To: Judiciary A

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002

By: Representative Moody

HOUSE BILL NO. 1071

AN ACT TO AMEND SECTION 41-29-105, MISSISSIPPI CODE OF 1972, TO DEFINE CONTROLLED SUBSTANCE ANALOGUE FOR PURPOSES OF THE UNIFORM CONTROLLED SUBSTANCES ACT; TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MANUFACTURE, DELIVERY, SALE AND POSSESSION OF A CONTROLLED SUBSTANCE ANALOGUE SHALL BE TREATED AS A SCHEDULE I SUBSTANCE FOR PURPOSES OF CRIMINAL PENALTIES, AND TO INCLUDE CONTROLLED SUBSTANCE ANALOGUES IN THOSE STATUTES PROVIDING CRIMINAL PENALTIES FOR TRAFFICKING IN CONTROLLED SUBSTANCES; TO AMEND SECTIONS 97-3-65 AND 97-3-97, MISSISSIPPI CODE OF 1972, TO INCLUDE THE USE OF CONTROLLED SUBSTANCES AND CONTROLLED SUBSTANCE ANALOGUE AS A CRIMINAL ELEMENT TO INCAPACITATE A PERSON UNDER THE RAPE AND SEXUAL BATTERY STATUTES; TO AMEND SECTIONS 41-29-313, MISSISSIPPI CODE OF 1972, TO ADD GAMMA-BUTYROLACTONE AND BUTANOLIDE TO LISTED CHEMICALS WHICH MAY BE USED AS A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or
dispenser. Such word does not include a common or contract
carrier, public warehouseman or employee of the carrier or
warehouseman. This definition shall not be applied to the term
"agent" when such term clearly designates a member or officer of
the Bureau of Narcotics or other law enforcement organization.

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

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

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

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

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

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

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

3. Is represented or intended to have a
stimulant, depressant or hallucinogenic effect on the central
nervous system substantially similar to the stimulant, depressant
or hallucinogenic effect on the central nervous system produced by
a drug or substance in Schedule I or II of Sections 41-29-113 and
41-29-115.
For purposes of any state law, the illicit manufacturing, sale, possession or use of a controlled substance analogue shall be treated as if it were the Schedule I or II substance to which it is substantially similar in chemical structure, pharmacological effect, intended or represented effect.

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

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

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

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

4. A controlled substance previously scheduled.

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

(i) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of
a controlled substance or a controlled substance analogue, whether
or not there is an agency relationship.

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

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

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

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

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

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

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

(q) "Immediate precursor" means a substance which the
board has found to be and by rule designates as being the
principal compound commonly used or produced primarily for use,
and which is an immediate chemical intermediary used or likely to
be used in the manufacture of a controlled substance, the control
of which is necessary to prevent, curtail, or limit manufacture.

   (r) "Manufacture" means the production, preparation,
   propagation, compounding, conversion or processing of a controlled
   substance or a controlled substance analogue, either directly or
   indirectly, by extraction from substances of natural origin, or
   independently by means of chemical synthesis, or by a combination
   of extraction and chemical synthesis, and includes any packaging
   or repackaging of the substance or labeling or relabeling of its
   container. The term "manufacture" does not include the
   preparation, compounding, packaging or labeling of a controlled
   substance in conformity with applicable state and local law:
   (1) By a practitioner as an incident to his
   administering or dispensing of a controlled substance in the
   course of his professional practice; or
   (2) By a practitioner, or by his authorized agent
   under his supervision, for the purpose of, or as an incident to,
   research, teaching or chemical analysis and not for sale.

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

   (t) "Narcotic drug" means any of the following, whether
produced directly or indirectly by extraction from substances of
vegetable origin, or independently by means of chemical synthesis,
or by a combination of extraction and chemical synthesis:
   (1) Opium and opiate, and any salt, compound,
derivative or preparation of opium or opiate;
   (2) Any salt, compound, isomer, derivative or
   preparation thereof which is chemically equivalent or identical
   with any of the substances referred to in clause 1, but not
   including the isoquinoline alkaloids of opium;
(3) Opium poppy and poppy straw; and

(4) Cocaine, coca leaves and any salt, compound, derivative or preparation of cocaine, coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

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

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

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

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

(ii) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing,
processing or preparing controlled substances or controlled substance analogues;

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

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

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

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

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

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

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

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

(xi) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally
injecting controlled substances or controlled substance analogues into the human body;

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

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

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

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

(ii) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance or controlled substance analogue;
(iii) The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Law;

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

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

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

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

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

(ix) National and local advertising concerning its use;

