

By: Representative Read

To: Public Health and
Welfare

COMMITTEE SUBSTITUTE
FOR
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; TO PROVIDE FOR THE JOINT PROMULGATION
6 OF REGULATIONS BY THE STATE BOARD OF MEDICAL LICENSURE AND THE
7 MISSISSIPPI BOARD OF NURSING THAT AUTHORIZE NURSE PRACTITIONERS TO
8 DISPENSE CONTROLLED SUBSTANCES, THAT SPECIFY THE SCOPE AND EXTENT
9 OF THAT DISPENSING AUTHORITY, AND THAT PRESCRIBE THE EDUCATION
10 REQUIRED IN ORDER TO EXERCISE THAT DISPENSING AUTHORITY; TO
11 PROVIDE THAT THOSE REGULATIONS SHALL TAKE EFFECT NOT LATER THAN
12 JULY 1, 2002; AND FOR RELATED PURPOSES.

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

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

16 41-29-109. The Mississippi Bureau of Narcotics shall have
17 the full cooperation and use of facilities and personnel of the
18 State Board of Pharmacy, the State Board of Medical Licensure, the
19 State Board of Dental Examiners, the Mississippi Board of Nursing,
20 the district and county attorneys, and of the Attorney General's
21 office.

22 It shall be the duty of all duly sworn peace officers of the
23 State of Mississippi to enforce the provisions of this article
24 with reference to illicit narcotic and drug traffic. The
25 provisions of this article may likewise be enforced by agents of
26 the United States Drug Enforcement Administration.

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

29 41-29-125. The State Board of Pharmacy may promulgate rules
30 and regulations relating to the registration and control of the

31 manufacture, distribution and dispensing of controlled substances
32 within this state.

33 (a) Every person who manufactures, distributes or
34 dispenses any controlled substance within this state, or who
35 proposes to engage in the manufacture, distribution or dispensing
36 of any controlled substance within this state, must obtain a
37 registration issued by the State Board of Pharmacy, the State
38 Board of Medical Licensure, the State Board of Dental Examiners or
39 the Mississippi Board of Nursing, as appropriate, in accordance
40 with its rules. Such registration shall be obtained annually or
41 biennially, as specified by the issuing board, and a reasonable
42 fee may be charged by the issuing board for such registration.

43 (b) Persons registered by the State Board of Pharmacy,
44 with the consent of the United States Drug Enforcement
45 Administration and the State Board of Medical Licensure, the State
46 Board of Dental Examiners or the Mississippi Board of Nursing, to
47 manufacture, distribute, dispense or conduct research with
48 controlled substances may possess, manufacture, distribute,
49 dispense or conduct research with those substances to the extent
50 authorized by their registration and in conformity with the other
51 provisions of this article.

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

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

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

60 (3) An ultimate user or a person in possession of
61 any controlled substance pursuant to a lawful order of a
62 practitioner or in lawful possession of a Schedule V substance as
63 defined in Section 41-29-121.

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

68 (e) A separate registration is required at each
69 principal place of business or professional practice where the
70 applicant manufactures, distributes or dispenses controlled
71 substances.

72 (f) The State Board of Pharmacy, the Mississippi Bureau
73 of Narcotics, the State Board of Medical Licensure, the State
74 Board of Dental Examiners and the Mississippi Board of Nursing may
75 inspect the establishment of a registrant or applicant for
76 registration in accordance with the regulations of these agencies
77 as approved by the board.

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

80 41-29-133. Persons registered to manufacture, distribute, or
81 dispense controlled substances under this article shall keep
82 records and maintain inventories in conformance with the
83 record-keeping and inventory requirements of federal law and with
84 any additional rules the State Board of Pharmacy, the State Board
85 of Medical Licensure, the State Board of Dental Examiners or the
86 Mississippi Board of Nursing may issue.

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

89 41-29-157. (a) Issuance and execution of administrative
90 inspection warrants and search warrants shall be as follows,
91 except as provided in subsection (c) of this section:

92 (1) A judge of any state court of record, or any
93 justice court judge within his jurisdiction, and upon proper oath
94 or affirmation showing probable cause, may issue warrants for the
95 purpose of conducting administrative inspections authorized by
96 this article or rules thereunder, and seizures of property

97 appropriate to the inspections. For purposes of the issuance of
98 administrative inspection warrants, probable cause exists upon
99 showing a valid public interest in the effective enforcement of
100 this article or rules thereunder, sufficient to justify
101 administrative inspection of the area, premises, building or
102 conveyance in the circumstances specified in the application for
103 the warrant. All such warrants shall be served during normal
104 business hours;

