

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2412

1 AN ACT TO AMEND SECTION 41-29-105, MISSISSIPPI CODE OF 1972,
 2 TO DEFINE CONTROLLED SUBSTANCE ANALOGUE FOR PURPOSES OF THE
 3 UNIFORM CONTROLLED SUBSTANCES ACT; TO AMEND SECTIONS 41-29-117,
 4 41-29-119 AND 41-29-121, MISSISSIPPI CODE OF 172, TO RECLASSIFY
 5 CERTAIN CONTROLLED SUBSTANCES IN SCHEDULES III, IV AND V OF THE
 6 UNIFORM CONTROLLED SUBSTANCES ACT; TO AMEND SECTION 41-29-139,
 7 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MANUFACTURE,
 8 DELIVERY, SALE AND POSSESSION OF A CONTROLLED SUBSTANCE ANALOGUE
 9 SHALL BE TREATED AS A SCHEDULE I SUBSTANCE FOR PURPOSES OF
 10 CRIMINAL PENALTIES, AND TO INCLUDE CONTROLLED SUBSTANCE ANALOGUES
 11 IN THOSE STATUTES PROVIDING CRIMINAL PENALTIES FOR TRAFFICKING IN
 12 CONTROLLED SUBSTANCES; TO AMEND SECTION 97-3-97, MISSISSIPPI CODE
 13 OF 1972, TO INCLUDE THE USE OF CONTROLLED SUBSTANCES AND
 14 CONTROLLED SUBSTANCE ANALOGUE AS A CRIMINAL ELEMENT TO
 15 INCAPACITATE A PERSON UNDER THE RAPE STATUTE; TO AMEND SECTION
 16 41-29-313, MISSISSIPPI CODE OF 1972, TO ADD GAMMA-BUTYROLACTONE
 17 AND BUTANOLIDE TO LISTED CHEMICALS WHICH MAY BE USED AS A
 18 CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE; TO AMEND
 19 SECTIONS 41-29-127, 41-29-129, 41-29-142, 41-29-144, 41-29-145,
 20 41-29-146, 41-29-152, 41-29-153, 41-29-154, 41-29-169, 41-29-171,
 21 41-29-176, 41-29-177, 41-29-179, 63-1-71 AND 63-1-83, MISSISSIPPI
 22 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

57 (i) Has a chemical structure substantially similar
58 to the chemical structure of a drug or substance in Schedule I or
59 II of Sections 41-29-113 and 41-29-115; or

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

65 (iii) Is represented or intended to have a
66 stimulant, depressant or hallucinogenic effect on the central
67 nervous system substantially similar to the stimulant, depressant
68 or hallucinogenic effect on the central nervous system produced by

69 a drug or substance in Schedule I or II of Sections 41-29-113 and
70 41-29-115.

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

76 Controlled substance analogue does not mean any of the
77 following:

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

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

89 (3) Any substance, before an exemption as
90 specified in paragraph (2) takes effect with respect to the
91 substance, to the extent the substance is not intended for human
92 consumption.

93 (4) A controlled substance previously scheduled.

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

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

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

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

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

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

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

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

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

131 (q) "Immediate precursor" means a substance which the
132 board has found to be and by rule designates as being the
133 principal compound commonly used or produced primarily for use,

134 and which is an immediate chemical intermediary used or likely to
135 be used in the manufacture of a controlled substance, the control
136 of which is necessary to prevent, curtail or limit manufacture.

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

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

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

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

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

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

164 (2) Any salt, compound, isomer, derivative or
165 preparation thereof which is chemically equivalent or identical

166 with any of the substances referred to in clause 1, but not
167 including the isoquinoline alkaloids of opium;

168 (3) Opium poppy and poppy straw; and

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

175 (u) "Opiate" means any substance having an
176 addiction-forming or addiction-sustaining liability similar to
177 morphine or being capable of conversion into a drug having
178 addiction-forming or addiction-sustaining liability. It does not
179 include, unless specifically designated as controlled under
180 Section 41-29-111, the dextrorotatory isomer of
181 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such
182 word does include its racemic and levorotatory forms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

262 (ii) Prior convictions, if any, of an owner, or of
263 anyone in control of the object, under any state or federal law

264 relating to any controlled substance or controlled substance
265 analogue;

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

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

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

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

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

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

285 (ix) National and local advertising concerning its
286 use;

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

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

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

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

298 (xiv) Expert testimony concerning its use.

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

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

304 (z) "Practitioner" means:

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

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

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

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

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

326 (dd) "Ultimate user" means a person who lawfully
327 possesses a controlled substance for his own use or for the use of

328 a member of his household or for administering to an animal owned
329 by him or by a member of his household.

330 **SECTION 2.** Section 41-29-117, Mississippi Code of 1972, is
331 amended as follows:

332 41-29-117. (A) The controlled substances listed in this
333 section are included in Schedule III.

