MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Criswell To: Judiciary B

HOUSE BILL NO. 607

AN ACT RELATING TO THE SEIZURE AND FORFEITURE OF PROPERTY IN CERTAIN CRIMINAL ACTIONS; TO DEFINE CERTAIN TERMS; TO STATE CERTAIN DECLARATIONS BY THE LEGISLATURE AND TO PRONOUNCE THE PURPOSE OF THIS ACT; TO AUTHORIZE A COURT TO ISSUE AN EX PARTE PRELIMINARY ORDER FOR THE SEIZURE OF PERSONAL PROPERTY FOR WHICH FORFEITURE IS SOUGHT; TO AUTHORIZE PERSONAL PROPERTY TO BE SEIZED WITHOUT A COURT ORDER OR WARRANT UNDER CERTAIN CONDITIONS; TO REQUIRE A COURT ORDER FOR THE SEIZURE OR RESTRAINT OF REAL PROPERTY; TO EXEMPT HOMESTEAD PROPERTY AND OTHER SPECIFIED PROPERTY HAVING A CERTAIN VALUE FROM SEIZURE AND FORFEITURE; TO DECLARE THAT CONTRABAND IS SUBJECT TO SEIZURE; TO PROHIBIT THE WAIVER OF A PERSON'S INTEREST IN SEIZED PROPERTY; TO REQUIRE LAW ENFORCEMENT TO ISSUE A RECEIPT FOR SEIZED PROPERTY; TO AUTHORIZE A COURT TO ORDER THE FORFEITURE OF PROPERTY WHEN A PERSON IS CONVICTED OF AN OFFENSE AUTHORIZING FORFEITURE; TO PROHIBIT CIVIL FORFEITURE OF PROPERTY UNDER THIS ACT; TO LIMIT FORFEITURE OF PROPERTY TO CASES WHERE THERE IS A CONVICTION OF A STATE CRIMINAL STATUTE THAT AUTHORIZES FORFEITURE OF PROPERTY; TO ESTABLISH THE PROCEDURE FOR FILING A CRIMINAL COMPLAINT FOR THE FORFEITURE OF PROPERTY; TO AUTHORIZE A PROSECUTING ATTORNEY TO FILE AN INDICTMENT WHEN THE STATE SEEKS FORFEITURE OF PROPERTY OTHER THAN THROUGH A COMPLAINT; TO STATE WHEN TITLE TO FORFEITED PROPERTY VESTS WITH THE STATE; TO AUTHORIZE A PRETRIAL HEARING TO DETERMINE THE VALIDITY OF A SEIZURE AND TO REQUIRE THE ISSUANCE OF A WRIT OF REPLEVIN IF CERTAIN FINDINGS ARE MADE; TO DECLARE THAT DISCOVERY IN SEIZURE AND FORFEITURE CASES IS SUBJECT TO THE MISSISSIPPI RULES OF CIVIL PROCEDURE; TO ESTABLISH JURISDICTION OVER FORFEITURE PROCEEDINGS IN THE COURT THAT HAS JURISDICTION OVER THE RELATED CRIMINAL MATTER; TO AUTHORIZE A DEFENDANT, DURING A HEARING RELATING TO THE SEIZURE AND FORFEITURE OF PROPERTY, TO PETITION THE COURT FOR A DETERMINATION ON WHETHER THE FORFEITURE IS UNCONSTITUTIONALLY EXCESSIVE; TO PROHIBIT THE FORFEITURE OF PROPERTY ENCUMBERED BY A BONA FIDE SECURITY INTEREST; TO AUTHORIZE AN INNOCENT OWNER OF PROPERTY SUBJECT TO FORFEITURE TO PETITION

