

By: Representative Moody

To: Judiciary A

HOUSE BILL NO. 1071

1 AN ACT TO AMEND SECTION 41-29-105, MISSISSIPPI CODE OF 1972,
 2 TO DEFINE CONTROLLED SUBSTANCE ANALOGUE FOR PURPOSES OF THE
 3 UNIFORM CONTROLLED SUBSTANCES ACT; TO AMEND SECTION 41-29-139,
 4 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MANUFACTURE,
 5 DELIVERY, SALE AND POSSESSION OF A CONTROLLED SUBSTANCE ANALOGUE
 6 SHALL BE TREATED AS A SCHEDULE I SUBSTANCE FOR PURPOSES OF
 7 CRIMINAL PENALTIES, AND TO INCLUDE CONTROLLED SUBSTANCE ANALOGUES
 8 IN THOSE STATUTES PROVIDING CRIMINAL PENALTIES FOR TRAFFICKING IN
 9 CONTROLLED SUBSTANCES; TO AMEND SECTIONS 97-3-65 AND 97-3-97,
 10 MISSISSIPPI CODE OF 1972, TO INCLUDE THE USE OF CONTROLLED
 11 SUBSTANCES AND CONTROLLED SUBSTANCE ANALOGUE AS A CRIMINAL ELEMENT
 12 TO INCAPACITATE A PERSON UNDER THE RAPE AND SEXUAL BATTERY
 13 STATUTES; TO AMEND SECTION 41-29-313, MISSISSIPPI CODE OF 1972, TO
 14 ADD GAMMA-BUTYROLACTONE AND BUTANOLIDE TO LISTED CHEMICALS WHICH
 15 MAY BE USED AS A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE
 16 ANALOGUE; TO AMEND SECTIONS 41-29-127, 41-29-129, 41-29-142,
 17 41-29-144, 41-29-145, 41-29-146, 41-29-152, 41-29-153, 41-29-154,
 18 41-29-169, 41-29-171, 41-29-176, 41-29-177, 41-29-179, 63-1-71 AND
 19 63-1-83, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PRECEDING
 20 PROVISIONS; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 41-29-105, Mississippi Code of 1972, is
 23 amended as follows:

24 41-29-105. The following words and phrases, as used in this
 25 article, shall have the following meanings, unless the context
 26 otherwise requires:

27 (a) "Administer" means the direct application of a
 28 controlled substance, whether by injection, inhalation, ingestion
 29 or any other means, to the body of a patient or research subject
 30 by:

31 (1) A practitioner (or, in his presence, by his
 32 authorized agent); or

33 (2) The patient or research subject at the
 34 direction and in the presence of the practitioner.

35 (b) "Agent" means an authorized person who acts on
 36 behalf of or at the direction of a manufacturer, distributor or



37 dispenser. Such word does not include a common or contract
38 carrier, public warehouseman or employee of the carrier or
39 warehouseman. This definition shall not be applied to the term
40 "agent" when such term clearly designates a member or officer of
41 the Bureau of Narcotics or other law enforcement organization.

42 (c) "Board" means the Mississippi State Board of
43 Medical Licensure.

44 (d) "Bureau" means the Mississippi Bureau of Narcotics.
45 However, where the title "Bureau of Drug Enforcement" occurs, said
46 term shall also refer to the Mississippi Bureau of Narcotics.

47 (e) "Commissioner" means the Commissioner of the
48 Department of Public Safety.

49 (f) "Controlled substance" means a drug, substance or
50 immediate precursor in Schedules I through V of Sections 41-29-113
51 through 41-29-121 or a controlled substance analogue as defined in
52 this section.

53 (g) (i) "Controlled substance analogue" means a
54 substance that is intended for human consumption and that either:

55 1. Has a chemical structure substantially
56 similar to the chemical structure of a drug or substance in
57 Schedule I or II of Sections 41-29-113 and 41-29-115; or

58 2. Produces a stimulant, depressant or
59 hallucinogenic effect on the control nervous system substantially
60 similar to the stimulant, depressant or hallucinogenic effect on
61 the central nervous system produced by a drug or substance in
62 Schedule I or II of Sections 41-29-113 and 41-29-115; or

63 3. Is represented or intended to have a
64 stimulant, depressant or hallucinogenic effect on the central
65 nervous system substantially similar to the stimulant, depressant
66 or hallucinogenic effect on the central nervous system produced by
67 a drug or substance in Schedule I or II of Sections 41-29-113 and
68 41-29-115.



69 For purposes of any state law, the illicit manufacturing,
70 sale, possession or use of a controlled substance analogue shall
71 be treated as if it were the Schedule I or II substance to which
72 it is substantially similar in chemical structure, pharmacological
73 effect, intended or represented effect.

74 (ii) Controlled substance analogue does not mean
75 any of the following:

76 1. Any substance for which there is an
77 approved new drug application as defined under Section 505 of the
78 federal Food, Drug and Cosmetic Act, or which is generally
79 recognized as safe and effective for use pursuant to Sections 501,
80 502 and 503 of the federal Food, Drug and Cosmetic Act and United
81 States Code Title 21, Section 330 et. seq.

82 2. With respect to a particular person, any
83 substance for which an exemption is in effect for investigational
84 use for that person pursuant to Section 505 of the federal Food,
85 Drug and Cosmetic Act, to the extent that the conduct with respect
86 to that substance is pursuant to the exemption.

87 3. Any substance, before an exemption as
88 specified in item 2 takes effect with respect to the substance, to
89 the extent the substance is not intended for human consumption.

90 4. A controlled substance previously
91 scheduled.

92 (h) "Counterfeit substance" means a controlled
93 substance which, or the container or labeling of which, without
94 authorization, bears the trademark, trade name, or other
95 identifying mark, imprint, number or device, or any likeness
96 thereof, of a manufacturer, distributor or dispenser other than
97 the person who in fact manufactured, distributed or dispensed the
98 substance.

99 (i) "Deliver" or "delivery" means the actual,
100 constructive, or attempted transfer from one person to another of



101 a controlled substance or a controlled substance analogue, whether
102 or not there is an agency relationship.

103 (j) "Director" means the Director of the Bureau of
104 Narcotics.

105 (k) "Dispense" means to deliver a controlled substance
106 to an ultimate user or research subject by or pursuant to the
107 lawful order of a practitioner, including the prescribing,
108 administering, packaging, labeling or compounding necessary to
109 prepare the substance for that delivery.

110 (l) "Dispenser" means a practitioner who dispenses.

111 (m) "Distribute" means to deliver other than by
112 administering or dispensing a controlled substance or a controlled
113 substance analogue.

114 (n) "Distributor" means a person who distributes.

115 (o) "Drug" means (1) a substance recognized as a drug
116 in the official United States Pharmacopoeia, official Homeopathic
117 Pharmacopoeia of the United States, or official National
118 Formulary, or any supplement to any of them; (2) a substance
119 intended for use in the diagnosis, cure, mitigation, treatment, or
120 prevention of disease in man or animals; (3) a substance (other
121 than food) intended to affect the structure or any function of the
122 body of man or animals; and (4) a substance intended for use as a
123 component of any article specified in this paragraph. Such word
124 does not include devices or their components, parts, or
125 accessories.

126 (p) "Hashish" means the resin extracted from any part
127 of the plants of the genus Cannabis and all species thereof or any
128 preparation, mixture or derivative made from or with said resin.

129 (q) "Immediate precursor" means a substance which the
130 board has found to be and by rule designates as being the
131 principal compound commonly used or produced primarily for use,
132 and which is an immediate chemical intermediary used or likely to



133 be used in the manufacture of a controlled substance, the control
134 of which is necessary to prevent, curtail, or limit manufacture.

135 (r) "Manufacture" means the production, preparation,
136 propagation, compounding, conversion or processing of a controlled
137 substance or a controlled substance analogue, either directly or
138 indirectly, by extraction from substances of natural origin, or
139 independently by means of chemical synthesis, or by a combination
140 of extraction and chemical synthesis, and includes any packaging
141 or repackaging of the substance or labeling or relabeling of its
142 container. The term "manufacture" does not include the
143 preparation, compounding, packaging or labeling of a controlled
144 substance in conformity with applicable state and local law:

145 (1) By a practitioner as an incident to his
146 administering or dispensing of a controlled substance in the
147 course of his professional practice; or

148 (2) By a practitioner, or by his authorized agent
149 under his supervision, for the purpose of, or as an incident to,
150 research, teaching or chemical analysis and not for sale.

151 (s) "Marihuana" means all parts of the plant of the
152 genus Cannabis and all species thereof, whether growing or not,
153 the seeds thereof, and every compound, manufacture, salt,
154 derivative, mixture or preparation of the plant or its seeds,
155 excluding hashish.

156 (t) "Narcotic drug" means any of the following, whether
157 produced directly or indirectly by extraction from substances of
158 vegetable origin, or independently by means of chemical synthesis,
159 or by a combination of extraction and chemical synthesis:

160 (1) Opium and opiate, and any salt, compound,
161 derivative or preparation of opium or opiate;

162 (2) Any salt, compound, isomer, derivative or
163 preparation thereof which is chemically equivalent or identical
164 with any of the substances referred to in clause 1, but not
165 including the isoquinoline alkaloids of opium;



166 (3) Opium poppy and poppy straw; and
167 (4) Cocaine, coca leaves and any salt, compound,
168 derivative or preparation of cocaine, coca leaves, and any salt,
169 compound, isomer, derivative or preparation thereof which is
170 chemically equivalent or identical with any of these substances,
171 but not including decocainized coca leaves or extractions of coca
172 leaves which do not contain cocaine or ecgonine.

173 (u) "Opiate" means any substance having an
174 addiction-forming or addiction-sustaining liability similar to
175 morphine or being capable of conversion into a drug having
176 addiction-forming or addiction-sustaining liability. It does not
177 include, unless specifically designated as controlled under
178 Section 41-29-111, the dextrorotatory isomer of
179 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such
180 word does include its racemic and levorotatory forms.