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

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

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

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

(xiv) Expert testimony concerning its use.
(x) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

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

(z) "Practitioner" means:

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

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

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

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

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

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

SECTION 2. Section 41-29-139, Mississippi Code of 1972, is amended as follows:
41-29-139. (a) Except as authorized by this article, it is unlawful for any person knowingly or intentionally:

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

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

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

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

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

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

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

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

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

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

For any controlled substance or controlled substance analogue that does not fall within the definition of the term "dosage
"The penalties shall be based upon the weight of the controlled substance or controlled substance analogue. The weight set forth refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance or controlled substance analogue. If a mixture or substance contains more than one (1) controlled substance or controlled substance analogue, the weight of the mixture or substance is assigned to the controlled substance or controlled substance analogue that results in the greater punishment. Any person who violates this subsection with respect to:

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

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

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

(C) Two (2) grams but less than ten (10) grams or ten (10) dosage units but less than twenty (20) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00).
(D) Ten (10) grams but less than thirty (30) grams or twenty (20) dosage units but not more than forty (40) dosage units, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars ($500,000.00).

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

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

(A) Thirty (30) grams or less by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00). The provisions of this paragraph shall be enforceable by summons, provided the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this section within two (2) years shall be punished by a fine of Two Hundred Fifty Dollars ($250.00) and not less than five (5) days nor more than sixty (60) days in the county jail and mandatory participation in a drug education program, approved by the Division of Alcohol and Drug Abuse of the State Department of Mental Health, unless the court enters a written finding that such drug education program is inappropriate. A third or subsequent conviction under this section within two (2) years is a misdemeanor punishable by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00) and confinement for not less than five (5) days nor more than six (6) months in the county jail. Upon a first or second conviction under this section the courts shall forward a report of such conviction to the Mississippi Bureau of Narcotics which shall make and maintain a private, nonpublic record for a period not to
exceed two (2) years from the date of conviction. The private, nonpublic record shall be solely for the use of the courts in determining the penalties which attach upon conviction under this section and shall not constitute a criminal record for the purpose of private or administrative inquiry and the record of each conviction shall be expunged at the end of the period of two (2) years following the date of such conviction;

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

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

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

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

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

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

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

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

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

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

(D) Three hundred (300) grams but less than five hundred (500) grams or one thousand (1,000) dosage units but less than two thousand five hundred (2,500) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00).
(E) Five hundred (500) grams or more or two thousand five hundred (2,500) dosage units or more, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars ($500,000.00).

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

(2) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or controlled substance analogue in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars ($500,000.00).
jail for not more than six (6) months, or fined not more than Five
Hundred Dollars ($500.00), or both.

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

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

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

(f) Except as otherwise authorized in this article, any
person twenty-one (21) years of age or older who knowingly sells,
barters, transfers, manufactures, distributes or dispenses during
any twelve (12) consecutive month period: (i) ten (10) pounds or
more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
two (2) or more ounces of cocaine or of any mixture containing
cocaine as described in Section 41-29-105(s), Mississippi Code of 1972; or (iv) one hundred (100) or more dosage units of morphine, Demerol or Dilaudid, shall be guilty of a felony and, upon conviction thereof, shall be sentenced to life imprisonment and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding. The provisions of this subsection shall not apply to any person who furnishes information and assistance to the bureau or its designee which, in the opinion of the trial judge objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

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

(2) "Trafficking in controlled substances or controlled substance analogues" as used herein means to engage in three (3) or more component offenses within any twelve (12) consecutive month period where at least two (2) of the component offenses occurred in different counties. A component offense is any act which would constitute a violation of subsection (a) of this section. Prior convictions shall not be used as component offenses to establish the charge of trafficking in controlled substances or controlled substance analogues.
(3) The charge of trafficking in controlled substances or controlled substance analogues shall be set forth in one (1) count of an indictment with each of the component offenses alleged therein and it may be charged and tried in any county where a component offense occurred. An indictment for trafficking in controlled substances or controlled substance analogues may also be returned by the State Grand Jury of Mississippi provided at least two (2) of the component offenses occurred in different circuit court districts.

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

97-3-65. (1) The crime of statutory rape is committed when:
   (a) Any person seventeen (17) years of age or older has sexual intercourse with a child who:
      (i) Is at least fourteen (14) but under sixteen (16) years of age;
      (ii) Is thirty-six (36) or more months younger than the person; and
      (iii) Is not the person's spouse; or
   (b) A person of any age has sexual intercourse with a child who:
      (i) Is under the age of fourteen (14) years;
      (ii) Is twenty-four (24) or more months younger than the person; and
      (iii) Is not the person's spouse.
   (c) Neither the victim's consent nor the victim's lack of chastity is a defense to a charge of statutory rape.