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

114 (A) State the grounds for its issuance and the
115 name of each person whose affidavit has been taken in support
116 thereof;

117 (B) Be directed to a person authorized by Section
118 41-29-159 to execute it;

119 (C) Command the person to whom it is directed to
120 inspect the area, premises, building or conveyance identified for
121 the purpose specified, and if appropriate, direct the seizure of
122 the property specified;

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

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

127 (3) A warrant issued pursuant to this section must be
128 executed and returned within ten (10) days of its date unless,
129 upon a showing of a need for additional time, the court orders

130 otherwise. If property is seized pursuant to a warrant, a copy
131 shall be given to the person from whom or from whose premises the
132 property is taken, together with a receipt for the property taken.
133 The return of the warrant shall be made promptly, accompanied by a
134 written inventory of any property taken. The inventory shall be
135 made in the presence of the person executing the warrant and of
136 the person from whose possession or premises the property was
137 taken, if present, or in the presence of at least one (1) credible
138 person other than the person executing the warrant. A copy of the
139 inventory shall be delivered to the person from whom or from whose
140 premises the property was taken and to the applicant for the
141 warrant;

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

147 (b) The Mississippi Bureau of Narcotics, the State Board of
148 Pharmacy, * * * the State Board of Medical Licensure, the State
149 Board of Dental Examiners or the Mississippi Board of Nursing may
150 make administrative inspections of controlled premises in
151 accordance with the following provisions:

152 (1) For purposes of this section only, "controlled
153 premises" means:

154 (A) Places where persons registered or exempted
155 from registration requirements under this article are required to
156 keep records; and

157 (B) Places including factories, warehouses,
158 establishments and conveyances in which persons registered or
159 exempted from registration requirements under this article are
160 permitted to hold, manufacture, compound, process, sell, deliver,
161 or otherwise dispose of any controlled substance.

162 (2) When authorized by an administrative inspection
163 warrant issued in accordance with the conditions imposed in this
164 section, an officer or employee designated by the Mississippi
165 Bureau of Narcotics, the State Board of Pharmacy, the State Board
166 of Medical Licensure, the State Board of Dental Examiners or the
167 Mississippi Board of Nursing, upon presenting the warrant and
168 appropriate credentials to the owner, operator or agent in charge,
169 may enter controlled premises for the purpose of conducting an
170 administrative inspection.

171 (3) When authorized by an administrative inspection
172 warrant, an officer or employee designated by the Mississippi
173 Bureau of Narcotics, the State Board of Pharmacy, the State Board
174 of Medical Licensure, the State Board of Dental Examiners or the
175 Mississippi Board of Nursing may:

176 (A) Inspect and copy records required by this
177 article to be kept;

178 (B) Inspect, within reasonable limits and in a
179 reasonable manner, controlled premises and all pertinent
180 equipment, finished and unfinished material, containers and
181 labeling found therein, and, except as provided in paragraph (5)
182 of this subsection, all other things therein, including records,
183 files, papers, processes, controls and facilities bearing on
184 violation of this article; and

185 (C) Inventory any stock of any controlled
186 substance therein and obtain samples thereof.

187 (4) This section does not prevent the inspection
188 without a warrant of books and records pursuant to an
189 administrative subpoena, nor does it prevent entries and
190 administrative inspections, including seizures of property,
191 without a warrant:

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

194 (B) In situations presenting imminent danger to
195 health or safety;

196 (C) In situations involving inspection of
197 conveyances if there is reasonable cause to believe that the
198 mobility of the conveyance makes it impracticable to obtain a
199 warrant;

200 (D) In any other exceptional or emergency
201 circumstance where time or opportunity to apply for a warrant is
202 lacking; or

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

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

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

215 (1) Is satisfied that there is probable cause to
216 believe that:

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

219 (B) The giving of such notice will immediately
220 endanger the life or safety of the executing officer or another
221 person; and

222 (2) Has included in the warrant a direction that the
223 officer executing the warrant shall not be required to give such
224 notice.

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

228 Search warrants which include the instruction that the
229 executing officer shall not be required to give notice of
230 authority and purpose as authorized by this subsection shall be
231 issued only by the county court or county judge in vacation,
232 chancery court or by the chancellor in vacation, by the circuit
233 court or circuit judge in vacation, or by a justice of the
234 Mississippi Supreme Court.