THE COURT FOR A HEARING ON THE PERSON'S ALLEGED INTEREST IN THE PROPERTY; TO REQUIRE THE COURT TO EITHER DISMISS THE FORFEITURE PROCEEDING OR ORDER FORFEITURE OF THE PROPERTY AFTER A HEARING ON THE MATTER OR PURSUANT TO A PLEA AGREEMENT; TO AUTHORIZE THE COURT TO ORDER FORFEITURE OF SUBSTITUTE PROPERTY WHENEVER THE PROPERTY SUBJECT TO FORFEITURE IS UNREACHABLE; TO PROHIBIT THE STATE FROM SEEKING PERSONAL MONEY JUDGMENTS RELATED TO THE FORFEITURE OF PROPERTY OTHER THAN PROVIDED FOR IN THIS ACT; TO PROHIBIT A COURT FROM HOLDING DEFENDANTS JOINTLY AND SEVERALLY LIABLE FOR FORFEITURE AWARDS; TO AUTHORIZE AN APPEAL OF A COURT'S DECISION IN FORFEITURE LITIGATION; TO REQUIRE A SEIZING AGENCY TO PAY ATTORNEY FEES WHENEVER A PROPERTY OWNER PREVAILS ON A CLAIM; TO REQUIRE A LAW ENFORCEMENT AGENCY TO RETURN PROPERTY WHEN SO ORDERED BY THE COURT; TO REQUIRE THE DESTRUCTION OF CONTRABAND NO LONGER NEEDED FOR EVIDENTIARY PURPOSES; TO REQUIRE ABANDONED PROPERTY NO LONGER NEEDED FOR EVIDENTIARY PURPOSES TO BE DELIVERED TO THE STATE TREASURER; TO PROHIBIT A LAW ENFORCEMENT AGENCY FROM RETAINING FORFEITED OR ABANDONED PROPERTY FOR ITS OWN USE; TO PROHIBIT A LAW ENFORCEMENT AGENCY FROM RELINQUISHING SEIZED PROPERTY TO A FEDERAL AGENCY FOR THE PURPOSE OF THE PROPERTY'S FORFEITURE UNDER THE CONTROLLED SUBSTANCES ACT; TO ESTABLISH CERTAIN REQUIREMENTS RELATING TO PROPERTY SEIZED THROUGH A MULTIJURISDICTIONAL COLLABORATION WITH THE FEDERAL GOVERNMENT; TO DECLARE THAT THIS ACT PREEMPTS ANY LOCAL GOVERNMENTAL LAW THAT REGULATES CIVIL AND CRIMINAL FORFEITURE; TO AMEND SECTIONS 49-1-43, 49-5-115, 49-7-81 AND 49-7-91, MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE PROTECTION OF GAME AND FISH AND HUNTING AND FISHING, IN CONFORMITY TO THE PRECEDING PROVISIONS OF THIS ACT; TO REPEAL SECTIONS 49-7-103 AND 49-7-251 THROUGH 49-7-257, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE THE SEIZURE AND CONFISCATION OF PROPERTY USED IN ILLEGAL HUNTING OR FISHING; TO REPEAL SECTION 59-21-33, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES THE SEIZURE AND FORFEITURE OF BOATS AND TRAILERS WITH ALTERED IDENTIFICATION NUMBERS; AND FOR RELATED PURPOSES.

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

SECTION 1. As used in this act, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Abandoned property" means personal property left by an owner who relinquishes all rights to its control. The term "abandoned property" does not include real property, which cannot be abandoned.

(b) "Actual knowledge" means direct and clear awareness of information, a fact or a condition.

(c) "Contraband" means goods that, in themselves, are unlawful to possess, including scheduled drugs without a valid prescription and a firearm that is illegal to possess. The term "contraband" does not include proceeds derived from an alleged crime or an instrumentality used in an alleged crime.

(d) "Conveyance" means a device used for transportation, including a motor vehicle, trailer, all terrain vehicle, airplane, vessel or any equipment attached to one of these devices. The term "conveyance" does not include property that is stolen or taken in violation of the law.

(e) "Court" means the criminal division of the circuit court.

(f) "Instrumentality" means property otherwise lawful to possess which is used in the commission of an offense of a law authorizing forfeiture. The term "instrumentality" includes land, buildings, a container, a conveyance, equipment, materials, products, a tool, a computer, computer software, a telecommunications device, a firearm and ammunition.

(g) "Law authorizing forfeiture of property" means a state law that includes forfeiture of property as a punishment or sanction for the offense.

(h) "Law enforcement agency" means an agency, department, bureau, office or other entity, regardless of its

name, of the state, a municipality, county or other local governmental entity which has the authority under state law to engage in seizure and forfeiture. The term "law enforcement agency" does not include a federal police force or other entity of the federal government.

(i) "Proceeds" means money, securities, negotiable instruments or other means of exchange obtained by the sale of property.

(j) "Prosecuting authority" means the government attorney who is prosecuting a criminal case.

SECTION 2. The Legislature declares that forfeiture is disfavored in the State of Mississippi. It is the purpose of this act to:

(a) Deter criminal activity by reducing its economic incentives;

(b) Confiscate property used in the violation of the law and disgorge the fruits of illegal conduct; and

(c) Protect property and due process rights of defendants and innocent owners.

SECTION 3. At the request of the state at any time, a court may issue an ex parte preliminary order or warrant to attach, seize or secure personal property for which forfeiture is sought and to provide for its custody. The application, issuance, execution and return of a court order or warrant issued pursuant

to this section are subject to applicable state statutes and court rules.

SECTION 4. (1) Personal property may be seized without a court order or warrant whenever one or more of the following conditions exists:

(a) The personal property subject to forfeiture is seized incident to a lawful arrest;

(b) The state has probable cause to believe the person committed an offense that authorizes the forfeiture of property and the search was lawfully conducted;

(c) The state has probable cause to believe that the delay caused by the necessity of obtaining process would result in the removal or destruction of the personal property and that the personal property is forfeitable under this act; or

(d) The personal property is the subject of a prior judgment of forfeiture in favor of the state.

