

By: Representative Fredericks

To: Judiciary A

HOUSE BILL NO. 1273

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE PENALTIES FOR POSSESSION OF SCHEDULE I OR II
3 CONTROLLED SUBSTANCES; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 41-29-139, Mississippi Code of 1972, is
6 amended as follows:

7 41-29-139. (a) Except as authorized by this article, it is
8 unlawful for any person knowingly or intentionally:

9 (1) To sell, barter, transfer, manufacture, distribute,
10 dispense or possess with intent to sell, barter, transfer,
11 manufacture, distribute or dispense, a controlled substance; or

12 (2) To create, sell, barter, transfer, distribute,
13 dispense or possess with intent to create, sell, barter, transfer,
14 distribute or dispense, a counterfeit substance.

15 (b) Except as otherwise provided in subsections (f) and (g)
16 of this section or in Section 41-29-142, any person who violates
17 subsection (a) of this section shall be sentenced as follows:

18 (1) In the case of controlled substances classified in
19 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
20 except one (1) ounce or less of marihuana, and except a first
21 offender as defined in Section 41-29-149(e) who violates
22 subsection (a) of this section with respect to less than one (1)
23 kilogram but more than one (1) ounce of marihuana, such person
24 may, upon conviction, be imprisoned for not more than thirty (30)
25 years and shall be fined not less than Five Thousand Dollars
26 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or

27 both;

28 (2) In the case of a first offender who violates
29 subsection (a) of this section with an amount less than one (1)
30 kilogram but more than one (1) ounce of marihuana as classified in
31 Schedule I, as set out in Section 41-29-113, such person is guilty
32 of a felony and upon conviction may be imprisoned for not more
33 than twenty (20) years or fined not more than Thirty Thousand
34 Dollars (\$30,000.00), or both;

35 (3) In the case of one (1) ounce or less of marihuana,
36 such person may, upon conviction, be imprisoned for not more than
37 three (3) years or fined not more than Three Thousand Dollars
38 (\$3,000.00), or both;

39 (4) In the case of controlled substances classified in
40 Schedules III and IV, as set out in Sections 41-29-117 and
41 41-29-119, such person may, upon conviction, be imprisoned for not
42 more than twenty (20) years and shall be fined not less than One
43 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
44 Thousand Dollars (\$250,000.00), or both; and

45 (5) In the case of controlled substances classified in
46 Schedule V, as set out in Section 41-29-121, such person may, upon
47 conviction, be imprisoned for not more than ten (10) years and
48 shall be fined not less than One Thousand Dollars (\$1,000.00) nor
49 more than Fifty Thousand Dollars (\$50,000.00), or both.

50 (c) It is unlawful for any person knowingly or intentionally
51 to possess any controlled substance unless the substance was
52 obtained directly from, or pursuant to, a valid prescription or
53 order of a practitioner while acting in the course of his
54 professional practice, or except as otherwise authorized by this
55 article. The penalties for any violation of this subsection (c)
56 with respect to a controlled substance classified in Schedules I,
57 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
58 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be
59 based on dosage unit as defined herein or the weight of the
60 controlled substance as set forth herein as appropriate:

61 "Dosage unit (d.u.)" means a tablet or capsule, or in the
62 case of a liquid solution, one (1) milliliter. In the case of
63 lysergic acid diethylamide (LSD) the term, "dosage unit" means a

64 stamp, square, dot, microdot, tablet or capsule of a controlled
65 substance.

66 For any controlled substance that does not fall within the
67 definition of the term "dosage unit," the penalties shall be based
68 upon the weight of the controlled substance.

69 The weight set forth refers to the entire weight of any
70 mixture or substance containing a detectable amount of the
71 controlled substance.

72 If a mixture or substance contains more than one (1)
73 controlled substance, the weight of the mixture or substance is
74 assigned to the controlled substance that results in the greater
75 punishment.

