

By: Representative Banks

To: Judiciary A

HOUSE BILL NO. 1094

1 AN ACT TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION
 2 41-29-136, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PERSON
 3 ARRESTED AND CHARGED WITH ANY VIOLATION OF THE UNIFORM CONTROLLED
 4 SUBSTANCES LAW MUST APPEAR BEFORE A JUDGE BEFORE BAIL MAY BE
 5 AUTHORIZED; TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
 6 TO DELETE THE PROVISION WHICH ALLOWS ANY PERSON WHO IS ARRESTED
 7 FOR POSSESSION OF ONE OUNCE OR LESS OF MARIHUANA TO GIVE A WRITTEN
 8 PROMISE TO APPEAR IN COURT TO HIS ARRESTING OFFICER; AND FOR
 9 RELATED PURPOSES.

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

11 SECTION 1. The following shall be codified as Section
 12 41-29-136, Mississippi Code of 1972:

13 41-29-136. Bail for a person who is arrested and charged
 14 with any violation of this chapter may not be authorized, set or
 15 determined except upon appearance of such person before a judge or
 16 a magistrate vested with judicial authority.

17 SECTION 2. Section 41-29-139, Mississippi Code of 1972, is
 18 amended as follows:

19 41-29-139. (a) Except as authorized by this article, it is
 20 unlawful for any person knowingly or intentionally:

21 (1) To sell, barter, transfer, manufacture, distribute,
 22 dispense or possess with intent to sell, barter, transfer,
 23 manufacture, distribute or dispense, a controlled substance; or

24 (2) To create, sell, barter, transfer, distribute,
 25 dispense or possess with intent to create, sell, barter, transfer,
 26 distribute or dispense, a counterfeit substance.

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

30 (1) In the case of controlled substances classified in
31 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
32 except one (1) ounce or less of marihuana, and except a first
33 offender as defined in Section 41-29-149(e) who violates
34 subsection (a) of this section with respect to less than one (1)
35 kilogram but more than one (1) ounce of marihuana, such person
36 may, upon conviction, be imprisoned for not more than thirty (30)
37 years and shall be fined not less than Five Thousand Dollars
38 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
39 both;

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

47 (3) In the case of one (1) ounce or less of marihuana,
48 such person may, upon conviction, be imprisoned for not more than
49 three (3) years or fined not more than Three Thousand Dollars
50 (\$3,000.00), or both;

51 (4) In the case of controlled substances classified in
52 Schedules III and IV, as set out in Sections 41-29-117 and
53 41-29-119, such person may, upon conviction, be imprisoned for not
54 more than twenty (20) years and shall be fined not less than One
55 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
56 Thousand Dollars (\$250,000.00), or both; and

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

62 (c) It is unlawful for any person knowingly or intentionally
63 to possess any controlled substance unless the substance was
64 obtained directly from, or pursuant to, a valid prescription or
65 order of a practitioner while acting in the course of his
66 professional practice, or except as otherwise authorized by this
67 article. The penalties for any violation of this subsection (c)
68 with respect to a controlled substance classified in Schedules I,
69 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
70 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be
71 based on dosage unit as defined herein or the weight of the
72 controlled substance as set forth herein as appropriate:

73 "Dosage unit (d.u.)" means a tablet or capsule, or in the
74 case of a liquid solution, one (1) milliliter. In the case of
75 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
76 stamp, square, dot, microdot, tablet or capsule of a controlled
77 substance.

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

81 The weight set forth refers to the entire weight of any
82 mixture or substance containing a detectable amount of the
83 controlled substance.

84 If a mixture or substance contains more than one (1)
85 controlled substance, the weight of the mixture or substance is
86 assigned to the controlled substance that results in the greater
87 punishment.

88 Any person who violates this subsection with respect to:

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

92 (A) Less than one-tenth (0.1) gram or one (1)
93 dosage unit or less may be charged as a misdemeanor or felony. If
94 charged by indictment as a felony: by imprisonment not less than

95 one (1) nor more than four (4) years and a fine not more than Ten
96 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by
97 imprisonment for up to one (1) year and a fine not more than One
98 Thousand Dollars (\$1,000.00).

