

By: Representative Fleming

To: Judiciary A

HOUSE BILL NO. 1044

1 AN ACT TO AUTHORIZE THE USE OF MEDICAL MARIJUANA FOR
 2 SERIOUSLY ILL PATIENTS UNDER A PHYSICIAN'S SUPERVISION; TO DEFINE
 3 CERTAIN TERMS; TO PROVIDE AN EXEMPTION FROM CRIMINAL AND CIVIL
 4 PENALTIES FOR THE MEDICAL USE OF MARIJUANA; TO PROVIDE LIMITATIONS
 5 ON THE MEDICAL USE OF MARIJUANA; TO PROVIDE A LEGAL DEFENSE FOR
 6 PATIENTS AND PRIMARY CAREGIVERS; TO AMEND SECTIONS 41-29-113 AND
 7 41-29-115, MISSISSIPPI CODE OF 1972, TO TRANSFER MARIJUANA FROM
 8 SCHEDULE I TO SCHEDULE II; TO AMEND SECTION 41-29-139, MISSISSIPPI
 9 CODE OF 1972, TO EXEMPT THE MEDICAL USE OF MARIJUANA FROM CRIMINAL
 10 PENALTIES; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** (1) Modern medical research has discovered a
 13 beneficial use for marijuana in treating or alleviating the pain
 14 or other symptoms associated with certain debilitating medical
 15 conditions, as found by the National Academy of Sciences'
 16 Institute of Medicine in March 1999.

17 (2) The Legislature admits that it would prefer for the
 18 federal government to permit marijuana to be prescribed by
 19 physicians and to be dispensed at pharmacies. However, the
 20 Legislature finds that the federal government has shown no
 21 indication that it will change federal policy with regard to
 22 medical marijuana, as evidenced by the federal government's
 23 reluctance to allow even FDA-approved clinical trials to move
 24 forward.

25 (3) According to the U.S. Sentencing Commission and the
 26 Federal Bureau of Investigation, more than ninety-nine (99) out of
 27 every one hundred (100) marijuana arrests are made under state
 28 law, rather than under federal law. Consequently, the Legislature
 29 finds that changing state law will have the practical effect of
 30 protecting from arrest the vast majority of seriously ill people
 31 who have a medical need to use marijuana.



32 (4) Although federal law expressly prohibits the use of
33 marijuana, the Legislature recognizes that the laws of Alaska,
34 California, Colorado, Hawaii, Maine, Nevada, Oregon and Washington
35 permit the medical use and cultivation of marijuana. The
36 Legislature intends to join in this effort for the health and
37 welfare of its citizens. However the Legislature does not intend
38 to make marijuana legally available for other than medical
39 purposes.

40 (5) The Legislature finds that the state is not required to
41 enforce federal law or prosecute people for engaging in activities
42 prohibited by federal law. Therefore, compliance with this act
43 does not put the state in violation of federal law.

44 (6) The Legislature finds that state law should make a
45 distinction between the medical and nonmedical use of marijuana.
46 Hence, the purpose of this act is to ensure that physicians are
47 not penalized for discussing marijuana as a treatment option with
48 their patients, and seriously ill people who engage in the medical
49 use of marijuana upon their physicians' advice are not arrested
50 and incarcerated for using marijuana for medical purposes.

51 **SECTION 2.** The following words and phrases shall have the
52 meanings ascribed herein, unless the context clearly indicates
53 otherwise:

54 (a) "Adequate supply" means an amount of marijuana
55 collectively possessed between the qualifying patient and the
56 qualifying patient's primary caregivers that is not more than is
57 reasonably necessary to ensure the uninterrupted availability of
58 marijuana for the purpose of alleviating the symptoms or effects
59 of a qualifying patient's debilitating medical condition; provided
60 that an "adequate supply" shall not exceed three (3) mature
61 marijuana plants, four (4) immature marijuana plants and one (1)
62 ounce of usable marijuana per each mature plant. "Usable
63 marijuana" means the dried leaves and flowers of marijuana, and
64 any mixture or preparation thereof, that are appropriate for the



65 medical use of marijuana, and does not include the seeds, stalks
66 and roots of the plant.

