

By: Representative Read

To: Public Health and
Welfare

HOUSE BILL NO. 1163

1 AN ACT TO AMEND SECTIONS 41-29-109, 41-29-125, 41-29-133,
2 41-29-157, 41-29-159, 41-29-167 AND 41-29-171, MISSISSIPPI CODE OF
3 1972, TO PROVIDE THAT UNDER THE UNIFORM CONTROLLED SUBSTANCES LAW,
4 THE MISSISSIPPI BOARD OF NURSING IS RESPONSIBLE FOR THE LEGITIMATE
5 DRUG TRAFFIC AMONG NURSES; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 41-29-109, Mississippi Code of 1972, is
8 amended as follows:

9 41-29-109. The Mississippi Bureau of Narcotics shall have
10 the full cooperation and use of facilities and personnel of the
11 State Board of Pharmacy, the State Board of Medical Licensure, the
12 State Board of Dental Examiners, the Mississippi Board of Nursing,
13 the district and county attorneys, and of the Attorney General's
14 office.

15 It shall be the duty of all duly sworn peace officers of the
16 State of Mississippi to enforce the provisions of this article
17 with reference to illicit narcotic and drug traffic. The
18 provisions of this article may likewise be enforced by agents of
19 the United States Drug Enforcement Administration.

20 SECTION 2. Section 41-29-125, Mississippi Code of 1972, is
21 amended as follows:

22 41-29-125. The State Board of Pharmacy may promulgate rules
23 and regulations relating to the registration and control of the
24 manufacture, distribution and dispensing of controlled substances
25 within this state.

26 (a) Every person who manufactures, distributes or
27 dispenses any controlled substance within this state, or who
28 proposes to engage in the manufacture, distribution or dispensing

29 of any controlled substance within this state, must obtain a
30 registration issued by the State Board of Pharmacy, the State
31 Board of Medical Licensure, the State Board of Dental Examiners or
32 the Mississippi Board of Nursing, as appropriate, in accordance
33 with its rules. Such registration shall be obtained annually or
34 biennially, as specified by the issuing board, and a reasonable
35 fee may be charged by the issuing board for such registration.

36 (b) Persons registered by the State Board of Pharmacy,
37 with the consent of the United States Drug Enforcement
38 Administration and the State Board of Medical Licensure, the State
39 Board of Dental Examiners or the Mississippi Board of Nursing, to
40 manufacture, distribute, dispense or conduct research with
41 controlled substances may possess, manufacture, distribute,
42 dispense or conduct research with those substances to the extent
43 authorized by their registration and in conformity with the other
44 provisions of this article.

45 (c) The following persons need not register and may
46 lawfully possess controlled substances under this article:

47 (1) An agent or employee of any registered
48 manufacturer, distributor or dispenser of any controlled substance
49 if he is acting in the usual course of his business or employment;

50 (2) A common or contract carrier or warehouseman,
51 or an employee thereof, whose possession of any controlled
52 substance is in the usual course of business or employment;

53 (3) An ultimate user or a person in possession of
54 any controlled substance pursuant to a lawful order of a
55 practitioner or in lawful possession of a Schedule V substance as
56 defined in Section 41-29-121.

57 (d) The State Board of Pharmacy may waive by rule the
58 requirement for registration of certain manufacturers,
59 distributors or dispensers if it finds it consistent with the
60 public health and safety.

61 (e) A separate registration is required at each
62 principal place of business or professional practice where the
63 applicant manufactures, distributes or dispenses controlled
64 substances.

65 (f) The State Board of Pharmacy, the Mississippi Bureau
66 of Narcotics, the State Board of Medical Licensure, the State
67 Board of Dental Examiners and the Mississippi Board of Nursing may
68 inspect the establishment of a registrant or applicant for
69 registration in accordance with the regulations of these agencies
70 as approved by the board.

71 SECTION 3. Section 41-29-133, Mississippi Code of 1972, is
72 amended as follows:

73 41-29-133. Persons registered to manufacture, distribute, or
74 dispense controlled substances under this article shall keep
75 records and maintain inventories in conformance with the
76 record-keeping and inventory requirements of federal law and with
77 any additional rules the State Board of Pharmacy, the State Board
78 of Medical Licensure, the State Board of Dental Examiners or the
79 Mississippi Board of Nursing may issue.