(2) The mere presence or possession of U.S. currency, without other indicia of an offense that authorizes forfeiture of property, is insufficient probable cause for seizure of U.S. currency.

SECTION 5. (1) Seizure or restraint of real property requires a court order. A court may issue an order to seize or secure real property for which forfeiture is sought only after proper notice and an opportunity for a contested hearing to

determine the sufficiency of probable cause for the seizure has been provided to the property owners.

(2) This section does not prohibit the prosecuting authority from seeking a lis pendens or restraining order to hinder the sale or destruction of the real property. However, if the prosecuting authority obtains a lis pendens or restraining order, then the prosecuting authority must notify any party with an interest in any real property within thirty (30) days of receiving the lis pendens or restraining order.

(3) Application, filing, issuance, execution and return of any order are subject to applicable state statutes.

SECTION 6. The following are exempt from seizure and forfeiture:

(a) Homestead real property.

(b) U.S. currency totaling Two Thousand Five Hundred Dollars ($2,500.00) or less; however, the prosecuting authority of a criminal court district may establish an exemption with a maximum dollar amount greater than Two Thousand Five Hundred Dollars ($2,500.00) for U.S. currency seized within that district.

(c) A motor vehicle having a market value equal to or less than Two Thousand Five Hundred Dollars ($2,500.00); however, the prosecuting authority of a criminal court district may establish an exemption with a maximum dollar amount greater than Two Thousand Five Hundred Dollars ($2,500.00) for a motor vehicle seized within that district.

SECTION 7. A property right does not exist in contraband. Contraband is subject to seizure and must be disposed of according to state law.

SECTION 8. (1) A police officer, sheriff or other member of law enforcement, other than the prosecuting authority, may not request, require or in any manner induce a person to execute a document purporting to waive, for purpose of forfeiture under this act, the person's interest in or rights to property seized.

(2) Any document purporting to waive a person's interest in or right to property seized under this act is null, void and inadmissible in court.

SECTION 9. When property is seized, the law enforcement officer shall give an itemized receipt to the person possessing the property. If the person possessing the property is not present, the law enforcement officer must leave a receipt in the place where the property was found, if reasonably possible.

SECTION 10. When a person is convicted of an offense that authorizes the forfeiture of property, the court, consistent with this act, may order the person to forfeit:

(a) Any property constituting, or derived directly from, proceeds of the underlying offense for which the person is convicted; or

(b) Any of the person's property used in any manner or part to commit or to facilitate the commission of the offense for which the person is convicted.

SECTION 11. (1) There may be no civil forfeiture under this act.

(2) Except as otherwise provided by law, property may be forfeited if the following conditions are met:

(a) The offense is of a state criminal law that authorizes the forfeiture of property;

(b) Guilt of the offense is established by proof of a criminal conviction, except as otherwise provided under subsection (4); and

(c) The state establishes that the property is subject to forfeiture under Section 10 of this act by clear and convincing evidence.

(3) This act does not prevent property from being forfeited by plea agreement approved by the presiding criminal court; however, the court may not accept a plea agreement or other arrangement that prevents the claims of any person who filed a statement of interest or ownership pursuant to Sections 18 and 19 of this act from being adjudicated.

(4) The court may waive the conviction requirement and grant title to the property to the state if the prosecuting authority files a motion no less than one hundred eighty (180) days after seizure and shows by clear and convincing evidence that, before conviction, the defendant:

(a) Died;

(b) Was deported by the federal government;

(c) Is granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution;

(d) Fled the jurisdiction; or

(e) Abandoned the property.

(5) Property that either is seized from a person who flees the jurisdiction or is abandoned must be delivered to the State Treasurer within thirty (30) days without further forfeiture-related litigation. The State Treasurer shall sell all noncurrency property. The sale proceeds and any currency seized from a person who flees the jurisdiction or abandons the currency must be deposited into the State General Fund.

SECTION 12. (1) In any case in which the state seeks forfeiture of property, except when the state seeks forfeiture through indictment or information as provided in Section 13 of this act, the prosecuting authority shall file a criminal complaint that includes: (a) criminal charges; and (b) the information identified in subsection (2) of this section before the defendant's first appearance in court. Upon motion by the prosecuting authority, a court may permit the filing of an amended criminal complaint within seven (7) days of the first appearance for good cause shown. Service of an amended criminal complaint on a represented party must be made on the defendant's attorney. Service on the attorney or party must be made in the manner provided by the rules of practice of the court, including by

electronic means as authorized by that court. The court shall verify service at the defendant's next appearance.