67 (b) "Debilitating medical condition" means:

68 (i) Cancer, glaucoma, positive status for human
69 immunodeficiency virus, acquired immune deficiency syndrome or the
70 treatment of these conditions;

71 (ii) Chronic or debilitating disease or medical
72 condition or its treatment that produces one or more of the
73 following: cachexia or wasting syndrome; severe pain; severe
74 nausea; seizures, including those characteristic of epilepsy; or
75 severe and persistent muscle spasms including those characteristic
76 of multiple sclerosis or Crohn's disease; or

77 (iii) Any other medical condition or its treatment
78 approved by the department, as provided for as follows: not later
79 than ninety (90) days after the effective date of this act, the
80 department shall promulgate regulations governing the manner in
81 which it will consider petitions from the public to add
82 debilitating medical conditions to those included in this act. In
83 considering such petitions, the department shall include public
84 notice of, and an opportunity to comment in a public hearing upon,
85 such petitions. The department shall, after hearing, approve or
86 deny such petitions within one hundred eighty (180) days of
87 submission. The approval or denial of such a petition shall be
88 considered a final agency action, subject to judicial review.

89 (c) "Department" means State Department of Health.

90 (d) "Marijuana" shall have the same meaning as
91 "marihuana" as provided in Section 41-29-105.

92 (e) "Medical use" means the acquisition, possession,
93 cultivation, use, transfer or transportation of marijuana or
94 paraphernalia relating to the administration of marijuana to
95 alleviate the symptoms or effects of a qualifying patient's
96 debilitating medical condition. For the purposes of "medical
97 use," the term "transfer" is limited to the transfer of marijuana



98 and paraphernalia between primary caregivers and qualifying
99 patients.

100 (f) "Physician" means a person who is licensed under
101 Section 73-25-1 et seq.

102 (g) "Primary caregiver" means a person who is at least
103 eighteen (18) years old and who has agreed to undertake
104 responsibility for managing the well-being of a person with
105 respect to the medical use of marijuana.

106 (h) "Qualifying patient" means a person who has been
107 diagnosed by a physician as having a debilitating medical
108 condition.

109 (i) "Written certification" means the qualifying
110 patient's medical records or a statement signed by a physician,
111 stating that in the physician's professional opinion, after having
112 completed a full assessment of the qualifying patient's medical
113 history and current medical condition made in the course of a bona
114 fide physician-patient relationship, the qualifying patient has a
115 debilitating medical condition and the potential benefits of the
116 medical use of marijuana would likely outweigh the health risks
117 for the qualifying patient.

118 **SECTION 3.** (1) A qualifying patient who has in his or her
119 possession written certification shall not be subject to arrest,
120 prosecution or penalty in any manner for the medical use of
121 marijuana, provided the quantity of marijuana does not exceed an
122 adequate supply.

123 (2) Subsection (1) shall not apply to a qualifying patient
124 under the age of eighteen (18) years, unless:

125 (a) The qualifying patient's physician has explained
126 the potential risks and benefits of the medical use of marijuana
127 to the qualifying patient and to a parent, guardian or person
128 having legal custody of the qualifying patient; and

129 (b) A parent, guardian or person having legal custody
130 consents in writing to:



131 (i) Allow the qualifying patient's medical use of
132 marijuana;

133 (ii) Serve as the qualifying patient's primary
134 caregiver; and

135 (iii) Control the acquisition of the marijuana,
136 the dosage and the frequency of the medical use of marijuana by
137 the qualifying patient.

138 (3) When the acquisition, possession, cultivation,
139 transportation or administration of marijuana by a qualifying
140 patient is not practicable, the legal protections established by
141 this act for a qualifying patient shall extend to the qualifying
142 patient's primary caregivers, provided that the primary
143 caregivers' actions are necessary for the qualifying patient's
144 medical use of marijuana.

145 (4) A physician shall not be subject to arrest or
146 prosecution, penalized in any manner or denied any right or
147 privilege for providing written certification for the medical use
148 of marijuana to qualifying patients.