(2) Upon conviction for statutory rape, the defendant shall be sentenced as follows:
   (a) If eighteen (18) years of age or older, but under twenty-one (21) years of age, and convicted under paragraph (1)(a) of this section, to imprisonment for not more than five (5) years
in the State Penitentiary or a fine of not more than Five Thousand Dollars ($5,000.00), or both;

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

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

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

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

(b) This subsection (3) shall apply whether the perpetrator is married to the victim or not.
(4) In all cases where a victim is under the age of sixteen years, it shall not be necessary to prove penetration where it is shown the genitals, anus or perineum of the child have been lacerated or torn in the attempt to have sexual intercourse with the child.

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

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

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

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

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

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

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

SECTION 5. Section 41-29-313, Mississippi Code of 1972, is amended as follows:
41-29-313. (1) (a) Except as authorized in this section, it is unlawful for any person to knowingly or intentionally:

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

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

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

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

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

(c) It is unlawful for any person to purchase, possess, transfer or distribute two hundred fifty (250) dosage units or fifteen (15) grams in weight (dosage unit and weight as defined in Section 41-29-139) of pseudoephedrine or ephedrine, knowing, or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance.
(d) Any person who violates this subsection (2), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed five (5) years and shall be fined not more than Five Thousand Dollars ($5,000.00), or both fine and imprisonment.

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

(a) Ether;
(b) Anhydrous ammonia;
(c) Pseudoephedrine;
(d) Ephedrine;
(e) Denatured alcohol (Ethanol);
(f) Lithium;
(g) Freon;
(h) Hydrochloric acid;
(i) Hydriodic acid;
(j) Red phosphorous;
(k) Iodine;
(l) Sodium metal;
(m) Muriatic acid;
(n) Sulfuric acid;
(o) Hydrogen chloride gas;
(p) Potassium;
(q) Methanol;
(r) Isopropyl alcohol; 
(s) Hexanes; 
(t) Heptanes; 
(u) Acetone; 
(v) Toluene; 
(w) Xylenes; 
(x) Gamma-butrolactone, including butyrolactone; 
butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; 
dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 
1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 
3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone 
with Chemical Abstract Service number (96-48-0).

(y) 1,4-butanediol, including butanediol; 
butane-1,4-diol; 1,4-butylene gylcol; butylene gylcol; 
1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene 
gylcol; tetramethylene 1,4-diol with Chemical Abstract Service 
number (110-63-4).

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

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

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

41-29-127. (a) The State Board of Pharmacy shall register 
an applicant to manufacture or distribute controlled substances 
included in Sections 41-29-113 through 41-29-121 unless it 
determines that the issuance of that registration would be 
inconsistent with the public interest. In determining the public 
interest, the State Board of Pharmacy shall consider the following 
factors:
(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable state and local law;

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

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

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

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

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

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

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

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

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

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

(a) Has willfully furnished false or fraudulent
material information in any application filed under this article;
(b) Has been convicted of a felony within the past five
(5) years and has not been pardoned and his citizenship restored
under any state or federal law relating to any controlled
substance or controlled substance analogue;
(c) Has had his federal registration suspended or
revoked to manufacture, distribute or dispense controlled
substances;
(d) Has violated or failed to comply with any duly
promulgated regulation of the State Board of Pharmacy which
reflects adversely on the registrant’s reliability and integrity
with respect to controlled substances;
(e) Has violated the Uniform Controlled Substances Law
of the State of Mississippi;
(f) Has violated any duly promulgated rule or
regulation of the State Board of Pharmacy pertaining to the
manufacture, distribution, storage, possession, control or
dispensing of controlled substances;
(g) Has been convicted of a violation relating to any
substance defined in this article as a controlled substance.

(2) The State Board of Pharmacy may limit revocation or
suspension of a registration to the particular controlled
substance with respect to which grounds for revocation or
suspension exist.

(3) If the board or the State Board of Pharmacy suspends or
revokes a registration, all controlled substances owned or
possessed by the registrant at the time of suspension or the
effective date of the revocation order may be placed under seal.

No disposition may be made of substances under seal until the time
for taking an appeal has elapsed or until all appeals have been
concluded unless a court, upon application therefor, orders the
sale of perishable substances and the deposit of the proceeds of
the sale with the court. Upon a revocation order becoming final,
all controlled substances may be forfeited to the state. All
state professional or business licensing agencies shall promptly
notify the bureau of all orders of suspensions or revocations
which are the result of drug violations or drug-related matters.