181 (v) "Opium poppy" means the plant of the species
182 *Papaver somniferum* L., except its seeds.

183 (w) "Paraphernalia" means all equipment, products and
184 materials of any kind which are used, intended for use, or
185 designed for use, in planting, propagating, cultivating, growing,
186 harvesting, manufacturing, compounding, converting, producing,
187 processing, preparing, testing, analyzing, packaging, repackaging,
188 storing, containing, concealing, injecting, ingesting, inhaling or
189 otherwise introducing into the human body a controlled substance
190 or a controlled substance analogue in violation of the Uniform
191 Controlled Substances Law. It includes, but is not limited to:

192 (i) Kits used, intended for use, or designed for
193 use in planting, propagating, cultivating, growing or harvesting
194 of any species of plant which is a controlled substance or a
195 controlled substance analogue or from which a controlled substance
196 or a controlled substance analogue can be derived;

197 (ii) Kits used, intended for use, or designed for
198 use in manufacturing, compounding, converting, producing,



199 processing or preparing controlled substances or controlled
200 substance analogues;

201 (iii) Isomerization devices used, intended for use
202 or designed for use in increasing the potency of any species of
203 plant which is a controlled substance or a controlled substance
204 analogue;

205 (iv) Testing equipment used, intended for use, or
206 designed for use in identifying or in analyzing the strength,
207 effectiveness or purity of controlled substances or controlled
208 substance analogues;

209 (v) Scales and balances used, intended for use or
210 designed for use in weighing or measuring controlled substances or
211 controlled substance analogues;

212 (vi) Diluents and adulterants, such as quinine
213 hydrochloride, mannitol, mannite, dextrose and lactose, used,
214 intended for use or designed for use in cutting controlled
215 substances or controlled substance analogues;

216 (vii) Separation gins and sifters used, intended
217 for use or designed for use in removing twigs and seeds from, or
218 in otherwise cleaning or refining, marihuana;

219 (viii) Blenders, bowls, containers, spoons and
220 mixing devices used, intended for use or designed for use in
221 compounding controlled substances or controlled substance
222 analogues;

223 (ix) Capsules, balloons, envelopes and other
224 containers used, intended for use or designed for use in packaging
225 small quantities of controlled substances or controlled substance
226 analogues;

227 (x) Containers and other objects used, intended
228 for use or designed for use in storing or concealing controlled
229 substances or controlled substance analogues;

230 (xi) Hypodermic syringes, needles and other
231 objects used, intended for use or designed for use in parenterally



232 injecting controlled substances or controlled substance analogues
233 into the human body;

234 (xii) Objects used, intended for use or designed
235 for use in ingesting, inhaling or otherwise introducing marihuana,
236 cocaine, hashish or hashish oil into the human body, such as:

- 237 1. Metal, wooden, acrylic, glass, stone,
238 plastic or ceramic pipes with or without screens, permanent
239 screens, hashish heads or punctured metal bowls;
- 240 2. Water pipes;
- 241 3. Carburetion tubes and devices;
- 242 4. Smoking and carburetion masks;
- 243 5. Roach clips, meaning objects used to hold
244 burning material, such as a marihuana cigarette, that has become
245 too small or too short to be held in the hand;
- 246 6. Miniature cocaine spoons and cocaine
247 vials;
- 248 7. Chamber pipes;
- 249 8. Carburetor pipes;
- 250 9. Electric pipes;
- 251 10. Air-driven pipes;
- 252 11. Chillums;
- 253 12. Bonges; and
- 254 13. Ice pipes or chillers.

255 In determining whether an object is paraphernalia, a court or
256 other authority should consider, in addition to all other
257 logically relevant factors, the following:

258 (i) Statements by an owner or by anyone in control
259 of the object concerning its use;

260 (ii) Prior convictions, if any, of an owner, or of
261 anyone in control of the object, under any state or federal law
262 relating to any controlled substance or controlled substance
263 analogue;



264 (iii) The proximity of the object, in time and
265 space, to a direct violation of the Uniform Controlled Substances
266 Law;

267 (iv) The proximity of the object to controlled
268 substances or controlled substance analogues;

269 (v) The existence of any residue of controlled
270 substances or controlled substance analogues on the object;

271 (vi) Direct or circumstantial evidence of the
272 intent of an owner, or of anyone in control of the object, to
273 deliver it to persons whom he knows, or should reasonably know,
274 intend to use the object to facilitate a violation of the Uniform
275 Controlled Substances Law; the innocence of an owner, or of anyone
276 in control of the object, as to a direct violation of the Uniform
277 Controlled Substances Law shall not prevent a finding that the
278 object is intended for use, or designed for use as paraphernalia;

279 (vii) Instructions, oral or written, provided with
280 the object concerning its use;

281 (viii) Descriptive materials accompanying the
282 object which explain or depict its use;

283 (ix) National and local advertising concerning its
284 use;

285 (x) The manner in which the object is displayed
286 for sale;

287 (xi) Whether the owner or anyone in control of the
288 object is a legitimate supplier of like or related items to the
289 community, such as a licensed distributor or dealer of tobacco
290 products;

291 (xii) Direct or circumstantial evidence of the
292 ratio of sales of the object(s) to the total sales of the business
293 enterprise;

294 (xiii) The existence and scope of legitimate uses
295 for the object in the community;

296 (xiv) Expert testimony concerning its use.



297 (x) "Person" means individual, corporation, government
298 or governmental subdivision or agency, business trust, estate,
299 trust, partnership or association, or any other legal entity.

300 (y) "Poppy straw" means all parts, except the seeds, of
301 the opium poppy, after mowing.

302 (z) "Practitioner" means:

303 (1) A physician, dentist, veterinarian, scientific
304 investigator, or other person licensed, registered or otherwise
305 permitted to distribute, dispense, conduct research with respect
306 to or to administer a controlled substance in the course of
307 professional practice or research in this state; and

308 (2) A pharmacy, hospital or other institution
309 licensed, registered, or otherwise permitted to distribute,
310 dispense, conduct research with respect to or to administer a
311 controlled substance in the course of professional practice or
312 research in this state.

313 (aa) "Production" includes the manufacture, planting,
314 cultivation, growing or harvesting of a controlled substance or a
315 controlled substance analogue.

316 (bb) "Sale," "sell" or "selling" means the actual,
317 constructive or attempted transfer or delivery of a controlled
318 substance or a controlled substance analogue for remuneration,
319 whether in money or other consideration.

320 (cc) "State," when applied to a part of the United
321 States, includes any state, district, commonwealth, territory,
322 insular possession thereof, and any area subject to the legal
323 authority of the United States of America.

324 (dd) "Ultimate user" means a person who lawfully
325 possesses a controlled substance for his own use or for the use of
326 a member of his household or for administering to an animal owned
327 by him or by a member of his household.

328 **SECTION 2.** Section 41-29-139, Mississippi Code of 1972, is
329 amended as follows:



330 41-29-139. (a) Except as authorized by this article, it is
331 unlawful for any person knowingly or intentionally:

332 (1) To sell, barter, transfer, manufacture, distribute,
333 dispense or possess with intent to sell, barter, transfer,
334 manufacture, distribute or dispense, a controlled substance or
335 controlled substance analogue; or

336 (2) To create, sell, barter, transfer, distribute,
337 dispense or possess with intent to create, sell, barter, transfer,
338 distribute or dispense, a counterfeit substance.

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

342 (1) In the case of controlled substances classified in
343 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
344 any drug product containing gamma-hydroxybutyric acid as listed in
345 Section 41-29-117, or any controlled substance analogue as defined
346 in Section 41-29-105, except one (1) ounce or less of marihuana,
347 and except a first offender as defined in Section 41-29-149(e) who
348 violates subsection (a) of this section with respect to less than
349 one (1) kilogram but more than one (1) ounce of marihuana, such
350 person may, upon conviction, be imprisoned for not more than
351 thirty (30) years and shall be fined not less than Five Thousand
352 Dollars (\$5,000.00) nor more than One Million Dollars
353 (\$1,000,000.00), or both;

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

361 (3) In the case of one (1) ounce or less of marihuana,
362 such person may, upon conviction, be imprisoned for not more than



363 three (3) years or fined not more than Three Thousand Dollars
364 (\$3,000.00), or both;

365 (4) Except as otherwise provided, in the case of
366 controlled substances classified in Schedules III and IV, as set
367 out in Sections 41-29-117 and 41-29-119, such person may, upon
368 conviction, be imprisoned for not more than twenty (20) years and
369 shall be fined not less than One Thousand Dollars (\$1,000.00) nor
370 more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or
371 both; and

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

377 (c) It is unlawful for any person knowingly or intentionally
378 to possess any controlled substance or controlled substance
379 analogue unless the substance was obtained directly from, or
380 pursuant to, a valid prescription or order of a practitioner while
381 acting in the course of his professional practice, or except as
382 otherwise authorized by this article. The penalties for any
383 violation of this subsection (c) with respect to a controlled
384 substance classified in Schedule I, II, III, IV or V, as set out
385 in Section 41-29-113, 41-29-115, 41-29-117, 41-29-119 or
386 41-29-121, including marihuana, shall be based on dosage unit as
387 defined herein or the weight of the controlled substance as set
388 forth herein as appropriate:

389 "Dosage unit (d.u.)" means a tablet or capsule, or in the
390 case of a liquid solution, one (1) milliliter. In the case of
391 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
392 stamp, square, dot, microdot, tablet or capsule of a controlled
393 substance.

394 For any controlled substance or controlled substance analogue
395 that does not fall within the definition of the term "dosage



396 unit," the penalties shall be based upon the weight of the
397 controlled substance or controlled substance analogue.

398 The weight set forth refers to the entire weight of any
399 mixture or substance containing a detectable amount of the
400 controlled substance or controlled substance analogue.

