4/30 2:40p

Chapter No. 495

12/HR12/R1887SG

Esr / KB

HOUSE BILL NO. 1507

Originated in House _____ Clerk

HOUSE BILL NO. 1507

AN ACT TO AMEND SECTION 41-29-176, MISSISSIPPI CODE OF 1972, TO REVISE THE FORFEITURE OF PROPERTY OTHER THAN CONTROLLED SUBSTANCES UNDER THE CONTROLLED SUBSTANCES ACT; TO AMEND SECTION 41-29-181, MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 41-29-185, MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL CORRECTIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-29-176, Mississippi Code of 1972, is amended as follows:

41-29-176. (1) When any property other than a controlled substance, raw material or paraphernalia, the value of which does not exceed Twenty Thousand Dollars ($20,000.00), is seized under the Uniform Controlled Substances Law, the property may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The attorney for *or any representative of* the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to Section 41-29-177(2), Mississippi Code of 1972.

(3) In the event that notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general

circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

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

(a) A description of the property;

(b) The approximate value of the property;

(c) The date and place of the seizure;

(d) The connection between the property and the violation of the Uniform Controlled Substances Law;

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

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

(5) Any person claiming an interest in property which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought, in order to claim an interest in the property. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.

(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 41-29-181, Mississippi Code of 1972.

SECTION 2. Section 41-29-181, Mississippi Code of 1972, is amended as follows:

41-29-181. (1) Regarding all controlled substances, raw materials and paraphernalia which have been forfeited, the circuit court shall by its order direct the Bureau of Narcotics to:

(a) Retain the property for its official purposes;

(b) Deliver the property to a government agency or department for official purposes;

(c) Deliver the property to a person authorized by the court to receive it; or

(d) Destroy the property that is not otherwise disposed, pursuant to the provisions of Section 41-29-154.

(2) All other property, real or personal, which is forfeited under this article, except as otherwise provided in Section 41-29-185, and except as provided in subsections (3), (7) and (8) of this section, shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, twenty percent (20%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty percent (20%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law

enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty percent (20%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

If the criminal case is initiated by an officer of the Bureau of Narcotics and more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, the proceeds shall be divided equitably between or among the Bureau of Narcotics and other participating law enforcement agencies and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the Bureau of Narcotics and the other participating law enforcement agencies cannot agree on an equitable division of the proceeds, a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(3) All money which is forfeited under this article, except as otherwise provided by Section 41-29-185, shall be divided, deposited and credited in the same manner as set forth in subsection (2) of this section.

(4) All property forfeited, deposited and credited to the Mississippi Bureau of Narcotics under this article shall be forwarded to the State Treasurer and deposited in a special fund for use by the Mississippi Bureau of Narcotics upon appropriation by the Legislature.

(5) All real estate which is forfeited under the provisions of this article shall be sold to the highest and best bidder at a public auction for cash, such auction to be conducted by the chief law enforcement officer of the initiating law enforcement agency, or his designee, at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of

such sale shall first be applied to the cost and expense in administering and conducting such sale, then to the satisfaction of all mortgages, deeds of trust, liens and encumbrances of record on such property. The remaining proceeds shall be divided, forwarded and deposited in the same manner set out in subsection (2) of this section.

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

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

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (2) of this section.

(7) (a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property, other than real property, money or such property that is described in subsection (1) of this section, that has been forfeited to the agency if it is free from any interest of a bona

fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. Such county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (9) of this section.

(b) (i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.

(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.

(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal property.

(8) The Mississippi Bureau of Narcotics may maintain, repair, use and operate for official purposes all property, other than real property, money or such property as is described in subsection (1) of this section, that has been forfeited to the bureau if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. In such case, the bureau may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that such property can be released for use by the bureau.

The bureau may maintain, repair, use and operate such property with money appropriated to the bureau for current operations. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the bureau is deemed to be the purchaser and the certificate of title shall be issued to it as required by subsection (9) of this section.

(9) The Department of Revenue shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

SECTION 3. Section 41-29-185, Mississippi Code of 1972, is amended as follows:

41-29-185. One hundred percent (100%) of any seized and forfeited property to be transferred to any state or local law enforcement agency under the provisions of 21 USCS Section 881(e)(1), 19 USCS Section 1616(a)(2), or other federal property sharing provisions, shall be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, for the specific purpose of increasing law enforcement resources for that specific state or local agency. Such transferred property must be used to augment existing state and local law enforcement budgets and not to supplant them.

SECTION 4. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 13, 2012

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 5, 2012

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR
4/30/12 2:10pm