149 (5) Any property interest that is possessed, owned or used
150 in connection with the medical use of marijuana, or acts
151 incidental to such use, shall not be harmed, neglected, injured or
152 destroyed while in the possession of state or local law
153 enforcement officials, provided that law enforcement agencies
154 seizing live plants as evidence shall not be responsible for the
155 care and maintenance of marijuana plants. Any such property
156 interest shall not be forfeited under any provision of state or
157 local law providing for the forfeiture of property other than as a
158 sentence imposed after conviction of a criminal offense or entry
159 of a plea of guilty to a criminal offense. Marijuana,
160 paraphernalia or other property seized from a qualifying patient
161 or primary caregivers in connection with the claimed medical use
162 of marijuana shall be returned immediately upon the determination
163 by a court or prosecutor that the qualifying patient or primary



164 caregivers are entitled to the protections of this act, as may be
165 evidenced by a decision not to prosecute, the dismissal of charges
166 or an acquittal.

167 (6) No person shall be subject to arrest or prosecution for
168 "constructive possession," "conspiracy" or any other offense for
169 simply being in the presence or vicinity of the medical use of
170 marijuana as permitted under this act.

171 **SECTION 4.** (1) The authorization for the medical use of
172 marijuana in this act shall not apply to:

173 (1) The authorization for the medical use of marijuana in
174 this act shall not apply to:

175 (a) The medical use of marijuana that endangers the
176 health or well-being of another person, such as driving or
177 operating heavy machinery while under the influence of marijuana.

178 (b) The smoking of marijuana:

179 (i) In a school bus, public bus or other public
180 vehicle;

181 (ii) In the workplace of one's employment;

182 (iii) On any school grounds;

183 (iv) In any correctional facility; or

184 (v) At any public park, public beach, public
185 recreation center or youth center; and

186 (c) The use of marijuana by a qualifying patient,
187 primary caregiver or any other person for purposes other than
188 medical use permitted by this act.

189 (2) Insurance companies shall not be required to cover the
190 medical use of marijuana.

191 (3) Notwithstanding any law to the contrary, fraudulent
192 representation to a law enforcement official of any fact or
193 circumstance relating to the medical use of marijuana to avoid
194 arrest or prosecution shall be a petty misdemeanor and subject to
195 a fine of Five Hundred Dollars (\$500.00). This penalty shall be



196 in addition to any other penalties that may apply for the
197 nonmedical use of marijuana.

198 **SECTION 5.** A person and a person's primary caregivers may
199 assert the medical use of marijuana as a defense to any
200 prosecution involving marijuana, and such defense shall be
201 presumed valid where the evidence shows that:

202 (a) The person's medical records indicate, or a
203 physician has stated that, in the physician's professional
204 opinion, after having completed a full assessment of the person's
205 medical history and current medical condition made in the course
206 of a bona fide physician-patient relationship, the potential
207 benefits of the medical use of marijuana would likely outweigh the
208 health risks for the person; and

209 (b) The person and the person's primary caregivers were
210 collectively in possession of a quantity of marijuana that was not
211 more than was reasonably necessary to ensure the uninterrupted
212 availability of marijuana for the purpose of alleviating the
213 symptoms or effects of the person's medical condition.

214 **SECTION 6.** Section 41-29-113, Mississippi Code of 1972, is
215 amended as follows:

216 41-29-113. The controlled substances listed in this section
217 are included in Schedule I.

218 **SCHEDULE I**

219 (a) Any of the following opiates, including their isomers,
220 esters, ethers, salts and salts of isomers, esters and ethers,
221 unless specifically excepted, whenever the existence of these
222 isomers, esters, ethers and salts is possible within the specific
223 chemical designation:

- 224 (1) Acetyl-alpha-methylfentanyl;
225 (2) Acetylmethadol;
226 (3) Allylprodine;
227 (4) Alphacetylmethadol, except levo-alphacetylmethadol
228 (levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);