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

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

41-29-142. (1) Except as provided in subsection (f) of
Section 41-29-139 or in subsection (2) of this section, any person
who violates or conspires to violate Section 41-29-139(a)(1),
Mississippi Code of 1972, by selling, bartering, transferring,
manufacturing, distributing, dispensing or possessing with intent
to sell, barter, transfer, manufacture, distribute or dispense, a
controlled substance or controlled substance analogue, in or on,
or within one thousand five hundred (1,500) feet of, a building or
outbuilding which is all or part of a public or private
elementary, vocational or secondary school, or any church, public
park, ballpark, public gymnasium, youth center or movie theater or
within one thousand (1,000) feet of, the real property comprising
such public or private elementary, vocational or secondary school,
or any church, public park, ballpark, public gymnasium, youth center or movie theater shall, upon conviction thereof, be punished by the term of imprisonment or a fine, or both, of that authorized by Section 41-29-139(b) and, in the discretion of the court, may be punished by a term of imprisonment or a fine, or both, of up to twice that authorized by Section 41-29-139(b).

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

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

41-29-144. (1) It is unlawful for any person knowingly or intentionally to acquire or obtain possession or attempt to acquire or obtain possession of a controlled substance or a controlled substance analogue.
controlled substance analogue by misrepresentation, fraud, forgery, deception or subterfuge.

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

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

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

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

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

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

(2) The provisions of this section shall not apply to a law enforcement officer acting in the course and scope of his employment or to a medical practitioner, pharmacist or other person authorized to dispense or administer controlled substances.
(3) Any person who violates this section shall, upon conviction, be guilty of a misdemeanor and may be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00) or by both.

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

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

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

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

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

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

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or controlled substance analogues in violation of this article;
(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this section;

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

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

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

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

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

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

(6) All drug paraphernalia as defined in Section 41-29-105(v); and
(7) Everything of value, including real estate, furnished, or intended to be furnished, in exchange for a controlled substance in violation of this article, all proceeds traceable to such an exchange, and all monies, negotiable instruments, businesses or business investments, securities, and other things of value used, or intended to be used, to facilitate any violation of this article. All monies, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph; the burden of proof is upon claimants of the property to rebut this presumption.

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

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

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

Seizure without process may be made if:
(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

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

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

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

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

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

(e) The failure, upon demand by the bureau and/or local law enforcement officers, or their authorized agents, or highway patrolmen designated by the bureau, the board, or the State Board
of Pharmacy, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

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

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

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

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

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

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

(1) Promote better recognition of the problems of misuse and abuse of controlled substances or controlled substance
(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances or controlled substance analogues;

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

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

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

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

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

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

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

(2) Make studies and undertake programs of research to:
(A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this article;

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

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

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

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

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

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

41-29-176. (1) When any property other than a controlled substance, controlled substance analogue, raw material or paraphernalia, the value of which does not exceed Ten Thousand Dollars ($10,000.00), is seized under the Uniform Controlled Substances Law, the property may be forfeited by the administrative forfeiture procedures provided for in this section.
(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to Section 41-29-177(2), Mississippi Code of 1972.

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

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

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

(5) Any person claiming an interest in property which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal
prosecution is brought, in order to claim an interest in the
property. Upon the filing of the petition and the payment of the
filing fees, service of the petition shall be made on the attorney
for or representative of the seizing law enforcement agency, and
the proceedings shall thereafter be governed by the rules of civil
procedure.

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

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

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

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

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the Bureau of Narcotics or the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Mississippi Bureau of Narcotics or the local law enforcement agency has actual knowledge;

(d) Any holder of a mortgage, deed of trust, lien or encumbrance of record, if the property is real estate, by making a good faith inquiry as described in subsection (8) of this section; and

(e) Any person in possession of property subject to forfeiture at the time that it was seized.

(3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the property is a motor vehicle and is not titled in the State of Mississippi, then the Bureau of Narcotics or the local law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the bureau or the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle.
owner of the vehicle and who, if anyone, holds any lien, security
interest or other instrument in the nature of a security device
which affects the vehicle.

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

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

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

(8) If the property is real estate, the Bureau of Narcotics
or the local law enforcement agency shall make inquiry of the
chancery clerk of the county wherein the property is located to
determine who is the owner of record and who, if anyone, is a
holder of a bona fide mortgage, deed of trust, lien or encumbrance.