401 If a mixture or substance contains more than one (1)
402 controlled substance or controlled substance analogue, the weight
403 of the mixture or substance is assigned to the controlled
404 substance or controlled substance analogue that results in the
405 greater punishment.

406 Any person who violates this subsection with respect to:

407 (1) A controlled substance classified in Schedule I or
408 II, GHB as listed in Schedule III, or a controlled substance
409 analogue except marihuana, in the following amounts shall be
410 charged and sentenced as follows:

411 (A) Less than one-tenth (0.1) gram or one (1)
412 dosage unit or less may be charged as a misdemeanor or felony. If
413 charged by indictment as a felony: by imprisonment not less than
414 one (1) nor more than four (4) years and a fine not more than Ten
415 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by
416 imprisonment for up to one (1) year and a fine not more than One
417 Thousand Dollars (\$1,000.00).

418 (B) One-tenth (0.1) gram but less than two (2)
419 grams or two (2) dosage units but less than ten (10) dosage units,
420 by imprisonment for not less than two (2) years nor more than
421 eight (8) years and a fine of not more than Fifty Thousand Dollars
422 (\$50,000.00).

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



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

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

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

439 (A) Thirty (30) grams or less by a fine of not
440 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
441 Fifty Dollars (\$250.00). The provisions of this paragraph shall
442 be enforceable by summons, provided the offender provides proof of
443 identity satisfactory to the arresting officer and gives written
444 promise to appear in court satisfactory to the arresting officer,
445 as directed by the summons. A second conviction under this
446 section within two (2) years shall be punished by a fine of Two
447 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
448 nor more than sixty (60) days in the county jail and mandatory
449 participation in a drug education program, approved by the
450 Division of Alcohol and Drug Abuse of the State Department of
451 Mental Health, unless the court enters a written finding that such
452 drug education program is inappropriate. A third or subsequent
453 conviction under this section within two (2) years is a
454 misdemeanor punishable by a fine of not less than Two Hundred
455 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
456 (\$500.00) and confinement for not less than five (5) days nor more
457 than six (6) months in the county jail. Upon a first or second
458 conviction under this section the courts shall forward a report of
459 such conviction to the Mississippi Bureau of Narcotics which shall
460 make and maintain a private, nonpublic record for a period not to



461 exceed two (2) years from the date of conviction. The private,
462 nonpublic record shall be solely for the use of the courts in
463 determining the penalties which attach upon conviction under this
464 section and shall not constitute a criminal record for the purpose
465 of private or administrative inquiry and the record of each
466 conviction shall be expunged at the end of the period of two (2)
467 years following the date of such conviction;

468 (B) Additionally, a person who is the operator of
469 a motor vehicle, who possesses on his person or knowingly keeps or
470 allows to be kept in a motor vehicle within the area of the
471 vehicle normally occupied by the driver or passengers, more than
472 one (1) gram, but not more than thirty (30) grams, of marihuana is
473 guilty of a misdemeanor and upon conviction may be fined not more
474 than One Thousand Dollars (\$1,000.00) and confined for not more
475 than ninety (90) days in the county jail. For the purposes of
476 this subsection, such area of the vehicle shall not include the
477 trunk of the motor vehicle or the areas not normally occupied by
478 the driver or passengers if the vehicle is not equipped with a
479 trunk. A utility or glove compartment shall be deemed to be
480 within the area occupied by the driver and passengers;

481 (C) More than thirty (30) grams but less than two
482 hundred fifty (250) grams may be fined not more than One Thousand
483 Dollars (\$1,000.00), or confined in the county jail for not more
484 than one (1) year, or both; or fined not more than Three Thousand
485 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
486 not more than three (3) years, or both;

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

491 (E) Five hundred (500) grams but less than one (1)
492 kilogram, by imprisonment for not less than four (4) years nor



493 more than sixteen (16) years and a fine of less than Two Hundred
494 Fifty Thousand Dollars (\$250,000.00);

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

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

502 (3) Except as otherwise provided, a controlled
503 substance classified in Schedule III, IV or V as set out in
504 Sections 41-29-117 through 41-29-121, upon conviction, may be
505 punished as follows:

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

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

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

520 (D) Three hundred (300) grams but less than five
521 hundred (500) grams or one thousand (1,000) dosage units but less
522 than two thousand five hundred (2,500) dosage units, by
523 imprisonment for not less than four (4) years nor more than
524 sixteen (16) years and a fine of not more than Two Hundred Fifty
525 Thousand Dollars (\$250,000.00).



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

531 (d) (1) It is unlawful for a person who is not authorized
532 by the State Board of Medical Licensure, State Board of Pharmacy,
533 or other lawful authority to use, or to possess with intent to
534 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
535 manufacture, compound, convert, produce, process, prepare, test,
536 analyze, pack, repack, store, contain, conceal, inject, ingest,
537 inhale or otherwise introduce into the human body a controlled
538 substance or controlled substance analogue in violation of the
539 Uniform Controlled Substances Law. Any person who violates this
540 subsection is guilty of a misdemeanor and upon conviction may be
541 confined in the county jail for not more than six (6) months, or
542 fined not more than Five Hundred Dollars (\$500.00), or both;
543 however, no person shall be charged with a violation of this
544 subsection when such person is also charged with the possession of
545 one (1) ounce or less of marihuana under subsection (c)(2)(A) of
546 this section.

547 (2) It is unlawful for any person to deliver, sell,
548 possess with intent to deliver or sell, or manufacture with intent
549 to deliver or sell, paraphernalia, knowing, or under circumstances
550 where one reasonably should know, that it will be used to plant,
551 propagate, cultivate, grow, harvest, manufacture, compound,
552 convert, produce, process, prepare, test, analyze, pack, repack,
553 store, contain, conceal, inject, ingest, inhale, or otherwise
554 introduce into the human body a controlled substance or controlled
555 substance analogue in violation of the Uniform Controlled
556 Substances Law. Any person who violates this subsection is guilty
557 of a misdemeanor and upon conviction may be confined in the county



558 jail for not more than six (6) months, or fined not more than Five
559 Hundred Dollars (\$500.00), or both.

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

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

576 (e) It shall be unlawful for any physician practicing
577 medicine in this state to prescribe, dispense or administer any
578 amphetamine or amphetamine-like anorectics and/or central nervous
579 system stimulants classified in Schedule II, pursuant to Section
580 41-29-115, for the exclusive treatment of obesity, weight control
581 or weight loss. Any person who violates this subsection, upon
582 conviction, is guilty of a misdemeanor and may be confined for a
583 period not to exceed six (6) months, or fined not more than One
584 Thousand Dollars (\$1,000.00), or both.

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



591 cocaine as described in Section 41-29-105(s), Mississippi Code of
592 1972; or (iv) one hundred (100) or more dosage units of morphine,
593 Demerol or Dilaudid, shall be guilty of a felony and, upon
594 conviction thereof, shall be sentenced to life imprisonment and
595 such sentence shall not be reduced or suspended nor shall such
596 person be eligible for probation or parole, the provisions of
597 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
598 of 1972, to the contrary notwithstanding. The provisions of this
599 subsection shall not apply to any person who furnishes information
600 and assistance to the bureau or its designee which, in the opinion
601 of the trial judge objectively should or would have aided in the
602 arrest or prosecution of others who violate this subsection. The
603 accused shall have adequate opportunity to develop and make a
604 record of all information and assistance so furnished.

605 (g) (1) Any person trafficking in controlled substances or
606 controlled substance analogues shall be guilty of a felony and
607 upon conviction shall be imprisoned for a term of thirty (30)
608 years and such sentence shall not be reduced or suspended nor
609 shall such person be eligible for probation or parole, the
610 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,
611 Mississippi Code of 1972, to the contrary notwithstanding and
612 shall be fined not less than Five Thousand Dollars (\$5,000.00) nor
613 more than One Million Dollars (\$1,000,000.00).

614 (2) "Trafficking in controlled substances or controlled
615 substance analogues" as used herein means to engage in three (3)
616 or more component offenses within any twelve (12) consecutive
617 month period where at least two (2) of the component offenses
618 occurred in different counties. A component offense is any act
619 which would constitute a violation of subsection (a) of this
620 section. Prior convictions shall not be used as component
621 offenses to establish the charge of trafficking in controlled
622 substances or controlled substance analogues.



623 (3) The charge of trafficking in controlled substances
624 or controlled substance analogues shall be set forth in one (1)
625 count of an indictment with each of the component offenses alleged
626 therein and it may be charged and tried in any county where a
627 component offense occurred. An indictment for trafficking in
628 controlled substances or controlled substance analogues may also
629 be returned by the State Grand Jury of Mississippi provided at
630 least two (2) of the component offenses occurred in different
631 circuit court districts.

632 **SECTION 3.** Section 97-3-65, Mississippi Code of 1972, is
633 amended as follows:

634 97-3-65. (1) The crime of statutory rape is committed when:

635 (a) Any person seventeen (17) years of age or older has
636 sexual intercourse with a child who:

637 (i) Is at least fourteen (14) but under sixteen
638 (16) years of age;

639 (ii) Is thirty-six (36) or more months younger
640 than the person; and

641 (iii) Is not the person's spouse; or

642 (b) A person of any age has sexual intercourse with a
643 child who:

644 (i) Is under the age of fourteen (14) years;

645 (ii) Is twenty-four (24) or more months younger
646 than the person; and

647 (iii) Is not the person's spouse.

648 (c) Neither the victim's consent nor the victim's lack
649 of chastity is a defense to a charge of statutory rape.