- 229 (5) Alphameprodine;
- 230 (6) Alphamethadol;
- 231 (7) Alpha-methylfentanyl;
- 232 (8) Alpha-methylthiofentanyl;
- 233 (9) Benzethidine;
- 234 (10) Betacetylmethadol;
- 235 (11) Beta-hydroxyfentanyl;
- 236 (12) Beta-hydroxy-3-methylfentanyl;
- 237 (13) Betameprodine;
- 238 (14) Betamethadol;
- 239 (15) Betaprodine;
- 240 (16) Clonitazene;
- 241 (17) Dextromoramide;
- 242 (18) Diampromide;
- 243 (19) Diethylthiambutene;
- 244 (20) Difenoxyin;
- 245 (21) Dimenoxadol;
- 246 (22) Dimepheptanol;
- 247 (23) Dimethylthiambutene;
- 248 (24) Dioxaphetyl butyrate;
- 249 (25) Dipipanone;
- 250 (26) Ethylmethylthiambutene;
- 251 (27) Etonitazene;
- 252 (28) Etoxadidine;
- 253 (29) Furethidine;
- 254 (30) Hydroxypethidine;
- 255 (31) Ketobemidone;
- 256 (32) Levomoramide;
- 257 (33) Levophenacilmorphan;
- 258 (34) 3-methylfentanyl;
- 259 (35) 3-methylthiofentanyl;
- 260 (36) Morpheridine;
- 261 (37) Noracymethadol;



262 (38) Norlevorphanol;
263 (39) Normethadone;
264 (40) Norpipanone;
265 (41) Para-fluorofentanyl;
266 (42) Phenadoxone;
267 (43) Phenampromide;
268 (44) Phenomorphan;
269 (45) Phenoperidine;
270 (46) Piritramide;
271 (47) Proheptazine;
272 (48) Properidine;
273 (49) Propiram;
274 (50) Racemoramide;
275 (51) Tilidine;
276 (52) Trimeperidine;
277 (53) Thiofentanyl;
278 (54) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
279 (55) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine
280 (PEPAP).

281 (b) Any of the following opium derivatives, their salts,
282 isomers and salts of isomers, unless specifically excepted,
283 whenever the existence of these salts, isomers and salts of
284 isomers is possible within the specific chemical designation:

285 (1) Acetorphine;
286 (2) Acetyldihydrocodeine;
287 (3) Benzylmorphine;
288 (4) Codeine methylbromide;
289 (5) Codeine-N-Oxide;
290 (6) Cyprenorphine;
291 (7) Desomorphine;
292 (8) Dihydromorphine;
293 (9) Drotebanol;
294 (10) Etorphine; (except hydrochloride salt);



- 295 (11) Heroin;
- 296 (12) Hydromorphenol;
- 297 (13) Methyldesorphine;
- 298 (14) Methyldihydromorphine;
- 299 (15) Monoacetylmorphine;
- 300 (16) Morphine methylbromide;
- 301 (17) Morphine methylsulfonate;
- 302 (18) Morphine-N-Oxide;
- 303 (19) Myrophine;
- 304 (20) Nicocodeine;
- 305 (21) Nicomorphine;
- 306 (22) Normorphine;
- 307 (23) Pholcodine;
- 308 (24) Thebacon.

309 (c) Any material, compound, mixture or preparation which
310 contains any quantity of the following hallucinogenic substances,
311 their salts, isomers and salts of isomers, unless specifically
312 excepted, whenever the existence of these salts, isomers and salts
313 of isomers is possible within the specific chemical designation:

- 314 (1) 3, 4-methylenedioxy amphetamine;
- 315 (2) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 316 (3) 2, 5-dimethoxy-4-ethylamphetamine (DOET);
- 317 (4) 3, 4-methylenedioxymethamphetamine (MDMA);
- 318 (5) 3, 4, 5-trimethoxy amphetamine;
- 319 (6) Bufotenine;
- 320 (7) Diethyltryptamine;
- 321 (8) Dimethyltryptamine;
- 322 (9) Alpha-ethyltryptamine;
- 323 (10) 4-methyl-2, 5-dimethoxyamphetamine;
- 324 (11) Hashish;
- 325 (12) Ibogaine;
- 326 (13) Lysergic acid diethylamide; (LSD)