(2) A complaint in any case in which the state seeks forfeiture of property must include the following:

(a) A description of the property seized;

(b) The date and place of the seizure;

(c) The name and address of the appropriate agency responsible for the seizure;

(d) A statement of facts establishing probable cause to believe that the charged offense has been committed, that the defendant committed it, and that the seized property is an instrument or represents the proceeds of the underlying offense;

(e) The name of any person known to the prosecuting authority to have an interest in the property and the nature of that interest; and

(f) References to the relevant statutory provisions required to show that the property is the type of property that may be forfeited under Section 10 of this act.

(3) If notice is not served in accordance with subsections (1) and (2) to all persons appearing to have an interest in the property and no time extension is granted or the extension period has expired, the appropriate agency, upon the owner's request, must return the property to the person from whom the property was seized or another owner if another owner made the request. The agency may not return contraband.

(4) Unless otherwise provided by law, the prosecuting authority shall provide notice of the forfeiture proceeding to the registered owner of any vehicle and any other individual known to have an interest in any property subject to forfeiture under this section who is not charged with a crime in the complaint. Notice must be given within seven (7) days of the filing of the complaint pursuant to subsection (1) or, if an interest was not known at the time of the filing, within seven (7) days of discovery of an individual with an interest in the property. Notice may be made by personal service if the owner is a resident of this state or by certified mail if the person is the resident of another state.

(5) The notice must be in writing and contain the following:

(a) A description of the property seized;

(b) The date of seizure; and

(c) A copy of the complaint filed pursuant to subsection (1).

(6) The following language must appear conspicuously in the notice: "WARNING: You may lose the right to be heard in court if you do not file a statement of interest or ownership within _____ days. You must file in ___[NAME OF COURT]___ court. You do not have to pay a filing fee to file your notice."

SECTION 13. (1) In any case in which the state seeks forfeiture of property other than through a complaint filed under Section 12 of this act, the prosecuting authority shall file an indictment or information that includes:

(a) A criminal charge; and

(b) A charge for which forfeiture of property under this act may be ordered, which charge must identify the specific assets to be forfeited, if known, or the relevant forfeiture statutes if specific assets to be forfeited are not known at the time the prosecuting authority requests the issuance of the indictment.

(2) Upon application of the prosecuting authority, the court may enter a restraining order or injunction or take other action to preserve the availability of property only:

(a) Upon the issuance of an indictment or information according to subsection (1); or

(b) Before the issuance of the indictment or information if the court determines there is a substantial probability the state will prevail on the issue of criminal forfeiture and that failure to enter the order will result in property being destroyed, removed from the jurisdiction or otherwise made unavailable for forfeiture.

(3) Any order entered under subsection (2)(b) may not be effective for a period greater than ninety (90) days unless extended by the court for good cause shown or unless an indictment or information described in subsection (2)(a) has been issued subsequently.

(4) Notice must be provided as required under subsections (4) through (6) of Section 12 of this act to all persons known to

have an interest in the property who are not named in the indictment or information.

SECTION 14. (1) Except as otherwise provided in subsection (3), title to property subject to forfeiture vests with the state when the court issues a forfeiture judgment and relates back to the time when the state seizes or restrains the property.

(2) Except as otherwise provided in subsection (3), title to substitute assets vests when the court issues an order forfeiting substitute assets.

(3) Notwithstanding the provisions of subsections (1) and (2), title to property subject to forfeiture and to substitute assets is subject to claims by third parties adjudicated under this act.

SECTION 15. (1) Following the seizure of property, a defendant has a right to a pretrial hearing to determine the validity of the seizure.

(2) The court shall hold the hearing at the time of a defendant's first appearance in court.

(3) Either party, by agreement or for good cause, may move the court for one (1) extension of no more than ten (10) days. A motion under this subsection may be supported by affidavits or other submissions.

(4) The court shall issue a writ of replevin if it finds any of the following:

(a) It is likely that the final judgment will be that the state must return the property to the defendant;

(b) The property is not reasonably required to be held for evidentiary reasons; or

(c) The property is the only reasonable means for the defendant to pay for legal representation in the forfeiture or criminal proceeding and minimum living expenses, unless the prosecuting authority shows by clear and convincing evidence that the property is the instrument or proceeds of an offense for which the defendant is charged. The court, in its discretion, may order the return of funds and property not needed for evidentiary reasons which are sufficient to obtain counsel of choice but less than the total amount seized.

SECTION 16. Discovery is subject to the Mississippi Rules of Criminal Procedure.

SECTION 17. (1) The court with jurisdiction over the related criminal matter has jurisdiction over the forfeiture proceeding.

(2) The litigation related to the forfeiture of property must be held in a proceeding following the trial of the related alleged offense. The timing of the litigation of the forfeiture proceeding is at the discretion of the court. The litigation associated with the forfeiture of property of less than Ten Thousand Dollars ($10,000.00) in value must be held before a judge without a jury.