334 **SCHEDULE III**

335 (a) Any material, compound, mixture, or preparation
336 which contains any quantity of the following substances or their
337 salts, isomers, or salts of isomers, of the following substances:

- 338 (1) Benzphetamine;
339 (2) Chlorphentermine;
340 (3) Clortermine;
341 (4) Phendimetrazine.

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

345 (1) Any substance which contains any quantity of a
346 derivative of barbituric acid, or any salt of a derivative of
347 barbituric acid, except those substances which are specifically
348 listed in other schedules.

349 (2) Unless specifically excepted or unless listed
350 in another schedule, any compound, mixture or preparation
351 containing any of the following substances or any salt of the
352 substances specifically included in this subsection (2) and one or
353 more other active medicinal ingredients which are not listed in
354 any other schedule:

- 355 (i) Amobarbital;
356 (ii) Secobarbital;
357 (iii) Pentobarbital.

358 (3) Any suppository dosage form containing any of
359 the following substances or any salt of any of the substances

360 specifically included in this subsection (3) approved by the Food
361 and Drug Administration for marketing only as a suppository:

362 (i) Amobarbital;

363 (ii) Secobarbital;

364 (iii) Pentobarbital.

365 (4) Chlorhexadol;

366 (5) Any drug product containing

367 gamma-hydroxybutyric acid, including its salts, isomers and salts

368 of isomers, for which an application is approved under Section 505

369 of the Federal Food, Drug and Cosmetic Act;

370 (6) Lysergic acid;

371 (7) Lysergic acid amide;

372 (8) Methyprylon;

373 (9) Sulfondiethylmethane;

374 (10) Sulfonethylmethane;

375 (11) Sulfonmethane;

376 (12) Tiletamine and zolazepam or any salt thereof;

377 other names for the tiletamine and zolazepam combination product

378 include: telazol; other names for tiletamine include:

379 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; other names for

380 zolazepam include: 4-(2-fluorophenyl)-6, 8-dihydro 1, 3,

381 8-trimethylpyrazolo - (3,4-e) (1,4)-diazepin-7 (1H)-one;

382 flupyrzapon.

383 (c) Nalorphine.

384 (d) Ketamine.

385 (e) Any material, compound, mixture, or preparation

386 containing limited quantities of any of the following narcotic

387 drugs, or any salts thereof:

388 (1) Not more than one and eight-tenths (1.8) grams

389 of codeine, or any of its salts, per one hundred (100) milliliters

390 or not more than ninety (90) milligrams per dosage unit, with an

391 equal or greater quantity of an isoquinoline alkaloid of opium;

392 (2) Not more than one and eight-tenths (1.8) grams
393 of codeine, or any of its salts, per one hundred (100) milliliters
394 or not more than ninety (90) milligrams per dosage unit, with one
395 or more active, nonnarcotic ingredients in recognized therapeutic
396 amounts;

397 (3) Not more than three hundred (300) milligrams
398 of dihydrocodeinone (also known as hydrocodone), or any of its
399 salts, per one hundred (100) milliliters or not more than fifteen
400 (15) milligrams per dosage unit, with a fourfold or greater
401 quantity of an isoquinoline alkaloid of opium;

402 (4) Not more than three hundred (300) milligrams
403 of dihydrocodeinone, or any of its salts, per one hundred (100)
404 milliliters or not more than fifteen (15) milligrams per dosage
405 unit, with one or more active nonnarcotic ingredients in
406 recognized therapeutic amounts;

407 (5) Not more than one and eight-tenths (1.8) grams
408 of dihydrocodeine, or any of its salts, per one hundred (100)
409 milliliters or not more than ninety (90) milligrams per dosage
410 unit, with one or more active, nonnarcotic ingredients in
411 recognized therapeutic amounts;

412 (6) Not more than three hundred (300) milligrams
413 of ethylmorphine, or any of its salts, per one hundred (100)
414 milliliters or not more than fifteen (15) milligrams per dosage
415 unit, with one or more active, nonnarcotic ingredients in
416 recognized therapeutic amounts;

417 (7) Not more than five hundred (500) milligrams of
418 opium per one hundred (100) milliliters or per one hundred (100)
419 grams, or not more than twenty-five (25) milligrams per dosage
420 unit, with one or more active, nonnarcotic ingredients in
421 recognized therapeutic amounts;

422 (8) Not more than fifty (50) milligrams of
423 morphine, or any of its salts, per one hundred (100) milliliters

424 or per one hundred (100) grams with one or more active,
425 nonnarcotic ingredients in recognized therapeutic amounts.