327 * * *



- 328 (14) Mescaline;
- 329 (15) Peyote;
- 330 (16) N-ethyl-3-piperidyl benzilate;
- 331 (17) N-methyl-3-piperidyl benzilate;
- 332 (18) Phencyclidine;
- 333 (19) Psilocybin;
- 334 (20) Psilocyn;
- 335 (21) Tetrahydrocannabinols (excluding dronabinol and
336 nabilone);
- 337 (22) 2, 5-dimethoxyamphetamine;
- 338 (23) 4-bromo-2, 5-dimethoxyamphetamine;
- 339 (24) 4-bromo-2, 5-dimethoxyphenylethylamine;
- 340 (25) 4-methoxyamphetamine;
- 341 (26) Ethylamine analog of phencyclidine (PCE);
- 342 (27) Pyrrolidine analog of phencyclidine (PHP, PCPy);
- 343 (28) Thiophene analog of Phencyclidine;
- 344 (29) Parahexyl;
- 345 (30) 1-[1-(2-Thienyl)cyclohexyl] pyrrolidine (TCPy);
- 346 (31) 3, 4-methylenedioxy-N-ethylamphetamine (also known
347 as N-ethyl-alpha-methyl-3, 4 (methylenedioxy) phenylethylamine,
348 N-ethyl MDA, MDE and MDEA);
- 349 (32) N-hydroxy-3, 4-methylenedioxyamphetamine (also
350 known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3,
351 4-(methylenedioxy) phenylethylamine).

352 (d) Mecloqualone, its salts, isomers and salts of isomers,
353 unless specifically excepted, whenever the existence of the salts,
354 isomers and salts of isomers is possible within this specific
355 chemical designation.

356 (e) Gamma-hydroxybutyric acid (other names include: GHB,
357 gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid;
358 sodium oxybate; sodium oxybutyrate), including its salts, isomers,
359 and salts of isomers.



360 (f) Any material, compound, mixture or preparation which
361 contains any quantity of the following central nervous system
362 stimulants including salts, isomers and salts of isomers unless
363 specifically excepted or unless listed in another schedule:

- 364 (1) Aminorex;
- 365 (2) Cathinone;
- 366 (3) Fenethylamine;
- 367 (4) N-ethyl-amphetamine;
- 368 (5) 4-methylaminorex (also known as
369 2-amino-4-methyl-5-phenyl-2-oxazoline);
- 370 (6) Methacathinone.

371 (g) Any material, compound, mixture or preparation which
372 contains any quantity of methaqualone, including its salts,
373 isomers, optical isomers, salts of their isomers and salts of
374 their optical isomers unless specifically excepted or unless
375 listed in another schedule.

376 (h) Any material, compound, mixture or preparation which
377 contains any quantity of N,N-dimethylamphetamine, including its
378 salts, isomers and salts of isomers, unless specifically excepted
379 or unless listed in another schedule. (Other names include: N,N,
380 alpha-trimethylbenzene-ethaneamine, and N,N,
381 alpha-trimethylphenylethylamine).

382 **SECTION 7.** Section 41-29-115, Mississippi Code of 1972, is
383 amended as follows:

384 41-29-115. (A) The controlled substances listed in this
385 section are included in Schedule II.

386 **SCHEDULE II**

387 (a) Any of the following substances, except those
388 narcotic drugs listed in other schedules, whether produced
389 directly or indirectly by extraction from substances of vegetable
390 origin, or independently by means of chemical synthesis, or by
391 combination of extraction and chemical synthesis:



392 (1) Opium and opiate, and any salt, compound,
393 derivative, or preparation of opium or opiate, excluding naloxone
394 hydrochloride, apomorphine, dextrorphan, nalbuphine, nalmefene and
395 naltrexone, but including the following:

- 396 (i) Raw opium;
- 397 (ii) Opium extracts;
- 398 (iii) Opium fluid extracts;
- 399 (iv) Powdered opium;
- 400 (v) Granulated opium;
- 401 (vi) Tincture of opium;
- 402 (vii) Codeine;
- 403 (viii) Ethylmorphine;
- 404 (ix) Etorphine hydrochloride;
- 405 (x) Hydrocodone;
- 406 (xi) Hydromorphone;
- 407 (xii) Metopon;
- 408 (xiii) Morphine;
- 409 (xiv) Oxycodone;
- 410 (xv) Oxymorphone;
- 411 (xvi) Thebaine.

412 (2) Any salt, compound, isomer, derivative, or
413 preparation thereof which is chemically equivalent or identical
414 with any of the substances referred to in paragraph (1), but not
415 including the isoquinoline alkaloids of opium;

416 (3) Opium poppy and poppy straw;

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

423 (5) Marijuana.