650 (2) Upon conviction for statutory rape, the defendant shall
651 be sentenced as follows:

652 (a) If eighteen (18) years of age or older, but under
653 twenty-one (21) years of age, and convicted under paragraph (1)(a)
654 of this section, to imprisonment for not more than five (5) years



655 in the State Penitentiary or a fine of not more than Five Thousand
656 Dollars (\$5,000.00), or both;

657 (b) If twenty-one (21) years of age or older and
658 convicted under paragraph (1)(a) of this section, to imprisonment
659 of not more than thirty (30) years in the State Penitentiary or a
660 fine of not more than Ten Thousand Dollars (\$10,000.00), or both,
661 for the first offense, and not more than forty (40) years in the
662 State Penitentiary for each subsequent offense;

663 (c) If eighteen (18) years of age or older and
664 convicted under paragraph (1)(b) of this section, to imprisonment
665 for life in the State Penitentiary or such lesser term of
666 imprisonment as the court may determine, but not less than twenty
667 (20) years.

668 (d) If thirteen (13) years of age or older but under
669 eighteen (18) years of age and convicted under paragraphs (1)(a)
670 or (1)(b) of this section, such imprisonment, fine or other
671 sentence as the court, in its discretion, may determine.

672 (3) (a) Every person who has forcible sexual intercourse
673 with any person, or who has sexual intercourse not constituting
674 forcible sexual intercourse or statutory rape with any person
675 without that person's consent by administering to the person any
676 controlled substance, controlled substance analogue, or other
677 substance or liquid that produces such stupor or such imbecility
678 of mind or weakness of body as to prevent effectual resistance,
679 upon conviction, shall be imprisoned for life in the State
680 Penitentiary if the jury by its verdict so prescribes; and in
681 cases where the jury fails to fix the penalty at life
682 imprisonment, the court shall fix the penalty at imprisonment in
683 the State Penitentiary for any term as the court, in its
684 discretion, may determine.

685 (b) This subsection (3) shall apply whether the
686 perpetrator is married to the victim or not.



687 (4) In all cases where a victim is under the age of sixteen
688 (16) years, it shall not be necessary to prove penetration where
689 it is shown the genitals, anus or perineum of the child have been
690 lacerated or torn in the attempt to have sexual intercourse with
691 the child.

692 (5) For the purposes of this section, "sexual intercourse"
693 shall mean a joining of the sexual organs of a male and female
694 human being in which the penis of the male is inserted into the
695 vagina of the female.

696 **SECTION 4.** Section 97-3-97, Mississippi Code of 1972, is
697 amended as follows:

698 97-3-97. For purposes of Sections 97-3-95 through 97-3-103
699 the following words shall have the meaning ascribed herein unless
700 the context otherwise requires:

701 (a) "Sexual penetration" includes cunnilingus,
702 fellatio, buggery or pederasty, any penetration of the genital or
703 anal openings of another person's body by any part of a person's
704 body, and insertion of any object into the genital or anal
705 openings of another person's body.

706 (b) A "mentally defective person" is one who suffers
707 from a mental disease, defect or condition which renders that
708 person temporarily or permanently incapable of knowing the nature
709 and quality of his or her conduct.

710 (c) A "mentally incapacitated person" is one rendered
711 incapable of knowing or controlling his or her conduct, or
712 incapable of resisting an act due to the influence of any drug,
713 controlled substance, controlled substance analogue or other
714 substance administered to that person without his or her consent.

715 (d) A "physically helpless person" is one who is
716 unconscious or one who for any other reason is physically
717 incapable of communicating an unwillingness to engage in an act.

718 **SECTION 5.** Section 41-29-313, Mississippi Code of 1972, is
719 amended as follows:



720 41-29-313. (1) (a) Except as authorized in this section,
721 it is unlawful for any person to knowingly or intentionally:

722 (i) Purchase, possess, transfer or distribute any
723 two (2) or more of the listed * * * chemicals or drugs in any
724 amount with the intent to unlawfully manufacture a controlled
725 substance or controlled substance analogue;

726 (ii) Purchase, possess, transfer or distribute any
727 two (2) or more of the listed * * * chemicals or drugs in any
728 amount, knowing, or under circumstances where one reasonably
729 should know, that the listed precursor chemical or drug will be
730 used to unlawfully manufacture a controlled substance or
731 controlled substance analogue;

732 (b) Any person who violates this subsection (1), upon
733 conviction, is guilty of a felony and may be imprisoned for a
734 period not to exceed thirty (30) years and shall be fined not less
735 than Five Thousand Dollars (\$5,000.00) nor more than One Million
736 Dollars (\$1,000,000.00), or both fine and imprisonment.

737 (2) (a) It is unlawful for any person to knowingly or
738 intentionally steal or unlawfully take or carry away any amount of
739 anhydrous ammonia.

740 (b) It is unlawful for any person to purchase, possess,
741 transfer or distribute any amount of anhydrous ammonia, knowing,
742 or under circumstances where one reasonably should know, that the
743 anhydrous ammonia will be used to unlawfully manufacture a
744 controlled substance.

745 (c) It is unlawful for any person to purchase, possess,
746 transfer or distribute two hundred fifty (250) dosage units or
747 fifteen (15) grams in weight (dosage unit and weight as defined in
748 Section 41-29-139) of pseudoephedrine or ephedrine, knowing, or
749 under circumstances where one reasonably should know, that the
750 pseudoephedrine or ephedrine will be used to unlawfully
751 manufacture a controlled substance.



752 (d) Any person who violates this subsection (2), upon
753 conviction, is guilty of a felony and may be imprisoned for a
754 period not to exceed five (5) years and shall be fined not more
755 than Five Thousand Dollars (\$5,000.00), or both fine and
756 imprisonment.

757 (3) The terms "listed * * * drug or chemical" means a * * *
758 drug or chemical that, in addition to legitimate uses, may be used
759 as a controlled substance analogue or in manufacturing a
760 controlled substance or controlled substance analogue in violation
761 of this chapter. Such term includes any salt, optical isomer or
762 salt of an optical isomer, whenever the existence of such salt,
763 optical isomer or salt of optical isomer is possible within the
764 specific chemical designation. The chemicals or drugs listed in
765 this section are included by whatever official, common, usual,
766 chemical or trade name designated. The following are
767 "listed * * * drugs or chemicals":

- 768 (a) Ether;
- 769 (b) Anhydrous ammonia;
- 770 (c) Pseudoephedrine;
- 771 (d) Ephedrine;
- 772 (e) Denatured alcohol (Ethanol);
- 773 (f) Lithium;
- 774 (g) Freon;
- 775 (h) Hydrochloric acid;
- 776 (i) Hydriodic acid;
- 777 (j) Red phosphorous;
- 778 (k) Iodine;
- 779 (l) Sodium metal;
- 780 (m) Muriatic acid;
- 781 (n) Sulfuric acid;
- 782 (o) Hydrogen chloride gas;
- 783 (p) Potassium;
- 784 (q) Methanol;



785 (r) Isopropyl alcohol;
786 (s) Hexanes;
787 (t) Heptanes;
788 (u) Acetone;
789 (v) Toluene;
790 (w) Xylenes;
791 (x) Gamma-butyrolactone, including butyrolactone;
792 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
793 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
794 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
795 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
796 with Chemical Abstract Service number (96-48-0).
797 (y) 1,4-butanediol, including butanediol;
798 butane-1,4-diol; 1,4-butylene glycol; butylene glycol;
799 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene
800 glycol; tetramethylene 1,4-diol with Chemical Abstract Service
801 number (110-63-4).

802 (4) Nothing in this section shall preclude any farmer from
803 storing or using any of the listed * * * drugs or chemicals listed
804 in this section in the normal pursuit of farming operations.

805 (5) Nothing in this section shall preclude any wholesaler,
806 retailer or pharmacist from possessing or selling the listed * * *
807 drugs or chemicals in the normal pursuit of business.

808 **SECTION 6.** Section 41-29-127, Mississippi Code of 1972, is
809 amended as follows:

810 41-29-127. (a) The State Board of Pharmacy shall register
811 an applicant to manufacture or distribute controlled substances
812 included in Sections 41-29-113 through 41-29-121 unless it
813 determines that the issuance of that registration would be
814 inconsistent with the public interest. In determining the public
815 interest, the State Board of Pharmacy shall consider the following
816 factors:



817 (1) Maintenance of effective controls against diversion
818 of controlled substances into other than legitimate medical,
819 scientific, or industrial channels;

820 (2) Compliance with applicable state and local law;

821 (3) Any convictions of the applicant under any federal
822 and state laws relating to any controlled substance or controlled
823 substance analogue;

824 (4) Past experience in the manufacture or distribution
825 of controlled substances and the existence in the applicant's
826 establishment of effective controls against diversion;

827 (5) Furnishing by the applicant of false or fraudulent
828 material in any application filed under this article;

829 (6) Suspension or revocation of the applicant's federal
830 registration to manufacture, distribute, or dispense controlled
831 substances as authorized by federal law; and

832 (7) Any other factors relevant to and consistent with
833 the public health and safety.

834 (b) Registration under subsection (a) does not entitle a
835 registrant to manufacture and distribute controlled substances in
836 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
837 other than those specified in the registration.

838 (c) Practitioners must be registered to dispense any
839 controlled substances or to conduct research with controlled
840 substances in Schedules II through V, as set out in Sections
841 41-29-115 through 41-29-121, if they are authorized to dispense or
842 conduct research under the law of this state. The State Board of
843 Pharmacy need not require separate registration under this section
844 for practitioners engaging in research with nonnarcotic controlled
845 substances in the said Schedules II through V where the registrant
846 is already registered therein in another capacity. Practitioners
847 registered under federal law to conduct research with Schedule I
848 substances, as set out in Section 41-29-113, may conduct research



849 with Schedule I substances within this state upon furnishing the
850 State Board of Health evidence of that federal registration.

851 (d) Compliance by manufacturers and distributors with the
852 provisions of the federal law respecting registration (excluding
853 fees) entitles them to be registered under this article.