80 SECTION 4. Section 41-29-157, Mississippi Code of 1972, is
81 amended as follows:

82 41-29-157. (a) Issuance and execution of administrative
83 inspection warrants and search warrants shall be as follows,
84 except as provided in subsection (c) of this section:

85 (1) A judge of any state court of record, or any
86 justice court judge within his jurisdiction, and upon proper oath
87 or affirmation showing probable cause, may issue warrants for the
88 purpose of conducting administrative inspections authorized by
89 this article or rules thereunder, and seizures of property
90 appropriate to the inspections. For purposes of the issuance of
91 administrative inspection warrants, probable cause exists upon
92 showing a valid public interest in the effective enforcement of
93 this article or rules thereunder, sufficient to justify

94 administrative inspection of the area, premises, building or
95 conveyance in the circumstances specified in the application for
96 the warrant. All such warrants shall be served during normal
97 business hours;

98 (2) A search warrant shall issue only upon an affidavit
99 of a person having knowledge or information of the facts alleged,
100 sworn to before the judge or justice court judge and establishing
101 the grounds for issuing the warrant. If the judge or justice
102 court judge is satisfied that grounds for the application exist or
103 that there is probable cause to believe they exist, he shall issue
104 a warrant identifying the area, premises, building or conveyance
105 to be searched, the purpose of the search, and, if appropriate,
106 the type of property to be searched, if any. The warrant shall:

107 (A) State the grounds for its issuance and the
108 name of each person whose affidavit has been taken in support
109 thereof;

110 (B) Be directed to a person authorized by Section
111 41-29-159 to execute it;

112 (C) Command the person to whom it is directed to
113 inspect the area, premises, building or conveyance identified for
114 the purpose specified, and if appropriate, direct the seizure of
115 the property specified;

116 (D) Identify the item or types of property to be
117 seized, if any;

118 (E) Direct that it be served and designate the
119 judge or magistrate to whom it shall be returned;

120 (3) A warrant issued pursuant to this section must be
121 executed and returned within ten (10) days of its date unless,
122 upon a showing of a need for additional time, the court orders
123 otherwise. If property is seized pursuant to a warrant, a copy
124 shall be given to the person from whom or from whose premises the
125 property is taken, together with a receipt for the property taken.
126 The return of the warrant shall be made promptly, accompanied by a

127 written inventory of any property taken. The inventory shall be
128 made in the presence of the person executing the warrant and of
129 the person from whose possession or premises the property was
130 taken, if present, or in the presence of at least one (1) credible
131 person other than the person executing the warrant. A copy of the
132 inventory shall be delivered to the person from whom or from whose
133 premises the property was taken and to the applicant for the
134 warrant;

135 (4) The judge or justice court judge who has issued a
136 warrant shall attach thereto a copy of the return and all papers
137 returnable in connection therewith and file them with the clerk of
138 the appropriate state court for the judicial district in which the
139 inspection was made.

140 (b) The Mississippi Bureau of Narcotics, the State Board of
141 Pharmacy, * * * the State Board of Medical Licensure, the State
142 Board of Dental Examiners or the Mississippi Board of Nursing may
143 make administrative inspections of controlled premises in
144 accordance with the following provisions:

145 (1) For purposes of this section only, "controlled
146 premises" means:

147 (A) Places where persons registered or exempted
148 from registration requirements under this article are required to
149 keep records; and

150 (B) Places including factories, warehouses,
151 establishments and conveyances in which persons registered or
152 exempted from registration requirements under this article are
153 permitted to hold, manufacture, compound, process, sell, deliver,
154 or otherwise dispose of any controlled substance.

155 (2) When authorized by an administrative inspection
156 warrant issued in accordance with the conditions imposed in this
157 section, an officer or employee designated by the Mississippi
158 Bureau of Narcotics, the State Board of Pharmacy, the State Board
159 of Medical Licensure, the State Board of Dental Examiners or the

160 Mississippi Board of Nursing, upon presenting the warrant and
161 appropriate credentials to the owner, operator or agent in charge,
162 may enter controlled premises for the purpose of conducting an
163 administrative inspection.

164 (3) When authorized by an administrative inspection
165 warrant, an officer or employee designated by the Mississippi
166 Bureau of Narcotics, the State Board of Pharmacy, the State Board
167 of Medical Licensure, the State Board of Dental Examiners or the
168 Mississippi Board of Nursing may:

169 (A) Inspect and copy records required by this
170 article to be kept;

171 (B) Inspect, within reasonable limits and in a
172 reasonable manner, controlled premises and all pertinent
173 equipment, finished and unfinished material, containers and
174 labeling found therein, and, except as provided in paragraph (5)
175 of this subsection, all other things therein, including records,
176 files, papers, processes, controls and facilities bearing on
177 violation of this article; and

178 (C) Inventory any stock of any controlled
179 substance therein and obtain samples thereof.