424 (b) Any of the following opiates, including their
425 isomers, esters, ethers, salts, and salts of isomers, whenever the
426 existence of these isomers, esters, ethers and salts is possible
427 within the specified chemical designation, dextorphan excepted:

- 428 (1) Alfentanil;
- 429 (2) Alphaprodine;
- 430 (3) Anileridine;
- 431 (4) Bezitramide;
- 432 (5) Bulk dextropropoxyphene (nondosage forms);
- 433 (6) Carfentanil;
- 434 (7) Dihydrocodeine;
- 435 (8) Diphenoxylate;
- 436 (9) Fentanyl;
- 437 (10) Isomethadone;
- 438 (11) Levo-alpha-acetylmethadol
439 (levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
- 440 (12) Levomethorphan;
- 441 (13) Levorphanol;
- 442 (14) Metazocine;
- 443 (15) Methadone;
- 444 (16) Methadone-intermediate,
445 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 446 (17) Moramide-intermediate,
447 2-methyl-3-morpholino-1, 1-diphenyl propane-carboxylic acid;
- 448 (18) Pethidine (meperidine);
- 449 (19) Pethidine-intermediate-A,
450 4-cyano-1-methyl-4-phenylpiperidine;
- 451 (20) Pethidine-intermediate-B,
452 ethyl-4-phenylpiperidine-4-carboxylate;
- 453 (21) Pethidine-intermediate-C,
454 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 455 (22) Phenazocine;
- 456 (23) Piminodine;



457 (24) Racemethorphan;

458 (25) Racemorphan;

459 (26) Remifentanil;

460 (27) Sufentanil.

461 (c) Any material, compound, mixture, or preparation
462 which contains any quantity of the following substances:

463 (1) Amphetamine, its salts, optical isomers, and
464 salts of its optical isomers;

465 (2) Phenmetrazine and its salts;

466 (3) Any substance which contains any quantity of
467 methamphetamine, including its salts, isomers, and salts of
468 isomers;

469 (4) Methylphenidate and its salts.

470 (d) Unless listed in another schedule, any material,
471 compound, mixture, or preparation which contains any quantity of
472 the following substances:

473 (1) Amobarbital;

474 (2) Secobarbital;

475 (3) Pentobarbital;

476 (4) Amphetamine and methamphetamine immediate

477 precursor: Phenylacetone (phenyl-2-propanone; P2P; benzyl methyl
478 ketone; and methyl benzyl ketone);

479 (5) Phencyclidine immediate precursors:

480 (i) 1-phenylcyclohexylamine;

481 (ii) 1-piperidinocyclohexanecarbonitrile

482 (PCC).

483 (6) Pentazocine and its salts in injectable dosage
484 form;

485 (7) Nabilone, other names include:

486 (+/-)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a -

487 hexahydro-1-1-hydroxy-6-6-dimethyl-9H-dibenzo (b,d) pyran-9-one;

488 (8) Glutethimide.



489 (B) Any material, compound, mixture or preparation which
490 contains any quantity of a Schedule II controlled substance and is
491 listed as an exempt substance in 21 C.F.R., Section 1308.24 or
492 1308.32, shall be exempted from the provisions of the Uniform
493 Controlled Substances Law.

494 **SECTION 8.** Section 41-29-139, Mississippi Code of 1972, is
495 amended as follows:

496 41-29-139. (a) Except as authorized by this article, it is
497 unlawful for any person knowingly or intentionally:

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

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

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

507 (1) In the case of controlled substances classified in
508 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
509 except one (1) ounce or less of marihuana, and except a first
510 offender as defined in Section 41-29-149(e) who violates
511 subsection (a) of this section with respect to less than one (1)
512 kilogram but more than one (1) ounce of marihuana, such person
513 may, upon conviction, be imprisoned for not more than thirty (30)
514 years and shall be fined not less than Five Thousand Dollars
515 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
516 both;

517 (2) In the case of a first offender who violates
518 subsection (a) of this section with an amount less than one (1)
519 kilogram but more than one (1) ounce of marihuana as classified in
520 Schedule I, as set out in Section 41-29-113, such person is guilty
521 of a felony and upon conviction may be imprisoned for not more



522 than twenty (20) years or fined not more than Thirty Thousand
523 Dollars (\$30,000.00), or both;