854 **SECTION 7.** Section 41-29-129, Mississippi Code of 1972, is
855 amended as follows:

856 41-29-129. (1) A registration to manufacture, distribute,
857 or dispense a controlled substance may be suspended or revoked by
858 the State Board of Pharmacy upon a finding that the registrant:

859 (a) Has willfully furnished false or fraudulent
860 material information in any application filed under this article;

861 (b) Has been convicted of a felony within the past five
862 (5) years and has not been pardoned and his citizenship restored
863 under any state or federal law relating to any controlled
864 substance or controlled substance analogue;

865 (c) Has had his federal registration suspended or
866 revoked to manufacture, distribute or dispense controlled
867 substances;

868 (d) Has violated or failed to comply with any duly
869 promulgated regulation of the State Board of Pharmacy which
870 reflects adversely on the registrant's reliability and integrity
871 with respect to controlled substances;

872 (e) Has violated the Uniform Controlled Substances Law
873 of the State of Mississippi;

874 (f) Has violated any duly promulgated rule or
875 regulation of the State Board of Pharmacy pertaining to the
876 manufacture, distribution, storage, possession, control or
877 dispensing of controlled substances;

878 (g) Has been convicted of a violation relating to any
879 substance defined in this article as a controlled substance.

880 (2) The State Board of Pharmacy may limit revocation or
881 suspension of a registration to the particular controlled



882 substance with respect to which grounds for revocation or
883 suspension exist.

884 (3) If the board or the State Board of Pharmacy suspends or
885 revokes a registration, all controlled substances owned or
886 possessed by the registrant at the time of suspension or the
887 effective date of the revocation order may be placed under seal.
888 No disposition may be made of substances under seal until the time
889 for taking an appeal has elapsed or until all appeals have been
890 concluded unless a court, upon application therefor, orders the
891 sale of perishable substances and the deposit of the proceeds of
892 the sale with the court. Upon a revocation order becoming final,
893 all controlled substances may be forfeited to the state. All
894 state professional or business licensing agencies shall promptly
895 notify the bureau of all orders of suspensions or revocations
896 which are the result of drug violations or drug-related matters.

897 (4) The bureau shall promptly notify the federal Bureau of
898 Narcotics and dangerous drugs of all orders suspending or revoking
899 registration and all forfeitures of controlled substances.

900 **SECTION 8.** Section 41-29-142, Mississippi Code of 1972, is
901 amended as follows:

902 41-29-142. (1) Except as provided in subsection (f) of
903 Section 41-29-139 or in subsection (2) of this section, any person
904 who violates or conspires to violate Section 41-29-139(a)(1),
905 Mississippi Code of 1972, by selling, bartering, transferring,
906 manufacturing, distributing, dispensing or possessing with intent
907 to sell, barter, transfer, manufacture, distribute or dispense, a
908 controlled substance or controlled substance analogue, in or on,
909 or within one thousand five hundred (1,500) feet of, a building or
910 outbuilding which is all or part of a public or private
911 elementary, vocational or secondary school, or any church, public
912 park, ballpark, public gymnasium, youth center or movie theater or
913 within one thousand (1,000) feet of, the real property comprising
914 such public or private elementary, vocational or secondary school,



915 or any church, public park, ballpark, public gymnasium, youth
916 center or movie theater shall, upon conviction thereof, be
917 punished by the term of imprisonment or a fine, or both, of that
918 authorized by Section 41-29-139(b) and, in the discretion of the
919 court, may be punished by a term of imprisonment or a fine, or
920 both, of up to twice that authorized by Section 41-29-139(b).

921 (2) Except as otherwise provided in subsection (f) of
922 Section 41-29-139, any person who violates or conspires to violate
923 Section 41-29-139(a)(1), Mississippi Code of 1972, by selling,
924 bartering, transferring, manufacturing, distributing, dispensing
925 or possessing with intent to sell, barter, transfer, manufacture,
926 distribute or dispense, a controlled substance or controlled
927 substance analogue, in or on, or within one thousand five hundred
928 (1,500) feet of, a building or outbuilding which is all or part of
929 a public or private elementary, vocational or secondary school, or
930 any church, public park, ballpark, public gymnasium, youth center
931 or movie theater or within one thousand (1,000) feet of, the real
932 property comprising such public or private elementary, vocational
933 or secondary school, or any church, public park, ballpark, public
934 gymnasium, youth center or movie theater after a prior conviction
935 under subsection (1) of this section has become final, shall, upon
936 conviction thereof, be punished by a term of imprisonment of not
937 less than three (3) years and not more than life, and in the
938 discretion of the court, may be punished by a term of imprisonment
939 of up to three (3) times that authorized by Section 41-29-139(b),
940 for a first offense, or a fine of up to three (3) times that
941 authorized by Section 41-29-139(b), for a first offense, or both.

942 **SECTION 9.** Section 41-29-144, Mississippi Code of 1972, is
943 amended as follows:

944 41-29-144. (1) It is unlawful for any person knowingly or
945 intentionally to acquire or obtain possession or attempt to
946 acquire or obtain possession of a controlled substance or a



947 controlled substance analogue by misrepresentation, fraud,
948 forgery, deception or subterfuge.

949 (2) It is unlawful for any person knowingly or intentionally
950 to possess, sell, deliver, transfer or attempt to possess, sell,
951 deliver or transfer a false, fraudulent or forged prescription of
952 a practitioner.

953 (3) Any person who violates this section is guilty of a
954 crime and upon conviction shall be confined for not less than one
955 (1) year nor more than five (5) years and fined not more than One
956 Thousand Dollars (\$1,000.00) or both.

957 **SECTION 10.** Section 41-29-145, Mississippi Code of 1972, is
958 amended as follows:

959 41-29-145. Any person twenty-one (21) years of age or over
960 who violates subsections (a) and (b) of Section 41-29-139 with
961 reference to a controlled substance listed in Schedules I, II,
962 III, IV and V as set out in Sections 41-29-113 through 41-29-121
963 or a controlled substance analogue, inclusive, to a person under
964 twenty-one (21) years of age may be punished by the fine
965 authorized by Section 41-29-139, or by a term of imprisonment or
966 confinement up to twice that authorized by said Section 41-29-139,
967 or both, or he may be punished as provided in Section 41-29-142.

968 **SECTION 11.** Section 41-29-146, Mississippi Code of 1972, is
969 amended as follows:

970 41-29-146. (1) It shall be unlawful for any person to sell,
971 produce, manufacture or possess with the intent to sell, produce,
972 manufacture, distribute or dispense any substance which is falsely
973 represented to be a controlled substance or controlled substance
974 analogue or which is falsely represented to be a counterfeit
975 substance as defined in Section 41-29-105.

976 (2) The provisions of this section shall not apply to a law
977 enforcement officer acting in the course and scope of his
978 employment or to a medical practitioner, pharmacist or other
979 person authorized to dispense or administer controlled substances.



980 (3) Any person who violates this section shall, upon
981 conviction, be guilty of a misdemeanor and may be punished by
982 imprisonment in the county jail for not more than one (1) year or
983 by a fine of not more than One Thousand Dollars (\$1,000.00) or by
984 both.

985 **SECTION 12.** Section 41-29-152, Mississippi Code of 1972, is
986 amended as follows:

987 41-29-152. (1) Any person who violates Section 41-29-313 or
988 who violates Section 41-29-139 with reference to a controlled
989 substance listed in Schedule I, II, III, IV or V as set out in
990 Sections 41-29-113 through 41-29-121, Mississippi Code of 1972, or
991 a controlled substance analogue, inclusive, and has in his
992 possession any firearm, either at the time of the commission of
993 the offense or at the time any arrest is made, may be punished by
994 a fine up to twice that authorized by Section 41-29-139 or
995 41-29-313, or by a term of imprisonment or confinement up to twice
996 that authorized by Section 41-29-139 or 41-29-313, or both.

997 (2) "Firearm" means any weapon, including a starter gun,
998 which will or is designed to or may readily be converted to expel
999 a projectile by the action of an explosive.

1000 **SECTION 13.** Section 41-29-153, Mississippi Code of 1972, is
1001 amended as follows:

1002 41-29-153. (a) The following are subject to forfeiture:

1003 (1) All controlled substances or controlled substance
1004 analogues which have been manufactured, distributed, dispensed or
1005 acquired in violation of this article;

1006 (2) All raw materials, products and equipment of any
1007 kind which are used, or intended for use, in manufacturing,
1008 compounding, processing, delivering, importing, or exporting any
1009 controlled substance or controlled substance analogues in
1010 violation of this article;



1011 (3) All property which is used, or intended for use, as
1012 a container for property described in paragraph (1) or (2) of this
1013 section;

1014 (4) All conveyances, including aircraft, vehicles or
1015 vessels, which are used, or intended for use, to transport, or in
1016 any manner to facilitate the transportation, sale, receipt,
1017 possession or concealment of property described in paragraph (1)
1018 or (2) of this section, however:

1019 A. No conveyance used by any person as a common
1020 carrier in the transaction of business as a common carrier is
1021 subject to forfeiture under this section unless it appears that
1022 the owner or other person in charge of the conveyance is a
1023 consenting party or privy to a violation of this article;

1024 B. No conveyance is subject to forfeiture under
1025 this section by reason of any act or omission proved by the owner
1026 thereof to have been committed or omitted without his knowledge or
1027 consent; if the confiscating authority has reason to believe that
1028 the conveyance is a leased or rented conveyance, then the
1029 confiscating authority shall notify the owner of the conveyance
1030 within five (5) days of the confiscation;

1031 C. A forfeiture of a conveyance encumbered by a
1032 bona fide security interest is subject to the interest of the
1033 secured party if he neither had knowledge of nor consented to the
1034 act or omission;

1035 D. A conveyance is not subject to forfeiture for a
1036 violation of Section 41-29-139(c)(2)(A), (B) or (C);

1037 (5) All money, deadly weapons, books, records, and
1038 research products and materials, including formulas, microfilm,
1039 tapes and data which are used, or intended for use, in violation
1040 of this article;

1041 (6) All drug paraphernalia as defined in Section
1042 41-29-105(v); and



1043 (7) Everything of value, including real estate,
1044 furnished, or intended to be furnished, in exchange for a
1045 controlled substance in violation of this article, all proceeds
1046 traceable to such an exchange, and all monies, negotiable
1047 instruments, businesses or business investments, securities, and
1048 other things of value used, or intended to be used, to facilitate
1049 any violation of this article. All monies, coin and currency
1050 found in close proximity to forfeitable controlled substances, to
1051 forfeitable drug manufacturing or distributing paraphernalia, or
1052 to forfeitable records of the importation, manufacture or
1053 distribution of controlled substances are presumed to be
1054 forfeitable under this paragraph; the burden of proof is upon
1055 claimants of the property to rebut this presumption.