(3) If the property owner engages in pro se representation in a case before a judge, the court is not bound by the common law, court rules of evidence, statutory rules of evidence, technical or formal rules of pleading or procedure in the litigation related to the forfeiture of property.

(4) If the defendant in the related criminal matter was represented by a public defender, the state public defender or chief public defender of the criminal court may authorize representation of the defendant in the forfeiture proceeding.

SECTION 18. (1) At any time during a hearing pursuant to Section 15 or 17 of this act, the defendant may petition the court to determine whether the forfeiture is unconstitutionally excessive under the state constitution.

(2) The defendant has the burden of establishing the forfeiture is disproportional to the seriousness of the offense by clear and convincing evidence at a hearing conducted by the court without a jury.

(3) In determining whether the forfeiture is unconstitutionally excessive, the court may consider all relevant factors, including, but not limited to, the following:

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

(b) The extent to which the defendant participated in the offense;

(c) The extent to which the property was used in committing the offense;

(d) The sentence imposed for committing the crime authorizing forfeiture;

(e) Whether the offense was completed or attempted;

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

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

(4) In determining the value of the instrumentality subject to forfeiture, the court may consider all relevant factors related to the fair market value of the property.

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

Section 19. (1) Property encumbered by a bona fide security interest is not subject to forfeiture. A person claiming a security interest must establish by clear and convincing evidence the validity of the interest perfected under Chapter 9, Title 75, Mississippi Code of 1972, or a lease or rental agreement.

(2) The prosecuting authority summarily shall return seized property to the person with a bona fide security interest, up to the value of the secured interest.

(3) If the person alleges a valid security interest but the state seeks to proceed with the forfeiture against the property, the state must prove by clear and convincing evidence that the person had actual knowledge of the underlying crime giving rise to the forfeiture. Either party may petition the court for a hearing at any time before the court enters judgment in the criminal prosecution or grants the motion in subsection (4) of Section 11 of this act.

SECTION 19. (1) Any person, including an heir but excluding the defendant or a secured-interest holder, asserting a legal interest in property that has been seized or restrained may petition the court, at any time before the court enters final judgment in the criminal prosecution or grants a motion pursuant to subsection (4) of Section 11 of this act, for a hearing to adjudicate the validity of the person's alleged interest in the property. The hearing must be held before the court alone, without a jury.

(2) The petitioner shall file with the court a simple statement of interest or ownership. The petitioner must sign the petition under penalty of perjury and set forth the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(3) The filing fee for the statement under this section is waived.

(4) To the extent practicable and consistent with the interests of justice, the hearing on the petition must be held within thirty (30) days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on the petitioner's own behalf and may cross-examine witnesses who appear at the hearing. The state may present evidence and witnesses in rebuttal and in defense of its claim to the property and may cross-examine witnesses who appear at the hearing.

(6) A petitioner who has an ownership interest in property subject to forfeiture at the time of the commission of the crime giving rise to the forfeiture and who claims to be an innocent owner bears the burden of proving by clear and convincing evidence that the person has a legal right, title or interest in the property seized under this act.

(7) If subsection (6) is satisfied and the state seeks to proceed with the forfeiture of the property, the state must prove by clear and convincing evidence that the petitioner had actual knowledge of the underlying crime giving rise to the forfeiture.

(8) A petitioner who acquires an ownership interest in property subject to forfeiture after the commission of the crime giving rise to the forfeiture and who claims to be an innocent owner bears the burden of proving by clear and convincing evidence that the person has legal right, title or interest in the property seized under this act.

(9) If subsection (8) is satisfied and the state seeks to proceed with the forfeiture of the property, the state must prove by clear and convincing evidence that at the time the petitioner acquired the property, the person:

(a) Had actual knowledge that the property was subject to forfeiture; or

(b) Was not a bona fide purchaser without notice of any defect in title and for valuable consideration.

(10) If the state fails to meet its burden in subsection (7) or (9), the court must find that the petitioner is an innocent owner and order the state to relinquish all claims of title to the property.

(11) Information in the statement of interest or ownership filed under this section may not be used as evidence in the criminal matter. This section does not prohibit a petitioner who has filed a statement of interest or ownership under this section from providing information to any prosecuting authority or defendant involved in the related criminal matter or their

representatives or from testifying in any criminal trial as to facts within the petitioner's knowledge.

(12) A defendant or convicted offender may invoke the right against self-incrimination or the marital privilege during the forfeiture-related litigation. The trier of fact at the hearing may draw an adverse inference from the invocation of the right or privilege.

SECTION 20. (1) If the prosecuting authority fails to meet its burden as to any claimant, the court must enter judgment dismissing the forfeiture proceeding and delivering the property to the prevailing owner unless the owner's possession of the property is illegal.