524 (3) In the case of one (1) ounce or less of marihuana,
525 such person may, upon conviction, be imprisoned for not more than
526 three (3) years or fined not more than Three Thousand Dollars
527 (\$3,000.00), or both;

528 (4) In the case of controlled substances classified in
529 Schedules III and IV, as set out in Sections 41-29-117 and
530 41-29-119, such person may, upon conviction, be imprisoned for not
531 more than twenty (20) years and shall be fined not less than One
532 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
533 Thousand Dollars (\$250,000.00), or both; and

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

539 (c) It is unlawful for any person knowingly or intentionally
540 to possess any controlled substance unless the substance was
541 obtained directly from, or pursuant to, a valid prescription or
542 order of a practitioner while acting in the course of his
543 professional practice, or except as otherwise authorized by this
544 article. The penalties for any violation of this subsection (c)
545 with respect to a controlled substance classified in Schedules I,
546 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
547 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be
548 based on dosage unit as defined herein or the weight of the
549 controlled substance as set forth herein as appropriate:

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



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

558 The weight set forth refers to the entire weight of any
559 mixture or substance containing a detectable amount of the
560 controlled substance.

561 If a mixture or substance contains more than one (1)
562 controlled substance, the weight of the mixture or substance is
563 assigned to the controlled substance that results in the greater
564 punishment.

565 Any person who violates this subsection with respect to:

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

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

576 (B) One-tenth (0.1) gram but less than two (2)
577 grams or two (2) dosage units but less than ten (10) dosage units,
578 by imprisonment for not less than two (2) years nor more than
579 eight (8) years and a fine of not more than Fifty Thousand Dollars
580 (\$50,000.00).

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

586 (D) Ten (10) grams but less than thirty (30) grams
587 or twenty (20) dosage units but not more than forty (40) dosage



588 units, by imprisonment for not less than six (6) years nor more
589 than twenty-four (24) years and a fine of not more than Five
590 Hundred Thousand Dollars (\$500,000.00).

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

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

597 (A) Thirty (30) grams or less by a fine of not
598 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
599 Fifty Dollars (\$250.00). The provisions of this paragraph shall
600 be enforceable by summons, provided the offender provides proof of
601 identity satisfactory to the arresting officer and gives written
602 promise to appear in court satisfactory to the arresting officer,
603 as directed by the summons. A second conviction under this
604 section within two (2) years shall be punished by a fine of Two
605 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
606 nor more than sixty (60) days in the county jail and mandatory
607 participation in a drug education program, approved by the
608 Division of Alcohol and Drug Abuse of the State Department of
609 Mental Health, unless the court enters a written finding that such
610 drug education program is inappropriate. A third or subsequent
611 conviction under this section within two (2) years is a
612 misdemeanor punishable by a fine of not less than Two Hundred
613 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
614 (\$500.00) and confinement for not less than five (5) days nor more
615 than six (6) months in the county jail. Upon a first or second
616 conviction under this section the courts shall forward a report of
617 such conviction to the Mississippi Bureau of Narcotics which shall
618 make and maintain a private, nonpublic record for a period not to
619 exceed two (2) years from the date of conviction. The private,
620 nonpublic record shall be solely for the use of the courts in



621 determining the penalties which attach upon conviction under this
622 section and shall not constitute a criminal record for the purpose
623 of private or administrative inquiry and the record of each
624 conviction shall be expunged at the end of the period of two (2)
625 years following the date of such conviction;

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

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

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

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



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

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

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

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

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

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

677 (D) Three hundred (300) grams but less than five
678 hundred (500) grams or one thousand (1,000) dosage units but less
679 than two thousand five hundred (2,500) dosage units, by
680 imprisonment for not less than four (4) years nor more than
681 sixteen (16) years and a fine of not more than Two Hundred Fifty
682 Thousand Dollars (\$250,000.00).

683 (E) Five hundred (500) grams or more or two
684 thousand five hundred (2,500) dosage units or more, by
685 imprisonment for not less than six (6) years nor more than



686 twenty-four (24) years and a fine of not more than Five Hundred
687 Thousand Dollars (\$500,000.00).