1056 A. No property shall be forfeited under the
1057 provisions of paragraph (a) (7) of this section, to the extent of
1058 the interest of an owner, by reason of any act or omission
1059 established by him to have been committed or omitted without his
1060 knowledge or consent.

1061 B. Neither personal property encumbered by a bona
1062 fide security interest nor real estate encumbered by a bona fide
1063 mortgage, deed of trust, lien or encumbrance shall be forfeited
1064 under the provisions of paragraph (a) (7) of this section, to the
1065 extent of the interest of the secured party or the interest of the
1066 mortgagee, holder of a deed of trust, lien or encumbrance by
1067 reason of any act or omission established by him to have been
1068 committed or omitted without his knowledge or consent.

1069 (b) Property subject to forfeiture may be seized by the
1070 bureau, local law enforcement officers, enforcement officers of
1071 the Mississippi Department of Transportation, highway patrolmen,
1072 the board, or the State Board of Pharmacy upon process issued by
1073 any appropriate court having jurisdiction over the property.

1074 Seizure without process may be made if:



1075 (1) The seizure is incident to an arrest or a search
1076 under a search warrant or an inspection under an administrative
1077 inspection warrant;

1078 (2) The property subject to seizure has been the
1079 subject of a prior judgment in favor of the state in a criminal
1080 injunction or forfeiture proceeding based upon this article;

1081 (3) The bureau, the board, local law enforcement
1082 officers, enforcement officers of the Mississippi Department of
1083 Transportation, or highway patrolmen, or the State Board of
1084 Pharmacy have probable cause to believe that the property is
1085 directly or indirectly dangerous to health or safety; or

1086 (4) The bureau, local law enforcement officers,
1087 enforcement officers of the Mississippi Department of
1088 Transportation, highway patrolmen, the board, or the State Board
1089 of Pharmacy have probable cause to believe that the property was
1090 used or is intended to be used in violation of this article.

1091 (c) Controlled substances listed in Schedule I of Section
1092 41-29-113 or controlled substance analogues that are possessed,
1093 transferred, sold or offered for sale in violation of this article
1094 are contraband and shall be seized and summarily forfeited to the
1095 state. Controlled substances listed in the said Schedule I or
1096 controlled substance analogues, which are seized or come into the
1097 possession of the state, the owners of which are unknown, are
1098 contraband and shall be summarily forfeited to the state.

1099 (d) Species of plants from which controlled substances in
1100 Schedules I and II of Sections 41-29-113 and 41-29-115 or
1101 controlled substance analogues may be derived which have been
1102 planted or cultivated in violation of this article, or of which
1103 the owners or cultivators are unknown, or which are wild growths,
1104 may be seized and summarily forfeited to the state.

1105 (e) The failure, upon demand by the bureau and/or local law
1106 enforcement officers, or their authorized agents, or highway
1107 patrolmen designated by the bureau, the board, or the State Board



1108 of Pharmacy, of the person in occupancy or in control of land or
1109 premises upon which the species of plants are growing or being
1110 stored, to produce an appropriate registration, or proof that he
1111 is the holder thereof, constitutes authority for the seizure and
1112 forfeiture of the plants.

1113 **SECTION 14.** Section 41-29-154, Mississippi Code of 1972, is
1114 amended as follows:

1115 41-29-154. Any controlled substance, controlled substance
1116 analogue or paraphernalia seized under the authority of this
1117 article or any other law of Mississippi or of the United States,
1118 shall be destroyed, adulterated and disposed of or otherwise
1119 rendered harmless and disposed of, upon written authorization of
1120 the director, after such substance or paraphernalia has served its
1121 usefulness as evidence or after such substance or paraphernalia is
1122 no longer useful for training or demonstration purposes.

1123 A record of the disposition of such substances and
1124 paraphernalia and the method of destruction or adulteration
1125 employed along with the names of witnesses to such destruction or
1126 adulteration shall be retained by the director.

1127 No substance or paraphernalia shall be disposed of, destroyed
1128 or rendered harmless under the authority of this section without
1129 an order from the director and without at least two (2) officers
1130 or agents of the bureau present as witnesses.

1131 **SECTION 15.** Section 41-29-169, Mississippi Code of 1972, is
1132 amended as follows:

1133 41-29-169. The Mississippi Bureau of Drug Enforcement and
1134 State Board of Education shall carry out educational programs
1135 designed to prevent and deter misuse and abuse of controlled
1136 substances or controlled substance analogues. In connection with
1137 these programs they may:

1138 (1) Promote better recognition of the problems of
1139 misuse and abuse of controlled substances or controlled substance



1140 analogues within the regulated industry and among interested
1141 groups and organizations;

1142 (2) Assist the regulated industry and interested groups
1143 and organizations in contributing to the reduction of misuse and
1144 abuse of controlled substances or controlled substance analogues;

1145 (3) Consult with interested groups and organizations to
1146 aid them in solving administrative and organizational problems;

1147 (4) Evaluate procedures, projects, techniques, and
1148 controls conducted or proposed as part of educational programs on
1149 misuse and abuse of controlled substances or controlled substance
1150 analogues;

1151 (5) Disseminate the results of research on misuse and
1152 abuse of controlled substances or controlled substance analogues
1153 to promote a better public understanding of what problems exist
1154 and what can be done to combat them; and

1155 (6) Assist in the education and training of state and
1156 local law enforcement officials in their efforts to control misuse
1157 and abuse of controlled substances or controlled substance
1158 analogues.

1159 **SECTION 16.** Section 41-29-171, Mississippi Code of 1972, is
1160 amended as follows:

1161 41-29-171. (a) The Mississippi Bureau of Narcotics, the
1162 State Board of Pharmacy, the State Board of Medical Licensure,
1163 the State Board of Dental Examiners and the Mississippi Board of
1164 Nursing shall encourage research on misuse and abuse of controlled
1165 substances or controlled substance analogues. In connection with
1166 the research, and in furtherance of the enforcement of this
1167 article they may:

1168 (1) Establish methods to assess accurately the effects
1169 of controlled substances or controlled substance analogues and
1170 identify and characterize those with potential for abuse;

1171 (2) Make studies and undertake programs of research to:



1172 (A) Develop new or improved approaches,
1173 techniques, systems, equipment and devices to strengthen the
1174 enforcement of this article;

1175 (B) Determine patterns of misuse and abuse of
1176 controlled substances or controlled substance analogues and the
1177 social effects thereof; and

1178 (C) Improve methods for preventing, predicting,
1179 understanding and dealing with the misuse and abuse of controlled
1180 substances or controlled substance analogues;

1181 (3) Enter into contracts with public agencies,
1182 institutions of higher education, and private organizations or
1183 individuals for the purpose of conducting research,
1184 demonstrations, or special projects which bear directly on misuse
1185 and abuse of controlled substances or controlled substance
1186 analogues.

1187 (b) The Mississippi Bureau of Narcotics and the State Board
1188 of Education may enter into contracts for educational and research
1189 activities without performance bonds.

1190 (c) The board may authorize the possession and distribution
1191 of controlled substances or controlled substance analogues by
1192 persons engaged in research. Persons who obtain this
1193 authorization are exempt from state prosecution for possession and
1194 distribution of controlled substances or controlled substance
1195 analogues to the extent of the authorization.

1196 **SECTION 17.** Section 41-29-176, Mississippi Code of 1972, is
1197 amended as follows:

1198 41-29-176. (1) When any property other than a controlled
1199 substance, controlled substance analogue, raw material or
1200 paraphernalia, the value of which does not exceed Ten Thousand
1201 Dollars (\$10,000.00), is seized under the Uniform Controlled
1202 Substances Law, the property may be forfeited by the
1203 administrative forfeiture procedures provided for in this section.



1204 (2) The attorney for or any representative of the seizing
1205 law enforcement agency shall provide notice of intention to
1206 forfeit the seized property administratively, either by certified
1207 mail, return receipt requested, or by personal delivery, to all
1208 persons who are required to be notified pursuant to Section
1209 41-29-177(2), Mississippi Code of 1972.

1210 (3) In the event that notice of intention to forfeit the
1211 seized property administratively cannot be given as provided in
1212 subsection (2) of this section because of refusal, failure to
1213 claim, insufficient address or any other reason, the attorney for
1214 or representative of the seizing law enforcement agency shall
1215 provide notice by publication in a newspaper of general
1216 circulation in the county in which the seizure occurred for once a
1217 week for three (3) consecutive weeks.

1218 (4) Notice pursuant to subsections (2) and (3) of this
1219 section shall include the following information:

- 1220 (a) A description of the property;
- 1221 (b) The approximate value of the property;
- 1222 (c) The date and place of the seizure;
- 1223 (d) The connection between the property and the
1224 violation of the Uniform Controlled Substances Law;
- 1225 (e) The instructions for filing a request for judicial
1226 review; and
- 1227 (f) A statement that the property will be forfeited to
1228 the seizing law enforcement agency if a request for judicial
1229 review is not timely filed.