(2) If the prosecuting authority meets its burden as to all claimants, the court must enter judgment forfeiting the seized property.

(3) A court may enter judgment following a hearing or pursuant to a stipulation or plea agreement.

SECTION 21. Upon the state's motion following conviction, the court may order the forfeiture of substitute property owned by the defendant up to the value of unreachable property that is beyond the court's jurisdiction or cannot be located through due diligence only if the state proves by clear and convincing evidence that the defendant intentionally:

(a) Dissipated the property;

(b) Transferred, sold or deposited property with a third party to avoid forfeiture;

(c) Diminished substantially the value of property; or

(d) Commingled the property with other property that cannot be divided without difficulty.

SECTION 22. The state may not seek personal money judgments or other remedies related to the forfeiture of property not provided for in this act.

SECTION 23. A defendant is not jointly and severally liable for forfeiture awards owed by other defendants. When ownership is unclear, a court may order each defendant to forfeit property on a pro rata basis or by another means the court finds equitable.

SECTION 24. (1) A party to forfeiture litigation, other than the defendant, may appeal the court's decision on an interlocutory basis.

(2) The defendant may appeal the court's decision regarding the seizure or forfeiture of property following final judgement in the forfeiture litigation.

SECTION 25. In a proceeding in which a property owner's claims prevail by recovering at least one-half (1/2), by value, of the property or currency claimed, the seizing agency is liable for:

(a) Reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

(b) Post-judgment interest; and

(c) In cases involving currency, other negotiable instruments or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure.

SECTION 26. (1) If the court orders the return of property, the law enforcement agency that holds the property must return the property to the owner or other prevailing claimant within a reasonable period of time, not to exceed five (5) days after entry of judgment.

(2) An owner to whom property is returned is not responsible for any charges for storage of the property or expenses incurred in the preservation of the property.

(3) The law enforcement agency that holds the property is responsible for any damages, storage fees and related costs applicable to property that is returned under this section.

SECTION 27. (1) Whenever contraband held for evidentiary purposes is no longer needed for that purpose, the court may order the contraband to be destroyed pursuant to state law.

(2) Whenever abandoned property held for evidentiary purposes is no longer needed for that purpose, the court may order the property to be delivered to the State Treasurer within thirty (30) days of the order.

(3) If forfeiture is granted, the court, upon motion, may order that a portion of the currency seized or proceeds from the sale of forfeited property be used to:

(a) Pay the victim of the crime for which the defendant is convicted;

(b) Pay reasonable nonpersonnel expenses for the seizure, storage and maintenance of any forfeited property found to be related to the crime for which the defendant is convicted; and

(c) Reimburse the seizing agency for nonpersonnel operating costs, including controlled-drug buy money, related to investigating the crime for which the defendant is convicted.

(4) If forfeiture is granted, the court must order currency and all other property to be delivered to the State Treasurer within thirty (30) days.

(5) The State Treasurer shall sell all noncurrency forfeited property. The sale proceeds and forfeited currency must be used first to pay all outstanding recorded liens on the forfeited property and then to comply with an order of the court under subsection (3). The State Treasurer shall deposit all remaining funds into the State General Fund.

SECTION 28. A law enforcement agency may not retain forfeited or abandoned property for its own use or sell it directly or indirectly to any employee of the agency, a person related to an employee by blood or marriage, or another law enforcement agency.

SECTION 29. A law enforcement agency may not refer, transfer or otherwise relinquish possession of property seized under state

law to a federal agency by way of adoption of the seized property or other means by the federal agency for the purpose of the property's forfeiture under the Controlled Substances Act, Public Law 91-513-Oct. 27, 1970, or other federal law.

SECTION 30. (1) In a case in which the aggregate net equity value of the property and currency seized is Fifty Thousand Dollars ($50,000.00) or less, excluding the value of contraband, a law enforcement agency or participant in a joint task force or other multijurisdictional collaboration with the federal government must transfer responsibility for the seized property to the state prosecuting authority for forfeiture under state law.

(2) If the federal government prohibits the transfer of seized property and currency to the state prosecuting authority as required under subsection (1) and instead requires the property to be transferred to the federal government for forfeiture under federal law, the law enforcement agency may not accept payment of any kind or distribution of forfeiture proceeds from the federal government.

(3) Neither subsection (1) or (2) may be construed to restrict a law enforcement agency from transferring responsibility to the federal government for forfeiture of seized property and currency that has an aggregate net equity value of greater than Fifty Thousand Dollars ($50,000.00), excluding the value of contraband.

(4) Neither subsection (1) or (2) may be construed to restrict a law enforcement agency from acting alone or collaborating with a federal agency or other agency to seize contraband or property that a law enforcement agent has probable cause to believe is the proceeds or instruments of a crime that subjects property to forfeiture.

