To: Public Health and Welfare

MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2001
By: Representative Read

HOUSE BILL NO. 1163
(As Sent to Governor)

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The State Board of Pharmacy may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if it finds it consistent with the public health and safety.
(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

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

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

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

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

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

(1) A judge of any state court of record, or any justice court judge within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this article or rules thereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this article or rules thereunder, sufficient to justify
administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant. All such warrants shall be served during normal business hours;

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

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

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

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

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

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

(3) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a
written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

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

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

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

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

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

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

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

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

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

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

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

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

(1) Carry firearms;

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

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

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

(b) As divided among the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners and the Mississippi Board of Nursing, the primary responsibility of the illicit street traffic or other illicit traffic of drugs is delegated to agents of the Mississippi Bureau of Narcotics. The State Board of Pharmacy is delegated the responsibility of regulating and checking the legitimate drug traffic among pharmacists, pharmacies, hospitals,
nursing homes, drug manufacturers, and any other related professions and facilities with the exception of the medical, dental, nursing and veterinary professions. The State Board of Medical Licensure is responsible for the legitimate drug traffic among physicians, podiatrists and veterinarians. The Mississippi Board of Dental Examiners is responsible for the legitimate drug traffic among dentists and dental hygienists. The Mississippi Board of Nursing is responsible for the legitimate drug traffic among nurses.

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

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

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

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

41-29-167. (a) The State Board of Medical Licensure, the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Dental Examiners and the Mississippi Board of Nursing shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may:
(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

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

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

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

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

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

41-29-171. (a) The Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners and the Mississippi Board of Nursing shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this article they may:
(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Make studies and undertake programs of research to:
   (A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this article;
   (B) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and
   (C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances;

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

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

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

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