76 Any person who violates this subsection with respect to:

77 (1) A controlled substance classified in Schedule I or
78 II, except marihuana, in the following amounts shall be charged
79 and sentenced as follows:

80 (A) Less than one-tenth (0.1) gram or one (1)
81 dosage unit or less may be charged as a misdemeanor or felony. If
82 charged by indictment as a felony: by imprisonment not less than
83 seven (7) years and a fine not more than Ten Thousand Dollars
84 (\$10,000.00). If charged as a misdemeanor: by imprisonment for
85 up to one (1) year and a fine not more than One Thousand Dollars
86 (\$1,000.00).

87 (B) One-tenth (0.1) gram but less than two (2)
88 grams or two (2) dosage units but less than ten (10) dosage units,
89 by imprisonment for not less than seven (7) years nor more than
90 eight (8) years and a fine of not more than Fifty Thousand Dollars
91 (\$50,000.00).

92 (C) Two (2) grams but less than ten (10) grams or
93 ten (10) dosage units but less than twenty (20) dosage units, by
94 imprisonment for not less than seven (7) years nor more than
95 sixteen (16) years and a fine of not more than Two Hundred Fifty
96 Thousand Dollars (\$250,000.00).

97 (D) Ten (10) grams but less than thirty (30) grams
98 or twenty (20) dosage units but not more than forty (40) dosage
99 units, by imprisonment for not less than seven (7) years nor more
100 than twenty-four (24) years and a fine of not more than Five
101 Hundred Thousand Dollars (\$500,000.00).

102 (E) Thirty (30) grams or more or forty (40) dosage
103 units or more, by imprisonment for not less than ten (10) years
104 nor more than thirty (30) years and a fine of not more than One
105 Million Dollars (\$1,000,000.00).

106 (2) Marihuana in the following amounts shall be charged
107 and sentenced as follows:

108 (A) Thirty (30) grams or less * * * by a fine of
109 not less than One Hundred Dollars (\$100.00) nor more than Two
110 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph
111 shall be enforceable by summons, provided the offender provides
112 proof of identity satisfactory to the arresting officer and gives
113 written promise to appear in court satisfactory to the arresting
114 officer, as directed by the summons. A second conviction under
115 this section within two (2) years shall be punished by a fine of
116 Two Hundred Fifty Dollars (\$250.00) and not less than five (5)
117 days nor more than sixty (60) days in the county jail and
118 mandatory participation in a drug education program, approved by
119 the Division of Alcohol and Drug Abuse of the State Department of
120 Mental Health, unless the court enters a written finding that such
121 drug education program is inappropriate. A third or subsequent
122 conviction under this section within two (2) years is a
123 misdemeanor punishable by a fine of not less than Two Hundred
124 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
125 (\$500.00) and confinement for not less than five (5) days nor more
126 than six (6) months in the county jail. Upon a first or second
127 conviction under this section the courts shall forward a report of
128 such conviction to the Mississippi Bureau of Narcotics which shall
129 make and maintain a private, nonpublic record for a period not to

130 exceed two (2) years from the date of conviction. The private,
131 nonpublic record shall be solely for the use of the courts in
132 determining the penalties which attach upon conviction under this
133 section and shall not constitute a criminal record for the
134 purpose of private or administrative inquiry and the record of
135 each conviction shall be expunged at the end of the period of two
136 (2) years following the date of such conviction;

137 (B) Additionally, a person who is the operator of
138 a motor vehicle, who possesses on his person or knowingly keeps or
139 allows to be kept in a motor vehicle within the area of the
140 vehicle normally occupied by the driver or passengers, more than
141 one (1) gram, but not more than thirty (30) grams, of marihuana is
142 guilty of a misdemeanor and upon conviction may be fined not more
143 than One Thousand Dollars (\$1,000.00) and confined for not more
144 than ninety (90) days in the county jail. For the purposes of
145 this subsection, such area of the vehicle shall not include the
146 trunk of the motor vehicle or the areas not normally occupied by
147 the driver or passengers if the vehicle is not equipped with a
148 trunk. A utility or glove compartment shall be deemed to be
149 within the area occupied by the driver and passengers;