99 (B) One-tenth (0.1) gram but less than two (2)
100 grams or two (2) dosage units but less than ten (10) dosage units,
101 by imprisonment for not less than two (2) years nor more than
102 eight (8) years and a fine of not more than Fifty Thousand Dollars
103 (\$50,000.00).

104 (C) Two (2) grams but less than ten (10) grams or
105 ten (10) dosage units but less than twenty (20) dosage units, by
106 imprisonment for not less than four (4) years nor more than
107 sixteen (16) years and a fine of not more than Two Hundred Fifty
108 Thousand Dollars (\$250,000.00).

109 (D) Ten (10) grams but less than thirty (30) grams
110 or twenty (20) dosage units but not more than forty (40) dosage
111 units, by imprisonment for not less than six (6) years nor more
112 than twenty-four (24) years and a fine of not more than Five
113 Hundred Thousand Dollars (\$500,000.00).

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

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

120 (A) Thirty (30) grams or less by a fine of not
121 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
122 Fifty Dollars (\$250.00). * * * A second conviction under this
123 section within two (2) years shall be punished by a fine of Two
124 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
125 nor more than sixty (60) days in the county jail and mandatory
126 participation in a drug education program, approved by the
127 Division of Alcohol and Drug Abuse of the State Department of

128 Mental Health, unless the court enters a written finding that such
129 drug education program is inappropriate. A third or subsequent
130 conviction under this section within two (2) years is a
131 misdemeanor punishable by a fine of not less than Two Hundred
132 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
133 (\$500.00) and confinement for not less than five (5) days nor more
134 than six (6) months in the county jail. Upon a first or second
135 conviction under this section the courts shall forward a report of
136 such conviction to the Mississippi Bureau of Narcotics which shall
137 make and maintain a private, nonpublic record for a period not to
138 exceed two (2) years from the date of conviction. The private,
139 nonpublic record shall be solely for the use of the courts in
140 determining the penalties which attach upon conviction under this
141 section and shall not constitute a criminal record for the purpose
142 of private or administrative inquiry and the record of each
143 conviction shall be expunged at the end of the period of two (2)
144 years following the date of such conviction;

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

158 (C) More than thirty (30) grams but less than two
159 hundred fifty (250) grams may be fined not more than One Thousand
160 Dollars (\$1,000.00), or confined in the county jail for not more

161 than one (1) year, or both; or fined not more than Three Thousand
162 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
163 not more than three (3) years, or both;

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

168 (E) Five hundred (500) grams but less than one (1)
169 kilogram, by imprisonment for not less than four (4) years nor
170 more than sixteen (16) years and a fine of less than Two Hundred
171 Fifty Thousand Dollars (\$250,000.00);

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

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

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

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

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

191 (C) One hundred fifty (150) grams but less than
192 three hundred (300) grams or five hundred (500) dosage units but
193 less than one thousand (1,000) dosage units, by imprisonment for

194 not less than two (2) years nor more than eight (8) years and a
195 fine of not more than Fifty Thousand Dollars (\$50,000.00).

196 (D) Three hundred (300) grams but less than five
197 hundred (500) grams or one thousand (1,000) dosage units but less
198 than two thousand five hundred (2,500) dosage units, by
199 imprisonment for not less than four (4) years nor more than
200 sixteen (16) years and a fine of not more than Two Hundred Fifty
201 Thousand Dollars (\$250,000.00).

202 (E) Five hundred (500) grams or more or two
203 thousand five hundred (2,500) dosage units or more, by
204 imprisonment for not less than six (6) years nor more than
205 twenty-four (24) years and a fine of not more than Five Hundred
206 Thousand Dollars (\$500,000.00).

