

By: Senator(s) Walls

To: Judiciary

SENATE BILL NO. 2915

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,  
2 TO CORRECT AN ERROR IN THE WORDING OF THE PENALTY FOR CERTAIN  
3 CONTROLLED SUBSTANCES VIOLATIONS; 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 one (1) nor more than four (4) years and a fine not more than Ten  
84 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by  
85 imprisonment for up to one (1) year and a fine not more than One  
86 Thousand Dollars (\$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 two (2) 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 four (4) 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 six (6) 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 not  
109 less than One Hundred Dollars (\$100.00) nor more than Two Hundred  
110 Fifty Dollars (\$250.00). The provisions of this paragraph shall  
111 be enforceable by summons, provided the offender provides proof of  
112 identity satisfactory to the arresting officer and gives written  
113 promise to appear in court satisfactory to the arresting officer,  
114 as directed by the summons. A second conviction under this  
115 section within two (2) years shall be punished by a fine of Two  
116 Hundred Fifty Dollars (\$250.00) and not less than five (5) days  
117 nor more than sixty (60) days in the county jail and mandatory  
118 participation in a drug education program, approved by the  
119 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 purpose  
134 of private or administrative inquiry and the record of each  
135 conviction shall be expunged at the end of the period of two (2)  
136 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) \* \* \* Five hundred (500) grams or more or two  
195 thousand five hundred (2,500) dosage units or more, 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 may  
224 be confined in the county jail for not more than six (6) months,  
225 or fined not more than Five Hundred Dollars (\$500.00), or both.

226 (3) Any person eighteen (18) years of age or over who  
227 violates subsection (d)(2) of this section by delivering or  
228 selling paraphernalia to a person under eighteen (18) years of age

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

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

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

251 (f) Except as otherwise authorized in this article, any  
252 person twenty-one (21) years of age or older who knowingly sells,  
253 barter, transfers, manufactures, distributes or dispenses during  
254 any twelve (12) consecutive month period: (i) ten (10) pounds or  
255 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)  
256 two (2) or more ounces of cocaine or of any mixture containing  
257 cocaine as described in Section 41-29-105(s), Mississippi Code of  
258 1972; or (iv) one hundred (100) or more dosage units of morphine,  
259 Demerol or Dilaudid, shall be guilty of a felony and, upon  
260 conviction thereof, shall be sentenced to life imprisonment and  
261 such sentence shall not be reduced or suspended nor shall such



262 person be eligible for probation or parole, the provisions of  
263 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code  
264 of 1972, to the contrary notwithstanding. The provisions of this  
265 subsection shall not apply to any person who furnishes information  
266 and assistance to the bureau or its designee which, in the opinion  
267 of the trial judge objectively should or would have aided in the  
268 arrest or prosecution of others who violate this subsection. The  
269 accused shall have adequate opportunity to develop and make a  
270 record of all information and assistance so furnished.

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

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

288 (3) The charge of trafficking in controlled substances  
289 shall be set forth in one (1) count of an indictment with each of  
290 the component offenses alleged therein and it may be charged and  
291 tried in any county where a component offense occurred. An  
292 indictment for trafficking in controlled substances may also be  
293 returned by the State Grand Jury of Mississippi provided at least  
294 two (2) of the component offenses occurred in different circuit

295 court districts.

296 SECTION 2. This act shall take effect and be in force from  
297 and after its passage.