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

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

(11) No proceedings instituted pursuant to the provisions of this article shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3)
through (8) of this section shall be introduced into evidence at the hearing.

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

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

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

(3) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without
knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

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

(5) Upon a petition filed in the name of the State of Mississippi, the county or the municipality with the clerk of the circuit court of the county in which the seizure of any controlled substance, controlled substance analogue or raw material is made, the circuit court having jurisdiction may order the controlled substance, controlled substance analogue or raw material summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the controlled substance or raw material returned to the owner, if the owner so desires. Upon a petition filed in the name of the State of Mississippi, the county or the municipality with the clerk of the circuit court of the county in which the seizure of any purported paraphernalia is made, the circuit court having jurisdiction may order such seized property summarily forfeited when the court has determined the seized property to be paraphernalia as defined in Section 41-29-105(v).
SECTION 20. Section 63-1-71, Mississippi Code of 1972, is amended as follows:

63-1-71. (1) In addition to any penalty authorized by the Uniform Controlled Substances Law or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, every person convicted of, or entering a plea of nolo contendere to, or adjudicated delinquent in a court of this state for a violation of any offense defined in the Uniform Controlled Substances Law, and every person convicted of, or entering a plea of nolo contendere to, or adjudicated delinquent under the laws of the United States, another state, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico of a violation for the use, distribution, possession, manufacture, sale, barter, transfer or dispensing of a "controlled substance," "counterfeit substance," "controlled substance analogue," "narcotic drug" or "drug," as such terms are defined under Section 41-29-105, shall forthwith forfeit his right to operate a motor vehicle over the highways of this state for a period of six (6) months. Notwithstanding the provisions of Section 63-11-30(2)(a) and in addition to any penalty authorized by the Uniform Controlled Substances Law or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, every person convicted of driving under the influence of a controlled substance, or entering a plea of nolo contendere thereto, or adjudicated delinquent therefor, in a court of this state, and every person convicted of driving under the influence of a controlled substance or controlled substance analogue, or entering a plea of nolo contendere thereto, or adjudicated delinquent therefor, under the laws of the United States, another state, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, shall forthwith forfeit his right to operate a motor vehicle over the highways of this state for a period of not less than six...
(6) months. In the case of any person who at the time of the imposition of sentence does not have a driver's license or is less than fifteen (15) years of age, the period of the suspension of driving privileges authorized herein shall commence on the day the sentence is imposed and shall run for a period of not less than six (6) months after the day the person obtains a driver's license or reaches the age of fifteen (15) years. If the driving privilege of any person is under revocation or suspension at the time of any conviction or adjudication of delinquency for a violation of any offense defined in the Uniform Controlled Substances Law, the revocation or suspension period imposed herein shall commence as of the date of termination of the existing revocation or suspension.

(2) The court in this state before whom any person is convicted of or adjudicated delinquent for a violation of an offense under subsection (1) of this section shall collect forthwith the Mississippi driver’s license of the person and forward such license to the Department of Public Safety along with a report indicating the first and last day of the suspension or revocation period imposed pursuant to this section. If the court is for any reason unable to collect the license of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the Commissioner of Public Safety. That report shall include the complete name, address, date of birth, eye color and sex of the person and shall indicate the first and last day of the suspension or revocation period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or revocation imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in Section 63-11-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to
receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of Section 63-11-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license but shall notify forthwith the Commissioner of Public Safety who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's nonresident driving privilege in this state.

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

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

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

(a) Driving a commercial motor vehicle for which a commercial driver instruction permit or commercial driver's license is required under this article while under the influence of alcohol or drugs.
of alcohol or a controlled substance or a controlled substance analogue;  

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

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

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

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

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

(2) The Commissioner of Public Safety shall suspend the commercial driver's license of a person for life, or such lesser minimum period of time as shall be required under applicable federal law or regulations, if a person is determined to have committed two (2) or more of the violations specified in subsection (1) of this section or any combination of such violations arising from two (2) or more separate incidents. The
provisions of this subsection (2) shall apply only to violations occurring on or after April 1, 1992.

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

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

(5) In addition to the reasons specified in this section for suspension of the commercial driver's license, the Commissioner of Public Safety shall be authorized to suspend the commercial driver's license of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a commercial driver's license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a commercial driver's license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a commercial driver's license suspended for that purpose, shall be governed by Section 93-11-157.
or 93-11-163, as the case may be. If there is any conflict
between any provision of Section 93-11-157 or 93-11-163 and any
provision of this article, the provisions of Section 93-11-157 or
93-11-163, as the case may be, shall control.

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