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

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

241 41-29-159. (a) Any officer or employee of the Mississippi
242 Bureau of Narcotics, investigative unit of the State Board of
243 Pharmacy, investigative unit of the State Board of Medical
244 Licensure, investigative unit of the State Board of Dental
245 Examiners, investigative unit of the Mississippi Board of Nursing,
246 any duly sworn peace officer of the State of Mississippi, any
247 enforcement officer of the Mississippi Department of
248 Transportation, or any highway patrolman, may, while engaged in
249 the performance of his statutory duties:

250 (1) Carry firearms;

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

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

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

258 (b) As divided among the Mississippi Bureau of Narcotics,
259 the State Board of Pharmacy, the State Board of Medical Licensure,
260 the State Board of Dental Examiners and the Mississippi Board of
261 Nursing, the primary responsibility of the illicit street traffic
262 or other illicit traffic of drugs is delegated to agents of the
263 Mississippi Bureau of Narcotics. The State Board of Pharmacy is
264 delegated the responsibility of regulating and checking the
265 legitimate drug traffic among pharmacists, pharmacies, hospitals,
266 nursing homes, drug manufacturers, and any other related
267 professions and facilities with the exception of the medical,
268 dental, nursing and veterinary professions. The State Board of
269 Medical Licensure is responsible for the legitimate drug traffic
270 among * * * physicians, podiatrists and veterinarians. The
271 Mississippi Board of Dental Examiners is responsible for the
272 legitimate drug traffic among dentists and dental hygienists. The
273 Mississippi Board of Nursing is responsible for the legitimate
274 drug traffic among nurses.

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

279 (d) Agents of the bureau are * * * authorized to investigate
280 the circumstances of deaths which are caused by drug overdose or
281 which are believed to be caused by drug overdose.

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

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

292 41-29-167. (a) The State Board of Medical Licensure, the
293 Mississippi Bureau of Narcotics, the State Board of
294 Pharmacy, * * * the State Board of Dental Examiners and the
295 Mississippi Board of Nursing shall cooperate with federal and
296 other state agencies in discharging their responsibilities
297 concerning traffic in controlled substances and in suppressing the
298 abuse of controlled substances. To this end, they may:

299 (1) Arrange for the exchange of information among
300 governmental officials concerning the use and abuse of controlled
301 substances;

302 (2) Coordinate and cooperate in training programs
303 concerning controlled substance law enforcement at local and state
304 levels;

305 (3) Cooperate with the United States Drug Enforcement
306 Administration by establishing a centralized unit to accept,
307 catalogue, file and collect statistics, including records of drug
308 dependent persons and other controlled substance law offenders
309 within the state, and make the information available for federal,
310 state and local law enforcement purposes; and

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

314 (b) Results, information and evidence received from the
315 United States Drug Enforcement Administration relating to the
316 regulatory functions of this article, including results of
317 inspections conducted by it may be relied and acted upon by the
318 Mississippi Bureau of Narcotics, the State Board of Pharmacy, the
319 State Board of Medical Licensure, the State Board of Dental
320 Examiners and the Mississippi Board of Nursing in the exercise of
321 their regulatory functions under this article.

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

324 41-29-171. (a) The Mississippi Bureau of Narcotics, the
325 State Board of Pharmacy, the State Board of Medical Licensure,
326 the State Board of Dental Examiners and the Mississippi Board of
327 Nursing shall encourage research on misuse and abuse of controlled
328 substances. In connection with the research, and in furtherance
329 of the enforcement of this article they may:

330 (1) Establish methods to assess accurately the effects
331 of controlled substances and identify and characterize those with
332 potential for abuse;

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

334 (A) Develop new or improved approaches,
335 techniques, systems, equipment and devices to strengthen the
336 enforcement of this article;

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

339 (C) Improve methods for preventing, predicting,
340 understanding and dealing with the misuse and abuse of controlled
341 substances;

342 (3) Enter into contracts with public agencies,
343 institutions of higher education, and private organizations or
344 individuals for the purpose of conducting research,
345 demonstrations, or special projects which bear directly on misuse
346 and abuse of controlled substances.

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

350 (c) The board may authorize the possession and distribution
351 of controlled substances by persons engaged in research. Persons
352 who obtain this authorization are exempt from state prosecution
353 for possession and distribution of controlled substances to the
354 extent of the authorization.

355 SECTION 8. The State Board of Medical Licensure and the
356 Mississippi Board of Nursing shall jointly promulgate regulations
357 that authorize nurse practitioners to dispense controlled
358 substances under the Uniform Controlled Substances Law (Section
359 41-29-101 et seq.), that specify the scope and extent of that
360 dispensing authority, and that prescribe the education required in
361 order to exercise that dispensing authority. Those regulations
362 shall take effect not later than July 1, 2002.

363 SECTION 9. This act shall take effect and be in force from
364 and after July 1, 2001.