(5) Neither subsection (1) or (2) may be construed to prohibit the federal government, acting without the involvement of a law enforcement agency, from seizing property and seeking forfeiture under federal law.

SECTION 31. This act preempts any laws by a municipal, county and other local government in the state which regulate civil and criminal forfeiture.

SECTION 32. Section 49-1-43, Mississippi Code of 1972, is amended as follows:

49-1-43. (1) The director shall have general supervision and control of all conservation officers, and shall enforce all the laws and regulations of the state relating to wild animals, birds and fish, and shall exercise all necessary powers incident thereto not specifically conferred on the department.

(2) The director, with the approval of the commission, shall make to the Governor and the Legislature a report covering the operation of the department for the preceding fiscal year.

(3) It shall be the duty of all conservation officers to enforce, and to obey and carry out all instructions and directions

of the department with respect to the enforcement of the laws and regulations relating to wild animals, birds and fish.

(4) The director and each conservation officer shall have power, and it shall be the duty of the director and of each conservation officer:

(a) To execute all warrants and search warrants for a violation of the laws and regulations relating to wild animals, birds and fish and to serve subpoenas issued for the examination and investigation or trial of offenses against any of the laws or regulations;

(b) To search where the conservation officer has cause to believe and does believe that animals, birds or fish, or any parts thereof, or the nest or eggs of birds, or spawn or eggs of fish are possessed in violation of law or regulation and in such case to examine, without warrant, the contents of any boat, car, automobile or other vehicle, box, locker, basket, creel, crate, game bag or other package, to ascertain whether any law or regulation for the protection of animals, birds or fish have been or are being violated, and to use such force as may be necessary for the purpose of such examination and inspection;

(c) With a search warrant, to search and examine the contents of any dwelling house, room, building or premises of any person suspected of violating any law or regulation, to seize all animals, birds or fish, or parts thereof, or nests or eggs of birds taken in violation of law or regulation, or showing evidence

of illegal taking and to seize and confiscate all devices illegally used in taking animals, birds or fish, which devices may be forfeited only upon conviction of the alleged violation of law or regulation in the manner prescribed under Sections 1 through 32 of House Bill No. , 2021 Regular Session;

(d) To arrest, without warrant, any person committing or attempting to commit a misdemeanor, felony or a breach of the peace within his presence or view and to pursue and so arrest any person committing an offense in any place in the state where the person may go or be; to aid and assist any peace officer of this state or any other state if requested, in manhunts or natural disasters within the state; and

(e) To exercise other powers of peace officers in the enforcement of game laws or regulations or of a judgment for the violation thereof, as are not herein specifically provided.

(5) In all cases of arrest without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense or is arrested on pursuit.

(6) No conservation officer shall compromise or settle out of court any violation of this chapter, or any law or regulation for the protection of wild animals, birds or fish.

(7) Nothing in this section shall be construed as granting conservation officers general police powers.

(8) Citations issued by a conservation officer for any violation of the laws for the protection of wild animals, birds and fish, the trespass laws, the litter laws, and the boating laws shall be issued on a uniform citation form consisting of an original and at least two (2) copies. Such citation shall show, among other necessary information, the name of the issuing officer, the name of the court in which the cause is to be heard, and the date and time the person charged with a violation is to appear to answer the charge. The uniform citation form shall make a provision on it for information that will constitute a complaint charging the offense for which the citation was issued and, when duly sworn to and filed with a court of competent jurisdiction, prosecution may proceed under that complaint.

SECTION 33. Section 49-5-115, Mississippi Code of 1972, is amended as follows:

49-5-115. (a) Any person who violates the provisions of subsection (c) of Section 49-5-107, or any regulations issued under Section 49-5-107 or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a Class I violation and punished as provided in Section 49-7-141.

(b) Any person who violates the provisions of subsection (c) of Section 49-5-109, or any regulations issued pursuant thereto or whoever fails to procure or violates the terms of any permit issued under subsections (d) and (e) of Section 49-5-111 is guilty

of a Class I violation and is punishable as provided under Section 49-7-141.

(c) All law enforcement and management officers of the commission and other law enforcement officers authorized to enforce the laws of the State of Mississippi are authorized to carry out the provisions of Sections 49-5-101 through 49-5-119. Any officer or agent may, without warrant, arrest any person who the officer or agent has probable cause to believe is violating, in his presence or view, any section, regulation or permit provided for by Sections 49-5-101 through 49-5-119. An officer or agent who has made an arrest of a person for any such violation may search the person or business records at the time of arrest * * *.