150 (C) More than thirty (30) grams but less than two
151 hundred fifty (250) grams may be fined not more than One Thousand
152 Dollars (\$1,000.00), or confined in the county jail for not more
153 than one (1) year, or both; or fined not more than Three Thousand
154 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
155 not more than three (3) years, or both;

156 (D) Two hundred fifty (250) grams but less than
157 five hundred (500) grams, by imprisonment for not less than two
158 (2) years nor more than eight (8) years and by a fine of not more
159 than Fifty Thousand Dollars (\$50,000.00);

160 (E) Five hundred (500) grams but less than one (1)
161 kilogram, by imprisonment for not less than four (4) years nor
162 more than sixteen (16) years and a fine of less than Two Hundred

163 Fifty Thousand Dollars (\$250,000.00);

164 (F) One (1) kilogram but less than five (5)
165 kilograms, by imprisonment for not less than six (6) years nor
166 more than twenty-four (24) years and a fine of not more than Five
167 Hundred Thousand Dollars (\$500,000.00);

168 (G) Five (5) kilograms or more, by imprisonment
169 for not less than ten (10) years nor more than thirty (30) years
170 and a fine of not more than One Million Dollars (\$1,000,000.00).

171 (3) A controlled substance classified in Schedule III,
172 IV or V as set out in Sections 41-29-117 through 41-29-121, upon
173 conviction, may be punished as follows:

174 (A) Less than fifty (50) grams or less than one
175 hundred (100) dosage units is a misdemeanor and punishable by not
176 more than one (1) year and a fine of not more than One Thousand
177 Dollars (\$1,000.00).

178 (B) Fifty (50) grams but less than one hundred
179 fifty (150) grams or one hundred (100) dosage units but less than
180 five hundred (500) dosage units, by imprisonment for not less than
181 one (1) year nor more than four (4) years and a fine of not more
182 than Ten Thousand Dollars (\$10,000.00).

183 (C) One hundred fifty (150) grams but less than
184 three hundred (300) grams or five hundred (500) dosage units but
185 less than one thousand (1,000) dosage units, by imprisonment for
186 not less than two (2) years nor more than eight (8) years and a
187 fine of not more than Fifty Thousand Dollars (\$50,000.00).

188 (D) Three hundred (300) grams but less than five
189 hundred (500) grams or one thousand (1,000) dosage units but less
190 than two thousand five hundred (2,500) dosage units, by
191 imprisonment for not less than four (4) years nor more than
192 sixteen (16) years and a fine of not more than Two Hundred Fifty
193 Thousand Dollars (\$250,000.00).

194 (E) More than five hundred (500) grams or more
195 than two thousand five hundred (2,500) dosage units, by

196 imprisonment for not less than six (6) years nor more than
197 twenty-four (24) years and a fine of not more than Five Hundred
198 Thousand Dollars (\$500,000.00).

199 (d) (1) It is unlawful for a person who is not authorized
200 by the State Board of Medical Licensure, State Board of Pharmacy,
201 or other lawful authority to use, or to possess with intent to
202 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
203 manufacture, compound, convert, produce, process, prepare, test,
204 analyze, pack, repack, store, contain, conceal, inject, ingest,
205 inhale or otherwise introduce into the human body a controlled
206 substance in violation of the Uniform Controlled Substances Law.
207 Any person who violates this subsection is guilty of a misdemeanor
208 and upon conviction may be confined in the county jail for not
209 more than six (6) months, or fined not more than Five Hundred
210 Dollars (\$500.00), or both; however, no person shall be charged
211 with a violation of this subsection when such person is also
212 charged with the possession of one (1) ounce or less of marihuana
213 under subsection (c)(2)(A) of this section.

214 (2) It is unlawful for any person to deliver, sell,
215 possess with intent to deliver or sell, or manufacture with intent
216 to deliver or sell, paraphernalia, knowing, or under circumstances
217 where one reasonably should know, that it will be used to plant,
218 propagate, cultivate, grow, harvest, manufacture, compound,
219 convert, produce, process, prepare, test, analyze, pack, repack,
220 store, contain, conceal, inject, ingest, inhale, or otherwise
221 introduce into the human body a controlled substance in violation
222 of the Uniform Controlled Substances Law. Any person who violates
223 this subsection is guilty of a misdemeanor and upon conviction
224 may be confined in the county jail for not more than six (6)
225 months, or fined not more than Five Hundred Dollars (\$500.00), or
226 both.