426 (f) Any material, compound, mixture or preparation
427 containing any quantity of any of the following anabolic steroids,
428 which means any drug or hormonal substance chemically and
429 pharmacologically related to testosterone (other than estrogens,
430 progestins and corticosteroids) that promotes muscle growth,
431 unless listed in another schedule or excepted:

- 432 (1) Boldenone (dehydrotestosterone);
- 433 (2) Chlorotestosterone (clostebol,
434 4-chlorotestosterone, 4-chlortestosterone);
- 435 (3) Dehydrochlormethyltestosterone;
- 436 (4) Dihydrotestosterone (stanolone,
437 4-dihydrotestosterone);
- 438 (5) Drostanolone;
- 439 (6) Ethylestrenol;
- 440 (7) Fluoxymesterone;
- 441 (8) Formebolone (formebolone);
- 442 (9) Mesterolone;
- 443 (10) Methandienone (methandrostenolone);
- 444 (11) Methandriol;
- 445 (12) Methenolone;
- 446 (13) Methyltestosterone;
- 447 (14) Mibolerone;
- 448 (15) Nandrolone;
- 449 (16) Norethandrolone;
- 450 (17) Oxandrolone;
- 451 (18) Oxymesterone;
- 452 (19) Oxymetholone;
- 453 (20) Stanozolol;
- 454 (21) Testolactone;
- 455 (22) Testosterone;
- 456 (23) Trenbolone;

457 (24) Any salt, ester, or isomer of a drug or
458 substance described or listed in this paragraph, if that salt,
459 ester, or isomer promotes muscle growth;

460 (g) Any material, compound, mixture or preparation
461 which contains any quantity of buprenorphine or its salts.

462 (h) Any material compound, mixture or preparation which
463 contains any quantity of pentazocine or its salts in oral dosage
464 form;

465 (i) Dronabinol (synthetic) in sesame oil and
466 encapsulated in a soft gelatin capsule in a United States Food and
467 Drug Administration approved drug product.

468 (B) Any material, compound, mixture or preparation which
469 contains any quantity of a Schedule III controlled substance and
470 is listed as an exempt substance in 21 C.F.R., Section 1308.22,
471 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the
472 provisions of the Uniform Controlled Substances Law.

473 **SECTION 3.** Section 41-29-119, Mississippi Code of 1972, is
474 amended as follows:

475 41-29-119. (A) The controlled substances listed in this
476 section are included in Schedule IV.

477 **SCHEDULE IV**

478 (a) Unless specifically excepted or unless listed in
479 another schedule, any material, compound, mixture or preparation
480 which contains limited quantities of the following narcotic drugs,
481 or any salts thereof:

482 (1) Not more than one (1) milligram of difenoxin
483 and not less than twenty-five (25) micrograms of atropine sulfate
484 per dosage unit;

485 (2) Dextropropoxyphene, including its salts
486 (Darvon, Darvon-N; also found in Darvon compound and Darvocet-N,
487 etc.).

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

- 490 (1) Alprazolam;
- 491 (2) Barbitol;
- 492 (3) Bromazepam;
- 493 (4) Butorphanol;
- 494 (5) Camazepam;
- 495 (6) Chloral betaine;
- 496 (7) Chloral hydrate;
- 497 (8) Chlordiazepoxide and its salts, but does not
498 include chlordiazepoxide hydrochloride and clidinium bromide or
499 chlordiazepoxide and esterified estrogens;
- 500 (9) Clobazam;
- 501 (10) Clonazepam;
- 502 (11) Clorazepate;
- 503 (12) Clotiazepam;
- 504 (13) Cloxazolam;
- 505 (14) Delorazepam;
- 506 (15) Diazepam;
- 507 (16) Dichloralphenazone;
- 508 (17) Estazolam;
- 509 (18) Ethchlorvynol;
- 510 (19) Ethinamate;
- 511 (20) Ethyl loflazepate;
- 512 (21) Fludiazepam;
- 513 (22) Flunitrazepam;
- 514 (23) Flurazepam;
- 515 (24) Halazepam;
- 516 (25) Haloxazolam;
- 517 (26) Ketazolam;
- 518 (27) Loprazolam;
- 519 (28) Lorazepam;
- 520 (29) Lormetazepam;
- 521 (30) Mazindol;
- 522 (31) Mebutamate;

