

By: Representative Formby

To: Judiciary A

HOUSE BILL NO. 78

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT IT SHALL BE A FELONY TO POSSESS OR BRING ANY  
3 CONTROLLED SUBSTANCES INTO ANY STATE, COUNTY OR MUNICIPAL BUILDING  
4 OR FACILITY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 41-29-139, Mississippi Code of 1972, is  
7 amended as follows:

8 41-29-139. (a) Except as authorized by this article, it is  
9 unlawful for any person knowingly or intentionally:

10 (1) To sell, barter, transfer, manufacture, distribute,  
11 dispense or possess with intent to sell, barter, transfer,  
12 manufacture, distribute or dispense, a controlled substance; or

13 (2) To create, sell, barter, transfer, distribute,  
14 dispense or possess with intent to create, sell, barter, transfer,  
15 distribute or dispense, a counterfeit substance.

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

20 (1) In the case of controlled substances classified in  
21 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,  
22 except one (1) ounce or less of marihuana, and except a first  
23 offender as defined in Section 41-29-149(e) who violates  
24 subsection (a) of this section with respect to less than one (1)  
25 kilogram but more than one (1) ounce of marihuana, such person  
26 may, upon conviction, be imprisoned for not more than thirty (30)  
27 years and shall be fined not less than Five Thousand Dollars



28 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or  
29 both;

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

37 (3) In the case of one (1) ounce or less of marihuana,  
38 such person may, upon conviction, be imprisoned for not more than  
39 three (3) years or fined not more than Three Thousand Dollars  
40 (\$3,000.00), or both;

41 (4) In the case of controlled substances classified in  
42 Schedules III and IV, as set out in Sections 41-29-117 and  
43 41-29-119, such person may, upon conviction, be imprisoned for not  
44 more than twenty (20) years and shall be fined not less than One  
45 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty  
46 Thousand Dollars (\$250,000.00), or both; and

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

52 (c) It is unlawful for any person knowingly or intentionally  
53 to possess any controlled substance unless the substance was  
54 obtained directly from, or pursuant to, a valid prescription or  
55 order of a practitioner while acting in the course of his  
56 professional practice, or except as otherwise authorized by this  
57 article. The penalties for any violation of this subsection (c)  
58 with respect to a controlled substance classified in Schedules I,  
59 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,  
60 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be



61 based on dosage unit as defined herein or the weight of the  
62 controlled substance as set forth herein as appropriate:

63 "Dosage unit (d.u.)" means a tablet or capsule, or in the  
64 case of a liquid solution, one (1) milliliter. In the case of  
65 lysergic acid diethylamide (LSD) the term, "dosage unit" means a  
66 stamp, square, dot, microdot, tablet or capsule of a controlled  
67 substance.

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

71 The weight set forth refers to the entire weight of any  
72 mixture or substance containing a detectable amount of the  
73 controlled substance.

74 If a mixture or substance contains more than one (1)  
75 controlled substance, the weight of the mixture or substance is  
76 assigned to the controlled substance that results in the greater  
77 punishment.

78 Any person who violates this subsection with respect to:

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

82 (A) Less than one-tenth (0.1) gram or one (1)  
83 dosage unit or less may be charged as a misdemeanor or felony. If  
84 charged by indictment as a felony: by imprisonment not less than  
85 one (1) nor more than four (4) years and a fine not more than Ten  
86 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by  
87 imprisonment for up to one (1) year and a fine not more than One  
88 Thousand Dollars (\$1,000.00).

89 (B) One-tenth (0.1) gram but less than two (2)  
90 grams or two (2) dosage units but less than ten (10) dosage units,  
91 by imprisonment for not less than two (2) years nor more than  
92 eight (8) years and a fine of not more than Fifty Thousand Dollars  
93 (\$50,000.00).



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

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

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

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

110 (A) Thirty (30) grams or less by a fine of not  
111 less than One Hundred Dollars (\$100.00) nor more than Two Hundred  
112 Fifty Dollars (\$250.00). The provisions of this paragraph shall  
113 be enforceable by summons, provided the offender provides proof of  
114 identity satisfactory to the arresting officer and gives written  
115 promise to appear in court satisfactory to the arresting officer,  
116 as directed by the summons. A second conviction under this  
117 section within two (2) years shall be punished by a fine of Two  
118 Hundred Fifty Dollars (\$250.00) and not less than five (5) days  
119 nor more than sixty (60) days in the county jail and mandatory  
120 participation in a drug education program, approved by the  
121 Division of Alcohol and Drug Abuse of the State Department of  
122 Mental Health, unless the court enters a written finding that such  
123 drug education program is inappropriate. A third or subsequent  
124 conviction under this section within two (2) years is a  
125 misdemeanor punishable by a fine of not less than Two Hundred  
126 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars



127 (\$500.00) and confinement for not less than five (5) days nor more  
128 than six (6) months in the county jail. Upon a first or second  
129 conviction under this section the courts shall forward a report of  
130 such conviction to the Mississippi Bureau of Narcotics which shall  
131 make and maintain a private, nonpublic record for a period not to  
132 exceed two (2) years from the date of conviction. The private,  
133 nonpublic record shall be solely for the use of the courts in  
134 determining the penalties which attach upon conviction under this  
135 section and shall not constitute a criminal record for the purpose  
136 of private or administrative inquiry and the record of each  
137 conviction shall be expunged at the end of the period of two (2)  
138 years following the date of such conviction;

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

152 (C) More than thirty (30) grams but less than two  
153 hundred fifty (250) grams may be fined not more than One Thousand  
154 Dollars (\$1,000.00), or confined in the county jail for not more  
155 than one (1) year, or both; or fined not more than Three Thousand  
156 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for  
157 not more than three (3) years, or both;

158 (D) Two hundred fifty (250) grams but less than  
159 five hundred (500) grams, by imprisonment for not less than two



160 (2) years nor more than eight (8) years and by a fine of not more  
161 than Fifty Thousand Dollars (\$50,000.00);

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

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

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

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

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

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

185 (C) One hundred fifty (150) grams but less than  
186 three hundred (300) grams or five hundred (500) dosage units but  
187 less than one thousand (1,000) dosage units, by imprisonment for  
188 not less than two (2) years nor more than eight (8) years and a  
189 fine of not more than Fifty Thousand Dollars (\$50,000.00).

190 (D) Three hundred (300) grams but less than five  
191 hundred (500) grams or one thousand (1,000) dosage units but less  
192 than two thousand five hundred (2,500) dosage units, by



193 imprisonment for not less than four (4) years nor more than  
194 sixteen (16) years and a fine of not more than Two Hundred Fifty  
195 Thousand Dollars (\$250,000.00).

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

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

216 (2) It is unlawful for any person to deliver, sell,  
217 possess with intent to deliver or sell, or manufacture with intent  
218 to deliver or sell, paraphernalia, knowing, or under circumstances  
219 where one reasonably should know, that it will be used to plant,  
220 propagate, cultivate, grow, harvest, manufacture, compound,  
221 convert, produce, process, prepare, test, analyze, pack, repack,  
222 store, contain, conceal, inject, ingest, inhale, or otherwise  
223 introduce into the human body a controlled substance in violation  
224 of the Uniform Controlled Substances Law. Any person who violates  
225 this subsection is guilty of a misdemeanor and upon conviction may



226 be confined in the county jail for not more than six (6) months,  
227 or fined not more than Five Hundred Dollars (\$500.00), or both.

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

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

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

253 (f) Except as otherwise authorized in this article, any  
254 person twenty-one (21) years of age or older who knowingly sells,  
255 barter, transfers, manufactures, distributes or dispenses during  
256 any twelve (12) consecutive month period: (i) ten (10) pounds or  
257 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)  
258 two (2) or more ounces of cocaine or of any mixture containing





259 cocaine as described in Section 41-29-105(s), Mississippi Code of  
260 1972; or (iv) one hundred (100) or more dosage units of morphine,  
261 Demerol or Dilaudid, shall be guilty of a felony and, upon  
262 conviction thereof, shall be sentenced to life imprisonment and  
263 such sentence shall not be reduced or suspended nor shall such  
264 person be eligible for probation or parole, the provisions of  
265 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code  
266 of 1972, to the contrary notwithstanding. The provisions of this  
267 subsection shall not apply to any person who furnishes information  
268 and assistance to the bureau or its designee which, in the opinion  
269 of the trial judge objectively should or would have aided in the  
270 arrest or prosecution of others who violate this subsection. The  
271 accused shall have adequate opportunity to develop and make a  
272 record of all information and assistance so furnished.

273 (g) (1) Any person trafficking in controlled substances  
274 shall be guilty of a felony and upon conviction shall be  
275 imprisoned for a term of thirty (30) years and such sentence shall  
276 not be reduced or suspended nor shall such person be eligible for  
277 probation or parole, the provisions of Sections 41-29-149,  
278 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the  
279 contrary notwithstanding and shall be fined not less than Five  
280 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
281 (\$1,000,000.00).

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

290 (3) The charge of trafficking in controlled substances  
291 shall be set forth in one (1) count of an indictment with each of



292 the component offenses alleged therein and it may be charged and  
293 tried in any county where a component offense occurred. An  
294 indictment for trafficking in controlled substances may also be  
295 returned by the State Grand Jury of Mississippi provided at least  
296 two (2) of the component offenses occurred in different circuit  
297 court districts.

298 (h) Any person who carries any controlled substance into any  
299 state, county or municipally owned building or facility or who  
300 possesses any controlled substance in such facilities shall be  
301 guilty of a felony and upon conviction shall be imprisoned for not  
302 less than one (1) year nor more than five (5) years and shall be  
303 fined not less than One Thousand Dollars (\$1,000.00) nor more than  
304 Ten Thousand Dollars (\$10,000.00).

305 **SECTION 2.** This act shall take effect and be in force from  
306 and after July 1, 2002.