227 (3) Any person eighteen (18) years of age or over who
228 violates subsection (d)(2) of this section by delivering or

229 selling paraphernalia to a person under eighteen (18) years of age
230 who is at least three (3) years his junior is guilty of a
231 misdemeanor and upon conviction may be confined in the county jail
232 for not more than one (1) year, or fined not more than One
233 Thousand Dollars (\$1,000.00), or both.

234 (4) It is unlawful for any person to place in any
235 newspaper, magazine, handbill, or other publication any
236 advertisement, knowing, or under circumstances where one
237 reasonably should know, that the purpose of the advertisement, in
238 whole or in part, is to promote the sale of objects designed or
239 intended for use as paraphernalia. Any person who violates this
240 subsection is guilty of a misdemeanor and upon conviction may be
241 confined in the county jail for not more than six (6) months, or
242 fined not more than Five Hundred Dollars (\$500.00), or both.

243 (e) It shall be unlawful for any physician practicing
244 medicine in this state to prescribe, dispense or administer any
245 amphetamine or amphetamine-like anorectics and/or central nervous
246 system stimulants classified in Schedule II, pursuant to Section
247 41-29-115, for the exclusive treatment of obesity, weight control
248 or weight loss. Any person who violates this subsection, upon
249 conviction, is guilty of a misdemeanor and may be confined for a
250 period not to exceed six (6) months, or fined not more than One
251 Thousand Dollars (\$1,000.00), or both.

252 (f) Except as otherwise authorized in this article, any
253 person twenty-one (21) years of age or older who knowingly sells,
254 barter, transfers, manufactures, distributes or dispenses during
255 any twelve (12) consecutive month period: (i) ten (10) pounds or
256 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
257 two (2) or more ounces of cocaine or of any mixture containing
258 cocaine as described in Section 41-29-105(s), Mississippi Code of
259 1972; or (iv) one hundred (100) or more dosage units of morphine,
260 Demerol or Dilaudid, shall be guilty of a felony and, upon
261 conviction thereof, shall be sentenced to life imprisonment and

262 such sentence shall not be reduced or suspended nor shall such
263 person be eligible for probation or parole, the provisions of
264 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
265 of 1972, to the contrary notwithstanding. The provisions of this
266 subsection shall not apply to any person who furnishes information
267 and assistance to the bureau or its designee which, in the opinion
268 of the trial judge objectively should or would have aided in the
269 arrest or prosecution of others who violate this subsection. The
270 accused shall have adequate opportunity to develop and make a
271 record of all information and assistance so furnished.

272 (g) (1) Any person trafficking in controlled substances
273 shall be guilty of a felony and upon conviction shall be
274 imprisoned for a term of thirty (30) years and such sentence shall
275 not be reduced or suspended nor shall such person be eligible for
276 probation or parole, the provisions of Sections 41-29-149,
277 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
278 contrary notwithstanding and shall be fined not less than Five
279 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
280 (\$1,000,000.00).

281 (2) "Trafficking in controlled substances" as used
282 herein means to engage in three (3) or more component offenses
283 within any twelve (12) consecutive month period where at least two
284 (2) of the component offenses occurred in different counties. A
285 component offense is any act which would constitute a violation of
286 subsection (a) of this section. Prior convictions shall not be
287 used as component offenses to establish the charge of trafficking
288 in controlled substances.

289 (3) The charge of trafficking in controlled substances
290 shall be set forth in one (1) count of an indictment with each of
291 the component offenses alleged therein and it may be charged and
292 tried in any county where a component offense occurred. An
293 indictment for trafficking in controlled substances may also be
294 returned by the State Grand Jury of Mississippi provided at least

295 two (2) of the component offenses occurred in different circuit
296 court districts.

297 SECTION 2. This act shall take effect and be in force from
298 and after July 1, 1999.