180 (4) This section does not prevent the inspection
181 without a warrant of books and records pursuant to an
182 administrative subpoena, nor does it prevent entries and
183 administrative inspections, including seizures of property,
184 without a warrant:

185 (A) If the owner, operator or agent in charge of
186 the controlled premises consents;

187 (B) In situations presenting imminent danger to
188 health or safety;

189 (C) In situations involving inspection of
190 conveyances if there is reasonable cause to believe that the
191 mobility of the conveyance makes it impracticable to obtain a
192 warrant;

193 (D) In any other exceptional or emergency
194 circumstance where time or opportunity to apply for a warrant is
195 lacking; or

196 (E) In all other situations in which a warrant is
197 not constitutionally required.

198 (5) An inspection authorized by this section shall not
199 extend to financial data, sales data, other than shipment data, or
200 pricing data unless the owner, operator or agent in charge of the
201 controlled premises consents in writing.

202 (c) Any agent of the bureau authorized to execute a search
203 warrant involving controlled substances, the penalty for which is
204 imprisonment for more than one (1) year, may, without notice of
205 his authority and purpose, break open an outer door or inner door,
206 or window of a building, or any part of the building, if the judge
207 issuing the warrant:

208 (1) Is satisfied that there is probable cause to
209 believe that:

210 (A) The property sought may, and, if such notice
211 is given, will be easily and quickly destroyed or disposed of; or

212 (B) The giving of such notice will immediately
213 endanger the life or safety of the executing officer or another
214 person; and

215 (2) Has included in the warrant a direction that the
216 officer executing the warrant shall not be required to give such
217 notice.

218 Any officer acting under such warrant shall, as soon as
219 practical, after entering the premises, identify himself and give
220 the reasons and authority for his entrance upon the premises.

221 Search warrants which include the instruction that the
222 executing officer shall not be required to give notice of
223 authority and purpose as authorized by this subsection shall be
224 issued only by the county court or county judge in vacation,
225 chancery court or by the chancellor in vacation, by the circuit

226 court or circuit judge in vacation, or by a justice of the
227 Mississippi Supreme Court.

228 This subsection shall expire and stand repealed from and
229 after July 1, 1974, except that the repeal shall not affect the
230 validity or legality of any search authorized under this
231 subsection and conducted prior to July 1, 1974.

232 SECTION 5. Section 41-29-159, Mississippi Code of 1972, is
233 amended as follows:

234 41-29-159. (a) Any officer or employee of the Mississippi
235 Bureau of Narcotics, investigative unit of the State Board of
236 Pharmacy, investigative unit of the State Board of Medical
237 Licensure, investigative unit of the State Board of Dental
238 Examiners, investigative unit of the Mississippi Board of Nursing,
239 any duly sworn peace officer of the State of Mississippi, any
240 enforcement officer of the Mississippi Department of
241 Transportation, or any highway patrolman, may, while engaged in
242 the performance of his statutory duties:

243 (1) Carry firearms;

244 (2) Execute and serve search warrants, arrest warrants,
245 subpoenas, and summonses issued under the authority of this state;

246 (3) Make arrests without warrant for any offense under
247 this article committed in his presence, or if he has probable
248 cause to believe that the person to be arrested has committed or
249 is committing a crime; and

250 (4) Make seizures of property pursuant to this article.

251 (b) As divided among the Mississippi Bureau of Narcotics,
252 the State Board of Pharmacy, the State Board of Medical Licensure,
253 the State Board of Dental Examiners and the Mississippi Board of
254 Nursing, the primary responsibility of the illicit street traffic
255 or other illicit traffic of drugs is delegated to agents of the
256 Mississippi Bureau of Narcotics. The State Board of Pharmacy is
257 delegated the responsibility of regulating and checking the
258 legitimate drug traffic among pharmacists, pharmacies, hospitals,

259 nursing homes, drug manufacturers, and any other related
260 professions and facilities with the exception of the medical,
261 dental, nursing and veterinary professions. The State Board of
262 Medical Licensure is responsible for the legitimate drug traffic
263 among * * * physicians, podiatrists and veterinarians. The
264 Mississippi Board of Dental Examiners is responsible for the
265 legitimate drug traffic among dentists and dental hygienists. The
266 Mississippi Board of Nursing is responsible for the legitimate
267 drug traffic among nurses.