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

222 (2) It is unlawful for any person to deliver, sell,
223 possess with intent to deliver or sell, or manufacture with intent
224 to deliver or sell, paraphernalia, knowing, or under circumstances
225 where one reasonably should know, that it will be used to plant,
226 propagate, cultivate, grow, harvest, manufacture, compound,

227 convert, produce, process, prepare, test, analyze, pack, repack,
228 store, contain, conceal, inject, ingest, inhale, or otherwise
229 introduce into the human body a controlled substance in violation
230 of the Uniform Controlled Substances Law. Any person who violates
231 this subsection is guilty of a misdemeanor and upon conviction may
232 be confined in the county jail for not more than six (6) months,
233 or fined not more than Five Hundred Dollars (\$500.00), or both.

234 (3) Any person eighteen (18) years of age or over who
235 violates subsection (d)(2) of this section by delivering or
236 selling paraphernalia to a person under eighteen (18) years of age
237 who is at least three (3) years his junior is guilty of a
238 misdemeanor and upon conviction may be confined in the county jail
239 for not more than one (1) year, or fined not more than One
240 Thousand Dollars (\$1,000.00), or both.

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

250 (e) It shall be unlawful for any physician practicing
251 medicine in this state to prescribe, dispense or administer any
252 amphetamine or amphetamine-like anorectics and/or central nervous
253 system stimulants classified in Schedule II, pursuant to Section
254 41-29-115, for the exclusive treatment of obesity, weight control
255 or weight loss. Any person who violates this subsection, upon
256 conviction, is guilty of a misdemeanor and may be confined for a
257 period not to exceed six (6) months, or fined not more than One
258 Thousand Dollars (\$1,000.00), or both.

259 (f) Except as otherwise authorized in this article, any
260 person twenty-one (21) years of age or older who knowingly sells,
261 barter, transfers, manufactures, distributes or dispenses during
262 any twelve (12) consecutive month period: (i) ten (10) pounds or
263 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
264 two (2) or more ounces of cocaine or of any mixture containing
265 cocaine as described in Section 41-29-105(s), Mississippi Code of
266 1972; or (iv) one hundred (100) or more dosage units of morphine,
267 Demerol or Dilaudid, shall be guilty of a felony and, upon
268 conviction thereof, shall be sentenced to life imprisonment and
269 such sentence shall not be reduced or suspended nor shall such
270 person be eligible for probation or parole, the provisions of
271 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
272 of 1972, to the contrary notwithstanding. The provisions of this
273 subsection shall not apply to any person who furnishes information
274 and assistance to the bureau or its designee which, in the opinion
275 of the trial judge objectively should or would have aided in the
276 arrest or prosecution of others who violate this subsection. The
277 accused shall have adequate opportunity to develop and make a
278 record of all information and assistance so furnished.

279 (g) (1) Any person trafficking in controlled substances
280 shall be guilty of a felony and upon conviction shall be
281 imprisoned for a term of thirty (30) years and such sentence shall
282 not be reduced or suspended nor shall such person be eligible for
283 probation or parole, the provisions of Sections 41-29-149,
284 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
285 contrary notwithstanding and shall be fined not less than Five
286 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
287 (\$1,000,000.00).

288 (2) "Trafficking in controlled substances" as used
289 herein means to engage in three (3) or more component offenses
290 within any twelve (12) consecutive month period where at least two
291 (2) of the component offenses occurred in different counties. A

292 component offense is any act which would constitute a violation of
293 subsection (a) of this section. Prior convictions shall not be
294 used as component offenses to establish the charge of trafficking
295 in controlled substances.

296 (3) The charge of trafficking in controlled substances
297 shall be set forth in one (1) count of an indictment with each of
298 the component offenses alleged therein and it may be charged and
299 tried in any county where a component offense occurred. An
300 indictment for trafficking in controlled substances may also be
301 returned by the State Grand Jury of Mississippi provided at least
302 two (2) of the component offenses occurred in different circuit
303 court districts.

304 SECTION 3. This act shall take effect and be in force from
305 and after July 1, 2001.