(d) * * * Upon conviction of a violation of Sections 49-5-101 through 49-5-119, equipment, merchandise, wildlife, or records subject to being seized and forfeited under * * * Sections 1 through 32 of House Bill No. , 2021 Regular Session, shall be held by an officer or agent of the commission pending disposition of * * * forfeiture proceedings, and may be forfeited to the state for destruction or disposition as the * * * court may deem appropriate. Prior to forfeiture, the * * * court may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping, costs thereof to be assessable to the defendant. The commission is authorized to issue regulations to implement this subsection.

SECTION 34. Section 49-7-81, Mississippi Code of 1972, is amended as follows:

49-7-81. (1) It is unlawful to take or kill game fish in any manner other than by hook and line with one or more hooks, or by use of a trot or troll line. Dip or landing nets may be used when landing a fish caught by hook and line, trot or troll lines. Shad and minnows may only be taken as bait with the aid of a dip or landing net, cast nets, boat-mounted scoops and wire baskets by residents for personal use in sportfishing. However, in private ponds or borrow pits or overflow ponds which go dry in summer and cut off from the regular streams, dip nets may be used for capturing or rescuing game fish. It is unlawful to kill or take fish of any species at any time or anywhere by mudding, or by the use of lime, poison, dynamite, India berries, weeds and walnuts, giant powder, gunpowder, or any other explosive, and no nongame gross fish shall be taken by the use of nets, seines or traps for personal use without a commercial fishing license. It is unlawful to set any freshwater commercial fishing equipment so that it extends more than halfway across the width of any stream, channel, drain or other body of water, and if commercial fishing equipment is placed in water, each piece of equipment shall be placed at least one hundred (100) yards apart. The commission shall have the authority to fix the minimum size mesh for use in barrel nets, hoop nets and seines for use in the freshwaters of this state regulated by the Commission on Wildlife, Fisheries and Parks.

This authority given the commission shall not be extended to the regulation of mesh size for use in marine waters. Notwithstanding anything in this or any other section to the contrary, any person in Mississippi fishing with barrel nets, hoop nets or seines in any waters of common boundary between Mississippi and another state may use a mesh size in such nets which is the same as the mesh size allowed in the other state, where the other state allows a mesh size in such nets which is smaller than the mesh size otherwise allowable in Mississippi.

(2) It is unlawful for any person to catch or destroy fish by the use of dynamite, gunpowder or other explosive substance.

(3) It is unlawful for any person to use a telephone, battery or any other electrically operated device for the purpose of killing or capturing fish.

(4) It is unlawful for any person to use any chemical of any kind in any stream or any lake where the public fishes for the purpose of killing or taking fish, except that this provision shall not be construed to apply to any owner of any fish pond using such chemical in his own private pond.

(5) It is unlawful for any person to poison any fish by mingling in the water any substance calculated and intended to stupefy or destroy fish.

(6) It is unlawful for any person to fish any equipment in the waters of the state of any size or type that is not allowed by the commission.

(7) Any hoop net, barrel net, seine, gill net, slat baskets, trammel net or untagged commercial fishing gear or devices being fished in public waters may be seized and held as evidence and upon conviction, shall be subject to forfeiture pursuant to Sections 1 through 32 of House Bill No. , 2021 Regular Session.

(8) Any person violating the provisions of subsections (2), (3), (4), (5) and (6) of this section is guilty of a Class I violation and, upon conviction, shall be punished as provided in Section 49-7-141.

SECTION 35. Section 49-7-91, Mississippi Code of 1972, is amended as follows:

49-7-91. (1) It is unlawful for any person, firm, or corporation to fish commercially at any time in Muddy Bayou, in Warren County, Mississippi.

(2) The department may enforce this section and seize and confiscate all commercial nets and seines used in Muddy Bayou, in Warren County, Mississippi, or on any part of the bayou, either along the length or at its two (2) openings in and to Eagle Lake and Steele Bayou.

(3) Any person violating this section is guilty of a misdemeanor and shall be fined not less than Ten Dollars ($10.00), nor more than One Hundred Dollars ($100.00), or be imprisoned not more than three (3) months, or both; and in addition the department shall seize and confiscate all commercial nets and seines used for such purpose, and upon conviction, dispose of the

same pursuant to Sections 1 through 32 of House Bill No. , 2021 Regular Session. The * * * proceeds of the forfeited property must be deposited to the credit of the State Game and Fish Fund in the State General Fund.

SECTION 36. Sections 49-7-103, 49-7-251, 49-7-253, 49-7-255 and 49-7-257, Mississippi Code of 1972, which authorize and prescribe the procedure for the seizure and forfeiture of property used in connection with violations of the state game and fish laws, are repealed.

SECTION 37. Section 59-21-33, Mississippi Code of 1972, which authorizes the seizure and forfeiture of boats and trailers with altered identification numbers, is repealed.

SECTION 38. This act shall take effect and be in force from and after July 1, 2021.