268 (c) The provisions of this section shall not be construed to
269 limit or preclude the detection or arrest of persons in violation
270 of Section 41-29-139 by any local law enforcement officer,
271 sheriff, deputy sheriff or peace officer.

272 (d) Agents of the bureau are * * * authorized to investigate
273 the circumstances of deaths which are caused by drug overdose or
274 which are believed to be caused by drug overdose.

275 (e) Any person who shall impersonate in any way the director
276 or any agent, or who shall in any manner hold himself out as
277 being, or represent himself as being, an officer or agent of the
278 Mississippi Bureau of Narcotics shall be guilty of a misdemeanor,
279 and upon conviction thereof shall be punished by a fine of not
280 less than One Hundred Dollars (\$100.00) nor more than Five Hundred
281 Dollars (\$500.00) or by imprisonment for not more than one (1)
282 year, or by both such fine and imprisonment.

283 SECTION 6. Section 41-29-167, Mississippi Code of 1972, is
284 amended as follows:

285 41-29-167. (a) The State Board of Medical Licensure, the
286 Mississippi Bureau of Narcotics, the State Board of
287 Pharmacy, * * * the State Board of Dental Examiners and the
288 Mississippi Board of Nursing shall cooperate with federal and
289 other state agencies in discharging their responsibilities
290 concerning traffic in controlled substances and in suppressing the
291 abuse of controlled substances. To this end, they may:

292 (1) Arrange for the exchange of information among
293 governmental officials concerning the use and abuse of controlled
294 substances;

295 (2) Coordinate and cooperate in training programs
296 concerning controlled substance law enforcement at local and state
297 levels;

298 (3) Cooperate with the United States Drug Enforcement
299 Administration by establishing a centralized unit to accept,
300 catalogue, file and collect statistics, including records of drug
301 dependent persons and other controlled substance law offenders
302 within the state, and make the information available for federal,
303 state and local law enforcement purposes; and

304 (4) Conduct programs of eradication aimed at destroying
305 wild or illicit growth of plant species from which controlled
306 substances may be extracted.

307 (b) Results, information and evidence received from the
308 United States Drug Enforcement Administration relating to the
309 regulatory functions of this article, including results of
310 inspections conducted by it may be relied and acted upon by the
311 Mississippi Bureau of Narcotics, the State Board of Pharmacy, the
312 State Board of Medical Licensure, the State Board of Dental
313 Examiners and the Mississippi Board of Nursing in the exercise of
314 their regulatory functions under this article.

315 SECTION 7. Section 41-29-171, Mississippi Code of 1972, is
316 amended as follows:

317 41-29-171. (a) The Mississippi Bureau of Narcotics, the
318 State Board of Pharmacy, the State Board of Medical Licensure,
319 the State Board of Dental Examiners and the Mississippi Board of
320 Nursing shall encourage research on misuse and abuse of controlled
321 substances. In connection with the research, and in furtherance
322 of the enforcement of this article they may:

323 (1) Establish methods to assess accurately the effects
324 of controlled substances and identify and characterize those with
325 potential for abuse;

326 (2) Make studies and undertake programs of research to:

327 (A) Develop new or improved approaches,
328 techniques, systems, equipment and devices to strengthen the
329 enforcement of this article;

330 (B) Determine patterns of misuse and abuse of
331 controlled substances and the social effects thereof; and

332 (C) Improve methods for preventing, predicting,
333 understanding and dealing with the misuse and abuse of controlled
334 substances;

335 (3) Enter into contracts with public agencies,
336 institutions of higher education, and private organizations or
337 individuals for the purpose of conducting research,
338 demonstrations, or special projects which bear directly on misuse
339 and abuse of controlled substances.

340 (b) The Mississippi Bureau of Narcotics and the State Board
341 of Education may enter into contracts for educational and research
342 activities without performance bonds.

343 (c) The board may authorize the possession and distribution
344 of controlled substances by persons engaged in research. Persons
345 who obtain this authorization are exempt from state prosecution
346 for possession and distribution of controlled substances to the
347 extent of the authorization.

348 SECTION 8. This act shall take effect and be in force from
349 and after July 1, 2001.