1230 (5) Any person claiming an interest in property which is the
1231 subject of a notice under this section may, within thirty (30)
1232 days after receipt of the notice or of the date of the first
1233 publication of the notice, file a petition to contest forfeiture
1234 signed by the claimant in the county court, if a county court
1235 exists, or otherwise in the circuit court of the county in which
1236 the seizure is made or the county in which the criminal



1237 prosecution is brought, in order to claim an interest in the
1238 property. Upon the filing of the petition and the payment of the
1239 filing fees, service of the petition shall be made on the attorney
1240 for or representative of the seizing law enforcement agency, and
1241 the proceedings shall thereafter be governed by the rules of civil
1242 procedure.

1243 (6) If no petition to contest forfeiture is timely filed,
1244 the attorney for the seizing law enforcement agency shall prepare
1245 a written declaration of forfeiture of the subject property and
1246 the forfeited property shall be used, distributed or disposed of
1247 in accordance with the provisions of Section 41-29-181,
1248 Mississippi Code of 1972.

1249 **SECTION 18.** Section 41-29-177, Mississippi Code of 1972, is
1250 amended as follows:

1251 41-29-177. (1) Except as otherwise provided in Section
1252 41-29-176, Mississippi Code of 1972, when any property, other than
1253 a controlled substance, controlled substance analogue, raw
1254 material or paraphernalia, is seized under the Uniform Controlled
1255 Substances Law, proceedings under this section shall be instituted
1256 within thirty (30) days from the date of seizure or the subject
1257 property shall be immediately returned to the party from whom
1258 seized.

1259 (2) A petition for forfeiture shall be filed in the name of
1260 the State of Mississippi, the county or the municipality and may
1261 be filed in the county in which the seizure is made, the county in
1262 which the criminal prosecution is brought or the county in which
1263 the owner of the seized property is found. Forfeiture proceedings
1264 may be brought in the circuit court or the county court if a
1265 county court exists in the county and the value of the seized
1266 property is within the jurisdictional limits of the county court
1267 as set forth in Section 9-9-21, Mississippi Code of 1972. A copy
1268 of such petition shall be served upon the following persons by
1269 service of process in the same manner as in civil cases:



1270 (a) The owner of the property, if address is known;
1271 (b) Any secured party who has registered his lien or
1272 filed a financing statement as provided by law, if the identity of
1273 such secured party can be ascertained by the Bureau of Narcotics
1274 or the local law enforcement agency by making a good faith effort
1275 to ascertain the identity of such secured party as described in
1276 subsections (3), (4), (5), (6) and (7) of this section;
1277 (c) Any other bona fide lienholder or secured party or
1278 other person holding an interest in the property in the nature of
1279 a security interest of whom the Mississippi Bureau of Narcotics or
1280 the local law enforcement agency has actual knowledge;
1281 (d) Any holder of a mortgage, deed of trust, lien or
1282 encumbrance of record, if the property is real estate, by making a
1283 good faith inquiry as described in subsection (8) of this section;
1284 and
1285 (e) Any person in possession of property subject to
1286 forfeiture at the time that it was seized.
1287 (3) If the property is a motor vehicle susceptible of
1288 titling under the Mississippi Motor Vehicle Title Law and if there
1289 is any reasonable cause to believe that the vehicle has been
1290 titled, the Bureau of Narcotics or the local law enforcement
1291 agency shall make inquiry of the State Tax Commission as to what
1292 the records of the State Tax Commission show as to who is the
1293 record owner of the vehicle and who, if anyone, holds any lien or
1294 security interest which affects the vehicle.
1295 (4) If the property is a motor vehicle and is not titled in
1296 the State of Mississippi, then the Bureau of Narcotics or the
1297 local law enforcement agency shall attempt to ascertain the name
1298 and address of the person in whose name the vehicle is licensed,
1299 and if the vehicle is licensed in a state which has in effect a
1300 certificate of title law, the bureau or the local law enforcement
1301 agency shall make inquiry of the appropriate agency of that state
1302 as to what the records of the agency show as to who is the record



1303 owner of the vehicle and who, if anyone, holds any lien, security
1304 interest or other instrument in the nature of a security device
1305 which affects the vehicle.

1306 (5) If the property is of a nature that a financing
1307 statement is required by the laws of this state to be filed to
1308 perfect a security interest affecting the property and if there is
1309 any reasonable cause to believe that a financing statement
1310 covering the security interest has been filed under the laws of
1311 this state, the Bureau of Narcotics or the local law enforcement
1312 agency shall make inquiry of the appropriate office designated in
1313 Section 75-9-501, Mississippi Code of 1972, as to what the records
1314 show as to who is the record owner of the property and who, if
1315 anyone, has filed a financing statement affecting the property.

1316 (6) If the property is an aircraft or part thereof and if
1317 there is any reasonable cause to believe that an instrument in the
1318 nature of a security device affects the property, then the Bureau
1319 of Narcotics or the local law enforcement agency shall make
1320 inquiry of the Mississippi Department of Transportation as to what
1321 the records of the Federal Aviation Administration show as to who
1322 is the record owner of the property and who, if anyone, holds an
1323 instrument in the nature of a security device which affects the
1324 property.

1325 (7) In the case of all other personal property subject to
1326 forfeiture, if there is any reasonable cause to believe that an
1327 instrument in the nature of a security device affects the
1328 property, then the Bureau of Narcotics or the local law
1329 enforcement agency shall make a good faith inquiry to identify the
1330 holder of any such instrument.

1331 (8) If the property is real estate, the Bureau of Narcotics
1332 or the local law enforcement agency shall make inquiry of the
1333 chancery clerk of the county wherein the property is located to
1334 determine who is the owner of record and who, if anyone, is a



1335 holder of a bona fide mortgage, deed of trust, lien or
1336 encumbrance.

1337 (9) In the event the answer to an inquiry states that the
1338 record owner of the property is any person other than the person
1339 who was in possession of it when it was seized, or states that any
1340 person holds any lien, encumbrance, security interest, other
1341 interest in the nature of a security interest, mortgage or deed of
1342 trust which affects the property, the Bureau of Narcotics or the
1343 local law enforcement agency shall cause any record owner and also
1344 any lienholder, secured party, other person who holds an interest
1345 in the property in the nature of a security interest, or holder of
1346 an encumbrance, mortgage or deed of trust which affects the
1347 property to be named in the petition of forfeiture and to be
1348 served with process in the same manner as in civil cases.

1349 (10) If the owner of the property cannot be found and served
1350 with a copy of the petition of forfeiture, or if no person was in
1351 possession of the property subject to forfeiture at the time that
1352 it was seized and the owner of the property is unknown, the Bureau
1353 of Narcotics or the local law enforcement agency shall file with
1354 the clerk of the court in which the proceeding is pending an
1355 affidavit to such effect, whereupon the clerk of the court shall
1356 publish notice of the hearing addressed to "the Unknown Owner of
1357 _____," filling in the blank space with a reasonably
1358 detailed description of the property subject to forfeiture.
1359 Service by publication shall contain the other requisites
1360 prescribed in Section 11-33-41, and shall be served as provided in
1361 Section 11-33-37, Mississippi Code of 1972, for publication of
1362 notice for attachments at law.

1363 (11) No proceedings instituted pursuant to the provisions of
1364 this article shall proceed to hearing unless the judge conducting
1365 the hearing is satisfied that this section has been complied with.
1366 Any answer received from an inquiry required by subsections (3)



1367 through (8) of this section shall be introduced into evidence at
1368 the hearing.

1369 **SECTION 19.** Section 41-29-179, Mississippi Code of 1972, is
1370 amended as follows:

1371 41-29-179. (1) Except as otherwise provided in Section
1372 41-29-176, an owner of property, other than a controlled
1373 substance, a controlled substance analogue, raw material or
1374 paraphernalia, that has been seized shall file an answer within
1375 thirty (30) days after the completion of service of process. If
1376 an answer is not filed, the court shall hear evidence that the
1377 property is subject to forfeiture and forfeit the property to the
1378 Mississippi Bureau of Narcotics or the local law enforcement
1379 agency. If an answer is filed, a time for hearing on forfeiture
1380 shall be set within thirty (30) days of filing the answer or at
1381 the succeeding term of court if court would not be in progress
1382 within thirty (30) days after filing the answer. Provided,
1383 however, that upon request by the Bureau of Narcotics, the local
1384 law enforcement agency or the owner of the property, the court may
1385 postpone said forfeiture hearing to a date past the time any
1386 criminal action is pending against said owner.

1387 (2) If the owner of the property has filed an answer denying
1388 that the property is subject to forfeiture, then the burden is on
1389 the petitioner to prove that the property is subject to
1390 forfeiture. However, if an answer has not been filed by the owner
1391 of the property, the petition for forfeiture may be introduced
1392 into evidence and is prima facie evidence that the property is
1393 subject to forfeiture. The standard of proof placed upon the
1394 petitioner in regard to property forfeited under the provisions of
1395 this article shall be by a preponderance of the evidence.

1396 (3) At the hearing any claimant of any right, title or
1397 interest in the property may prove his lien, encumbrance, security
1398 interest, other interest in the nature of a security interest,
1399 mortgage or deed of trust to be bona fide and created without



1400 knowledge or consent that the property was to be used so as to
1401 cause the property to be subject to forfeiture.

1402 (4) If it is found that the property is subject to
1403 forfeiture, then the judge shall forfeit the property to the
1404 Mississippi Bureau of Narcotics or the local law enforcement
1405 agency. However, if proof at the hearing discloses that the
1406 interest of any bona fide lienholder, secured party, other person
1407 holding an interest in the property in the nature of a security
1408 interest, or any holder of a bona fide encumbrance, mortgage or
1409 deed of trust is greater than or equal to the present value of the
1410 property, the court shall order the property released to him. If
1411 such interest is less than the present value of the property and
1412 if the proof shows that the property is subject to forfeiture, the
1413 court shall order the property forfeited to the Mississippi Bureau
1414 of Narcotics or the local law enforcement agency.