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

703 (2) It is unlawful for any person to deliver, sell,
704 possess with intent to deliver or sell, or manufacture with intent
705 to deliver or sell, paraphernalia, knowing, or under circumstances
706 where one reasonably should know, that it will be used to plant,
707 propagate, cultivate, grow, harvest, manufacture, compound,
708 convert, produce, process, prepare, test, analyze, pack, repack,
709 store, contain, conceal, inject, ingest, inhale, or otherwise
710 introduce into the human body a controlled substance in violation
711 of the Uniform Controlled Substances Law. Any person who violates
712 this subsection is guilty of a misdemeanor and upon conviction may
713 be confined in the county jail for not more than six (6) months,
714 or fined not more than Five Hundred Dollars (\$500.00), or both.

715 (3) Any person eighteen (18) years of age or over who
716 violates subsection (d) (2) of this section by delivering or
717 selling paraphernalia to a person under eighteen (18) years of age
718 who is at least three (3) years his junior is guilty of a



719 misdemeanor and upon conviction may be confined in the county jail
720 for not more than one (1) year, or fined not more than One
721 Thousand Dollars (\$1,000.00), or both.

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

731 (e) It shall be unlawful for any physician practicing
732 medicine in this state to prescribe, dispense or administer any
733 amphetamine or amphetamine-like anorectics and/or central nervous
734 system stimulants classified in Schedule II, pursuant to Section
735 41-29-115, for the exclusive treatment of obesity, weight control
736 or weight loss. Any person who violates this subsection, upon
737 conviction, is guilty of a misdemeanor and may be confined for a
738 period not to exceed six (6) months, or fined not more than One
739 Thousand Dollars (\$1,000.00), or both.

740 (f) Except as otherwise authorized in this article, any
741 person twenty-one (21) years of age or older who knowingly sells,
742 barter, transfers, manufactures, distributes or dispenses during
743 any twelve (12) consecutive month period: (i) ten (10) pounds or
744 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
745 two (2) or more ounces of cocaine or of any mixture containing
746 cocaine as described in Section 41-29-105(s), Mississippi Code of
747 1972; or (iv) one hundred (100) or more dosage units of morphine,
748 Demerol or Dilaudid, shall be guilty of a felony and, upon
749 conviction thereof, shall be sentenced to life imprisonment and
750 such sentence shall not be reduced or suspended nor shall such
751 person be eligible for probation or parole, the provisions of



752 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
753 of 1972, to the contrary notwithstanding. The provisions of this
754 subsection shall not apply to any person who furnishes information
755 and assistance to the bureau or its designee which, in the opinion
756 of the trial judge objectively should or would have aided in the
757 arrest or prosecution of others who violate this subsection. The
758 accused shall have adequate opportunity to develop and make a
759 record of all information and assistance so furnished.

760 (g) (1) Any person trafficking in controlled substances
761 shall be guilty of a felony and upon conviction shall be
762 imprisoned for a term of thirty (30) years and such sentence shall
763 not be reduced or suspended nor shall such person be eligible for
764 probation or parole, the provisions of Sections 41-29-149,
765 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
766 contrary notwithstanding and shall be fined not less than Five
767 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
768 (\$1,000,000.00).

769 (2) "Trafficking in controlled substances" as used
770 herein means to engage in three (3) or more component offenses
771 within any twelve (12) consecutive month period where at least two
772 (2) of the component offenses occurred in different counties. A
773 component offense is any act which would constitute a violation of
774 subsection (a) of this section. Prior convictions shall not be
775 used as component offenses to establish the charge of trafficking
776 in controlled substances.

777 (3) The charge of trafficking in controlled substances
778 shall be set forth in one (1) count of an indictment with each of
779 the component offenses alleged therein and it may be charged and
780 tried in any county where a component offense occurred. An
781 indictment for trafficking in controlled substances may also be
782 returned by the State Grand Jury of Mississippi provided at least
783 two (2) of the component offenses occurred in different circuit
784 court districts.



785 (h) The use of marijuana are provided by Sections 1 through
786 5 of House Bill No. , 2003 Regular Session, shall not be a
787 violation of this section.

788 **SECTION 9.** If any provision of this act or the application
789 thereof to any person or circumstance is held invalid, the
790 invalidity does not affect other provisions or applications of the
791 act which can be given effect without the invalid provision or
792 application, and to this end the provisions of this act are
793 severable.

794 **SECTION 10.** This act shall take effect and be in force from
795 and after July 1, 2003.

