To: Judiciary A

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003
By: Representative Fleming

HOUSE BILL NO. 1044

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

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

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

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

(3) According to the U.S. Sentencing Commission and the
Federal Bureau of Investigation, more than ninety-nine (99) out of
every one hundred (100) marijuana arrests are made under state
law, rather than under federal law. Consequently, the Legislature
finds that changing state law will have the practical effect of
protecting from arrest the vast majority of seriously ill people
who have a medical need to use marijuana.
Although federal law expressly prohibits the use of marijuana, the Legislature recognizes that the laws of Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon and Washington permit the medical use and cultivation of marijuana. The Legislature intends to join in this effort for the health and welfare of its citizens. However the Legislature does not intend to make marijuana legally available for other than medical purposes.

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

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

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

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

(b) "Debilitating medical condition" means:

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

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

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

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

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

(e) "Medical use" means the acquisition, possession,
cultivation, use, transfer or transportation of marijuana or
paraphernalia relating to the administration of marijuana to
alleviate the symptoms or effects of a qualifying patient's
debilitating medical condition. For the purposes of "medical
use," the term "transfer" is limited to the transfer of marijuana
and paraphernalia between primary caregivers and qualifying patients.

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

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

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

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

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

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

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

(b) A parent, guardian or person having legal custody consents in writing to:
(i) Allow the qualifying patient's medical use of marijuana;
(ii) Serve as the qualifying patient's primary caregiver; and
(iii) Control the acquisition of the marijuana, the dosage and the frequency of the medical use of marijuana by the qualifying patient.

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

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

(5) Any property interest that is possessed, owned or used in connection with the medical use of marijuana, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of state or local law enforcement officials, provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of marijuana plants. Any such property interest shall not be forfeited under any provision of state or local law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to a criminal offense. Marijuana, paraphernalia or other property seized from a qualifying patient or primary caregivers in connection with the claimed medical use of marijuana shall be returned immediately upon the determination by a court or prosecutor that the qualifying patient or primary caregiver has met the requirements of this act.
caregivers are entitled to the protections of this act, as may be evidenced by a decision not to prosecute, the dismissal of charges or an acquittal.

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

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

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

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

(b) The smoking of marijuana:

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

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

(iii) On any school grounds;

(iv) In any correctional facility; or

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

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

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

(3) Notwithstanding any law to the contrary, fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be a petty misdemeanor and subject to a fine of Five Hundred Dollars ($500.00). This penalty shall be
in addition to any other penalties that may apply for the
nonmedical use of marijuana.

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

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

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

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

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

SCHEDULE I

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

(1) Acetyl-alpha-methyldifentanyln;
(2) Acetylmethadol;
(3) Allylprodine;
(4) Alphacetylmethadol, except levo-alphacetylmethadol
(leva-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
(5) Alphameprodine;  
(6) Alphamethadol;  
(7) Alpha-methylfentanyl;  
(8) Alpha-methylthiofentanyl;  
(9) Benzethidine;  
(10) Betacetylmethadol;  
(11) Beta-hydroxyfentanyl;  
(12) Beta-hydroxy-3-methylfentanyl;  
(13) Betameprodine;  
(14) Betamethadol;  
(15) Betaprodine;  
(16) Clonitazene;  
(17) Dextromoramide;  
(18) Diampromide;  
(19) Diethylthiambutene;  
(20) Difenoxin;  
(21) Dimenoxadol;  
(22) Dimepheptanol;  
(23) Dimethylthiambutene;  
(24) Dioxaphetyl butyrate;  
(25) Dipipanone;  
(26) Ethylmethylthiambutene;  
(27) Etonitazene;  
(28) Etoxeridine;  
(29) Etoxethidine;  
(30) Hydroxypethidine;  
(31) Ketobemidone;  
(32) Levomoramide;  
(33) Levophenacylmorphan;  
(34) 3-methylfentanyl;  
(35) 3-methylthiofentanyl;  
(36) Morpheridine;  
(37) Noracymethadol;
(38) Norlevorphanol;
(39) Normethadone;
(40) Norpipanone;
(41) Para-fluorofentanyl;
(42) Phenadoxone;
(43) Phenampromide;
(44) Phenomorphan;
(45) Phenoperidine;
(46) Piritramide;
(47) Proheptazine;
(48) Properidine;
(49) Propiram;
(50) Racemoramide;
(51) Tilidine;
(52) Trimeperidine;
(53) Thiofentanyl;
(54) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
(55) 1-(2-phenylethyl)-4-phenyl-4-acetyloxy-6-piperidine (PEPAP).

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

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine; (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphone;
(14) Methyldihydromorphine;
(15) Monoacetylmorphine;
(16) Morphine methylbromide;
(17) Morphine methylsulfonate;
(18) Morphine-N-Oxide;
(19) Myrophine;
(20) Nicocodeine;
(21) Nicomorphine;
(22) Normorphine;
(23) Pholcodine;
(24) Thebacon.