1415 (5) Upon a petition filed in the name of the State of
1416 Mississippi, the county or the municipality with the clerk of the
1417 circuit court of the county in which the seizure of any controlled
1418 substance, controlled substance analogue or raw material is made,
1419 the circuit court having jurisdiction may order the controlled
1420 substance, controlled substance analogue or raw material summarily
1421 forfeited except when lawful possession and title can be
1422 ascertained. If a person is found to have had lawful possession
1423 and title prior to seizure, the court shall order the controlled
1424 substance or raw material returned to the owner, if the owner so
1425 desires. Upon a petition filed in the name of the State of
1426 Mississippi, the county or the municipality with the clerk of the
1427 circuit court of the county in which the seizure of any purported
1428 paraphernalia is made, the circuit court having jurisdiction may
1429 order such seized property summarily forfeited when the court has
1430 determined the seized property to be paraphernalia as defined in
1431 Section 41-29-105(v).



1432 **SECTION 20.** Section 63-1-71, Mississippi Code of 1972, is
1433 amended as follows:

1434 63-1-71. (1) In addition to any penalty authorized by the
1435 Uniform Controlled Substances Law or any other statute indicating
1436 the dispositions that can be ordered for an adjudication of
1437 delinquency, every person convicted of, or entering a plea of nolo
1438 contendere to, or adjudicated delinquent in a court of this state
1439 for a violation of any offense defined in the Uniform Controlled
1440 Substances Law, and every person convicted of, or entering a plea
1441 of nolo contendere to, or adjudicated delinquent under the laws of
1442 the United States, another state, a territory or possession of the
1443 United States, the District of Columbia or the Commonwealth of
1444 Puerto Rico of a violation for the use, distribution, possession,
1445 manufacture, sale, barter, transfer or dispensing of a "controlled
1446 substance," "counterfeit substance," "controlled substance
1447 analogue," "narcotic drug" or "drug," as such terms are defined
1448 under Section 41-29-105, shall forthwith forfeit his right to
1449 operate a motor vehicle over the highways of this state for a
1450 period of six (6) months. Notwithstanding the provisions of
1451 Section 63-11-30(2)(a) and in addition to any penalty authorized
1452 by the Uniform Controlled Substances Law or any other statute
1453 indicating the dispositions that can be ordered for an
1454 adjudication of delinquency, every person convicted of driving
1455 under the influence of a controlled substance, or entering a plea
1456 of nolo contendere thereto, or adjudicated delinquent therefor, in
1457 a court of this state, and every person convicted of driving under
1458 the influence of a controlled substance or controlled substance
1459 analogue, or entering a plea of nolo contendere thereto, or
1460 adjudicated delinquent therefor, under the laws of the United
1461 States, another state, a territory or possession of the United
1462 States, the District of Columbia or the Commonwealth of Puerto
1463 Rico, shall forthwith forfeit his right to operate a motor vehicle
1464 over the highways of this state for a period of not less than six



1465 (6) months. In the case of any person who at the time of the
1466 imposition of sentence does not have a driver's license or is less
1467 than fifteen (15) years of age, the period of the suspension of
1468 driving privileges authorized herein shall commence on the day the
1469 sentence is imposed and shall run for a period of not less than
1470 six (6) months after the day the person obtains a driver's license
1471 or reaches the age of fifteen (15) years. If the driving
1472 privilege of any person is under revocation or suspension at the
1473 time of any conviction or adjudication of delinquency for a
1474 violation of any offense defined in the Uniform Controlled
1475 Substances Law, the revocation or suspension period imposed herein
1476 shall commence as of the date of termination of the existing
1477 revocation or suspension.

1478 (2) The court in this state before whom any person is
1479 convicted of or adjudicated delinquent for a violation of an
1480 offense under subsection (1) of this section shall collect
1481 forthwith the Mississippi driver's license of the person and
1482 forward such license to the Department of Public Safety along with
1483 a report indicating the first and last day of the suspension or
1484 revocation period imposed pursuant to this section. If the court
1485 is for any reason unable to collect the license of the person, the
1486 court shall cause a report of the conviction or adjudication of
1487 delinquency to be filed with the Commissioner of Public Safety.
1488 That report shall include the complete name, address, date of
1489 birth, eye color and sex of the person and shall indicate the
1490 first and last day of the suspension or revocation period imposed
1491 by the court pursuant to this section. The court shall inform the
1492 person orally and in writing that if the person is convicted of
1493 personally operating a motor vehicle during the period of license
1494 suspension or revocation imposed pursuant to this section, the
1495 person shall, upon conviction, be subject to the penalties set
1496 forth in Section 63-11-40. A person shall be required to
1497 acknowledge receipt of the written notice in writing. Failure to



1498 receive a written notice or failure to acknowledge in writing the
1499 receipt of a written notice shall not be a defense to a subsequent
1500 charge of a violation of Section 63-11-40. If the person is the
1501 holder of a driver's license from another jurisdiction, the court
1502 shall not collect the license but shall notify forthwith the
1503 Commissioner of Public Safety who shall notify the appropriate
1504 officials in the licensing jurisdiction. The court shall,
1505 however, in accordance with the provisions of this section, revoke
1506 the person's nonresident driving privilege in this state.

1507 (3) The county court or circuit court having jurisdiction,
1508 on petition, may reduce the suspension of driving privileges under
1509 this section if the denial of which would constitute a hardship on
1510 the offender. When the petition is filed, such person shall pay
1511 to the circuit clerk of the court where the petition is filed a
1512 fee of Twenty Dollars (\$20.00) for each year, or portion thereof,
1513 of license revocation or suspension remaining under the original
1514 sentence, which shall be deposited into the State General Fund to
1515 the credit of a special fund hereby created in the State Treasury
1516 to be used for alcohol or drug abuse treatment and education, upon
1517 appropriation by the Legislature. This fee shall be in addition
1518 to any other court costs or fees required for the filing of
1519 petitions.

1520 **SECTION 21.** Section 63-1-83, Mississippi Code of 1972, is
1521 amended as follows:

1522 63-1-83. (1) From and after April 1, 1992, it shall be a
1523 violation of this article and the Commissioner of Public Safety
1524 shall suspend for a period of one (1) year the commercial driver's
1525 license of any person whom he determines to have committed a first
1526 violation of:

1527 (a) Driving a commercial motor vehicle for which a
1528 commercial driver instruction permit or commercial driver's
1529 license is required under this article while under the influence



1530 of alcohol or a controlled substance or a controlled substance
1531 analogue;

1532 (b) Driving a commercial motor vehicle for which a
1533 commercial driver instruction permit or commercial driver's
1534 license is required under this article while the alcohol
1535 concentration of the person's blood, breath or urine is four
1536 one-hundredths percent (.04%) or more;

1537 (c) Knowingly and willfully leaving the scene of an
1538 accident involving a commercial motor vehicle for which a
1539 commercial driver instruction permit or commercial driver's
1540 license is required under this article, if the vehicle was driven
1541 by such person;

1542 (d) Using a commercial motor vehicle for which a
1543 commercial driver instruction permit or commercial driver's
1544 license is required under this article in the commission of any
1545 felony as defined in this article; or

1546 (e) Refusing to submit to a test to determine the
1547 driver's alcohol concentration while driving a commercial motor
1548 vehicle for which a commercial driver instruction permit or
1549 commercial driver's license is required under this article.

1550 If any of the violations in subsection (1) of this section
1551 occurred while transporting hazardous materials required to be
1552 placarded under the Hazardous Materials Transportation Act, the
1553 commissioner shall suspend the commercial driver's license of such
1554 person for a period of three (3) years.

1555 (2) The Commissioner of Public Safety shall suspend the
1556 commercial driver's license of a person for life, or such lesser
1557 minimum period of time as shall be required under applicable
1558 federal law or regulations, if a person is determined to have
1559 committed two (2) or more of the violations specified in
1560 subsection (1) of this section or any combination of such
1561 violations arising from two (2) or more separate incidents. The



1562 provisions of this subsection (2) shall apply only to violations
1563 occurring on or after April 1, 1992.

1564 (3) The Commissioner of Public Safety shall suspend for life
1565 the commercial driver's license of any person who uses a
1566 commercial motor vehicle for which a commercial driver instruction
1567 permit or commercial driver's license is required under this
1568 article in the commission of any felony involving the manufacture,
1569 distribution or dispensing of a controlled substance or controlled
1570 substance analogue, or possession with intent to manufacture,
1571 distribute or dispense a controlled substance or controlled
1572 substance analogue. The provisions of this subsection (3) shall
1573 apply only to violations occurring on or after April 1, 1992.

1574 (4) The Commissioner of Public Safety shall suspend for a
1575 period of sixty (60) days the commercial driver's license of any
1576 person convicted of two (2) serious traffic violations, or one
1577 hundred twenty (120) days if convicted of three (3) serious
1578 traffic violations, committed in a commercial motor vehicle for
1579 which a commercial driver instruction permit or commercial
1580 driver's license is required under this article arising from
1581 separate incidents occurring within a period of three (3) years.
1582 The provisions of this subsection (4) shall apply only to
1583 violations occurring on or after April 1, 1992.

1584 (5) In addition to the reasons specified in this section for
1585 suspension of the commercial driver's license, the Commissioner of
1586 Public Safety shall be authorized to suspend the commercial
1587 driver's license of any person for being out of compliance with an
1588 order for support, as defined in Section 93-11-153. The procedure
1589 for suspension of a commercial driver's license for being out of
1590 compliance with an order for support, and the procedure for the
1591 reissuance or reinstatement of a commercial driver's license
1592 suspended for that purpose, and the payment of any fees for the
1593 reissuance or reinstatement of a commercial driver's license
1594 suspended for that purpose, shall be governed by Section 93-11-157



1595 or 93-11-163, as the case may be. If there is any conflict
1596 between any provision of Section 93-11-157 or 93-11-163 and any
1597 provision of this article, the provisions of Section 93-11-157 or
1598 93-11-163, as the case may be, shall control.

1599 **SECTION 22.** This act shall take effect and be in force from
1600 and after July 1, 2002.

