183, Mississippi Code of 1972, is
619 amended as follows:

620 41-29-183. Except as otherwise provided in Section 1 of
621 House Bill No. 812, 2017 Regular Session, the forfeiture procedure
622 set forth in Sections 41-29-177 through 41-29-181 is the sole
623 remedy of any claimant, and no court shall have jurisdiction to
624 interfere therewith by replevin, injunction, supersedeas or in any
625 other manner.



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

628 41-29-179. (1) Except as otherwise provided in Section
629 41-29-176 and Section 1 of House Bill No. 812, 2017 Regular
630 Session, an owner of property, other than a controlled substance,
631 raw material or paraphernalia, that has been seized shall file an
632 answer within thirty (30) days after the completion of service of
633 process. If an answer is not filed, the court shall hear evidence
634 that the property is subject to forfeiture and forfeit the
635 property to the Mississippi Bureau of Narcotics or the local law
636 enforcement agency. If an answer is filed, a time for hearing on
637 forfeiture shall be set within thirty (30) days of filing the
638 answer or at the succeeding term of court if court would not be in
639 progress within thirty (30) days after filing the answer.

640 Provided, however, that upon request by the Bureau of Narcotics,
641 the local law enforcement agency or the owner of the property, the
642 court may postpone said forfeiture hearing to a date past the time
643 any criminal action is pending against said owner.

644 (2) If the owner of the property has filed an answer denying
645 that the property is subject to forfeiture, then the burden is on
646 the petitioner to prove that the property is subject to
647 forfeiture. However, if an answer has not been filed by the owner
648 of the property, the petition for forfeiture may be introduced
649 into evidence and is prima facie evidence that the property is
650 subject to forfeiture. The standard of proof placed upon the



651 petitioner in regard to property forfeited under the provisions of
652 this article shall be by a preponderance of the evidence.

653 (3) At the hearing any claimant of any right, title or
654 interest in the property may prove his lien, encumbrance, security
655 interest, other interest in the nature of a security interest,
656 mortgage or deed of trust to be bona fide and created without
657 knowledge or consent that the property was to be used so as to
658 cause the property to be subject to forfeiture.

659 (4) If it is found that the property is subject to
660 forfeiture, then the judge shall forfeit the property to the
661 Mississippi Bureau of Narcotics or the local law enforcement
662 agency. However, if proof at the hearing discloses that the
663 interest of any bona fide lienholder, secured party, other person
664 holding an interest in the property in the nature of a security
665 interest, or any holder of a bona fide encumbrance, mortgage or
666 deed of trust is greater than or equal to the present value of the
667 property, the court shall order the property released to him. If
668 such interest is less than the present value of the property and
669 if the proof shows that the property is subject to forfeiture, the
670 court shall order the property forfeited to the Mississippi Bureau
671 of Narcotics or the local law enforcement agency.

672 (5) Upon a petition filed in the name of the State of
673 Mississippi, the county or the municipality with the clerk of the
674 circuit court of the county in which the seizure of any controlled
675 substance or raw material is made, the circuit court having



676 jurisdiction may order the controlled substance or raw material
677 summarily forfeited except when lawful possession and title can be
678 ascertained. If a person is found to have had lawful possession
679 and title prior to seizure, the court shall order the controlled
680 substance or raw material returned to the owner, if the owner so
681 desires. Upon a petition filed in the name of the State of
682 Mississippi, the county or the municipality with the clerk of the
683 circuit court of the county in which the seizure of any purported
684 paraphernalia is made, the circuit court having jurisdiction may
685 order such seized property summarily forfeited when the court has
686 determined the seized property to be paraphernalia as defined in
687 Section 41-29-105(v).

688 **SECTION 9.** This act shall take effect and be in force from
689 and after July 1, 2017.

