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Chapter No. 346

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HOUSE BILL NO. 784

Originated in House Don Richardson Clerk

HOUSE BILL NO. 784

AN ACT TO PROVIDE FOR THE SEIZURE AND FORFEITURE OF PROPERTY USED IN TRADEMARK AND RECORDINGS VIOLATIONS; TO PROVIDE FOR SEIZURE AND FORFEITURE PROCEEDINGS; TO PROVIDE FOR NOTICE TO LIENHOLDERS AND PARTIES WITH SECURITY INTERESTS; TO PROVIDE FOR THE DISPOSITION OF PROPERTY AND PROCEEDS; TO AMEND SECTIONS 97-21-53, 97-21-55, 97-21-57 AND 97-23-89, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of Section 97-21-53, 97-21-55, 97-21-57 or 97-23-89 is subject to civil forfeiture to the state pursuant to the provisions of Section 2 of this act; provided, however, that a forfeiture of personal property encumbered by a bona fide security interest or real property encumbered by a bona fide mortgage, deed of trust, lien or encumbrance of record shall be subject to the interest of the secured party or subject to the interest of the holder of the mortgage, deed of trust, lien or encumbrance of record if such secured party or holder neither had knowledge of or consented to the act or omission.

(2) Property subject to forfeiture may be seized by law enforcement officers upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under a lawful administrative inspection;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this article.

(3) The Attorney General, any district attorney or any state agency having jurisdiction over conduct in violation of Section 97-21-53, 97-21-55, 97-21-57 or 97-23-89 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(4) Any aggrieved person may institute a civil proceeding against any person or enterprise convicted of engaging in activity in violation of Section 97-21-53, 97-21-55, 97-21-57 or 97-23-89. In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of immediate and irreparable injury, loss or damage to the person shall have to be made.

(5) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under this section if he certifies that, in his opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

(6) Notwithstanding any other provision of law, a criminal or civil action or proceeding under this act may be commenced at any time within five (5) years after the conduct in violation of law terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of law, the running of the period of limitations prescribed by this

section with respect to any cause of action arising under this section which is based, in whole or in part, upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such prosecution, action or proceeding and for two (2) years following its termination.

(7) The application of one (1) civil remedy under any provision of this act shall not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental.

SECTION 2. (1) When any property is seized pursuant to Section 1 of this act, proceedings under this section shall be instituted promptly.

(2) (a) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi with the clerk of the circuit court of the county in which the seizure is made. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

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

(ii) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the state by making a good faith effort to ascertain the identity of such secured party as described in paragraphs (b), (c), (d), (e) and (f) of this subsection;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the state has actual knowledge;

(iv) A holder of a mortgage, deed of trust, lien or encumbrance of record, if the property is real estate by making a good faith inquiry as described in paragraph (g) of this section; and

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

(b) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the state shall make inquiry of the Department of Revenue as to what the records of the Department of Revenue show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(c) If the property is a motor vehicle and is not titled in the State of Mississippi, then the state shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the state shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device which affects the vehicle.

(d) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the state shall make inquiry of the appropriate office designated in Section 75-9-501 as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(e) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the state shall make inquiry of the administrator of the Federal Aviation Administration as to what the records of the

administrator show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(f) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the state shall make a good faith inquiry to identify the holder of any such instrument.

(g) If the property is real estate, the state shall make inquiry at the appropriate places to determine who is the owner of record and who, if anyone is a holder of a bona fide mortgage, deed of trust, lien or encumbrance.

(h) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the state shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(i) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the state shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of _____," filling in the blank space with a reasonably detailed description of the property