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

(1) 3, 4-methylenedioxyamphetamine;
(2) 5-methoxy-3, 4-methylenedioxyamphetamine;
(3) 2, 5-dimethoxy-4-ethylamphetamine (DOET);
(4) 3, 4-methylenedioxymethamphetamine (MDMA);
(5) 3, 4, 5-trimethoxyamphetamine;
(6) Bufotenine;
(7) Diethyltryptamine;
(8) Dimethyltryptamine;
(9) Alpha-ethyltryptamine;
(10) 4-methyl-2, 5-dimethoxyamphetamine;
(11) Hashish;
(12) Ibogaine;
(13) Lysergic acid diethylamide; (LSD)

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Mescaline;

Peyote;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Phencyclidine;

Psilocybin;

Psilocyn;

Tetrahydrocannabinols (excluding dronabinol and nabilone);

2, 5-dimethoxyamphetamine;

4-bromo-2, 5-dimethoxyamphetamine;

4-bromo-2, 5-dimethoxyphenylethylamine;

4-methoxyamphetamine;

Ethylamine analog of phencyclidine (PCE);

Pyrolidine analog of phencyclidine (PHP, PCPy);

Thiophene analog of Phencyclidine;

Parahexyl;

1-[1-(2-Thienyl)cyclohexyl] pyrrolidine (TCPy);

3, 4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3, 4-(methylenedioxy) phenylethylamine, N-ethyl MDA, MDE and MDEA);

N-hydroxy-3, 4-methylenedioxyamphetamine (also known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3, 4-(methylenedioxy) phenylethylamine).

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

(e) Gamma-hydroxybutyric acid (other names include: GHB, gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate), including its salts, isomers, and salts of isomers.
(f) Any material, compound, mixture or preparation which contains any quantity of the following central nervous system stimulants including salts, isomers and salts of isomers unless specifically excepted or unless listed in another schedule:

   (1) Aminorex;
   (2) Cathinone;
   (3) Fenethylline;
   (4) N-ethyl-amphetamine;
   (5) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline);
   (6) Methacathinone.

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

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

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

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

SCHEDULE II

(a) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone hydrochloride, apomorphine, dextrophan, nalbuphine, nalmefene and naltrexone, but including the following:

   (i) Raw opium;
   (ii) Opium extracts;
   (iii) Opium fluid extracts;
   (iv) Powdered opium;
   (v) Granulated opium;
   (vi) Tincture of opium;
   (vii) Codeine;
   (viii) Ethylmorphine;
   (ix) Etorphine hydrochloride;
   (x) Hydrocodone;
   (xi) Hydrocodeine;
   (xii) Metopon;
   (xiii) Morphine;
   (xiv) Oxycodone;
   (xv) Oxymorphone;
   (xvi) Thebaine.

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

(3) Opium poppy and poppy straw;

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

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

1. Alfentanil;
2. Alphaprodine;
3. Anileridine;
4. Bezitramide;
5. Bulk dextropropoxyphene (nondosage forms);
6. Carfentanil;
7. Dihydrocodeine;
8. Diphenoxylate;
9. Fentanyl;
10. Isomethadone;
11. Levo-alphacetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
12. Levomethorphan;
13. Levorphanol;
14. Metazocine;
15. Methadone;
16. Methadone-intermediate,
17. Moramide-intermediate,
18. Pethidine (meperidine);
19. Pethidine-intermediate-A,
20. Pethidine-intermediate-B,
21. Pethidine-intermediate-C,
22. Phenazocine;
23. Piminochine;
(24) Racemethorphan;
(25) Racemorphan;
(26) Remifentanil;
(27) Sufentanil.

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

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
(2) Phenmetrazine and its salts;
(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
(4) Methylphenidate and its salts.

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

(1) Amobarbital;
(2) Secobarbital;
(3) Pentobarbital;
(4) Amphetamine and methamphetamine immediate precursor: Phenyacetone (phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone);
(5) Phencyclidine immediate precursors:
   (i) 1-phenylcyclohexylamine;
   (ii) 1-piperidinocyclohexanecarbonitrile
(6) Pentazocine and its salts in injectable dosage form;
(7) Nabilone, other names include:
   (+/−)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1,1-hydroxy-6-6-dimethyl-9H-dibenzo (b,d) pyran-9-one;
(8) Glutethimide.
(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule II controlled substance and is listed as an exempt substance in 21 C.F.R., Section 1308.24 or 1308.32, shall be exempted from the provisions of the Uniform Controlled Substances Law.

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

(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

(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, 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) 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 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 Schedules I, II, III, IV or V, as set out in Sections 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 that does not fall within the definition of the term "dosage unit," the penalties shall be based upon the weight of the controlled substance.

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

If a mixture or substance contains more than one (1) controlled substance, the weight of the mixture or substance is assigned to the controlled substance 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, 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

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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) 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, 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, 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, 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 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 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.

(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 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" as used herein means to engage in three (3) or more component offenses within any twelve (12) consecutive month period where at least two 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.

(3) The charge of trafficking in controlled substances 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 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.
(h) The use of marijuana are provided by Sections 1 through 5 of House Bill No. , 2003 Regular Session, shall not be a violation of this section.

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

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