- 523 (32) Medazepam;
- 524 (33) Meprobamate;
- 525 (34) Methohexital;
- 526 (35) Methylphenobarbital;
- 527 (36) Midazolam;
- 528 (37) Nimetazepam;
- 529 (38) Nitrazepam;
- 530 (39) Nordiazepam;
- 531 (40) Oxazepam;
- 532 (41) Oxazolam;
- 533 (42) Paraldehyde;
- 534 (43) Petrichloral;
- 535 (44) Phenobarbital;
- 536 (45) Pinazepam;
- 537 (46) Prazepam;
- 538 (47) Quazepam;
- 539 (48) Temazepam;
- 540 (49) Tetrazepam;
- 541 (50) Triazolam;
- 542 (51) Zaleplon;
- 543 (52) Zolpidem.
- 544 (c) Fenfluramine.
- 545 (d) Any material, compound, mixture or preparation
- 546 which contains any quantity of the following substances:
- 547 (1) Diethylpropion;
- 548 (2) Phentermine;
- 549 (3) Pemoline (including any organometallic
- 550 complexes or chelates thereof);
- 551 (4) Pipradrol;
- 552 (5) Sibutramine;
- 553 (6) SPA ((-)-1-dimethylamino-1, 2-diphenylethane).
- 554 (e) Any material, compound, mixture or preparation
- 555 which contains any quantity of the following substances:

- 556 (1) Cathine ((+/-) Norpseudoephedrine);
557 (2) Fencamfamin;
558 (3) Fenproporex;
559 (4) Mefenorex;
560 (5) Modafinil.

561 (B) Any material, compound, mixture or preparation which
562 contains any quantity of a Schedule IV controlled substance and is
563 listed as an exempt substance in 21 C.F.R., Section 1308.22,
564 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the
565 provisions of the Uniform Controlled Substances Law.

566 **SECTION 4.** Section 41-29-121, Mississippi Code of 1972, is
567 amended as follows:

568 41-29-121. (A) The controlled substances listed in this
569 section are included in Schedule V:

570 **SCHEDULE V**

571 (a) Any compound, mixture or preparation containing
572 limited quantities of any of the following narcotic drugs, which
573 also contains one or more nonnarcotic active medicinal ingredients
574 in sufficient proportion to confer upon the compound, mixture or
575 preparation, valuable, medicinal qualities other than those
576 possessed by the narcotic drug alone:

577 (1) Not more than two hundred (200) milligrams of
578 codeine, or any of its salts, per one hundred (100) milliliters or
579 per one hundred (100) grams;

580 (2) Not more than one hundred (100) milligrams of
581 dihydrocodeine, or any of its salts, per one hundred (100)
582 milliliters or per one hundred (100) grams;

583 (3) Not more than one hundred (100) milligrams of
584 ethylmorphine, or any of its salts, per one hundred (100)
585 milliliters or per one hundred (100) grams;

586 (4) Not more than two and five-tenths (2.5)
587 milligrams of diphenoxylate and not less than twenty-five (25)
588 micrograms of atropine sulphate per dosage unit;

589 (5) Not more than one hundred (100) milligrams of
590 opium per one hundred (100) milliliters or per one hundred (100)
591 grams;

592 (6) Not more than five-tenths (0.5) milligram of
593 difenoxin and not less than twenty-five (25) micrograms of
594 atropine sulfate per dosage unit.

595 * * *

596 (b) Unless specifically excepted or listed in another
597 schedule, any material, compound, mixture or preparation which
598 contains any quantity of the following substances, including their
599 salts, isomers and salts of isomers:

600 Pyrovalerone.

601 (B) Any material, compound, mixture or preparation which
602 contains any quantity of a Schedule V controlled substance and is
603 listed as an exempt substance in 21 C.F.R., Section 1308.22,
604 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the
605 provisions of the Uniform Controlled Substances Law.

606 **SECTION 5.** Section 41-29-139, Mississippi Code of 1972, is
607 amended as follows:

608 41-29-139. (a) Except as authorized by this article, it is
609 unlawful for any person knowingly or intentionally:

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

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

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

620 (1) In the case of controlled substances classified in
621 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,

622 any drug product containing gamma-hydroxybutyric acid as listed in
623 Section 41-29-117, or any controlled substance analogue as defined
624 in Section 41-29-105, except one (1) ounce or less of marihuana,
625 and except a first offender as defined in Section 41-29-149(e) who
626 violates subsection (a) of this section with respect to less than
627 one (1) kilogram but more than one (1) ounce of marihuana, such
628 person may, upon conviction, be imprisoned for not more than
629 thirty (30) years and shall be fined not less than Five Thousand
630 Dollars (\$5,000.00) nor more than One Million Dollars
631 (\$1,000,000.00), or both;

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

639 (3) In the case of one (1) ounce or less of marihuana,
640 such person may, upon conviction, be imprisoned for not more than
641 three (3) years or fined not more than Three Thousand Dollars
642 (\$3,000.00), or both;

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

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

655 (c) It is unlawful for any person knowingly or intentionally
656 to possess any controlled substance or controlled substance
657 analogue unless the substance was obtained directly from, or
658 pursuant to, a valid prescription or order of a practitioner while
659 acting in the course of his professional practice, or except as
660 otherwise authorized by this article. The penalties for any
661 violation of this subsection (c) with respect to a controlled
662 substance classified in Schedule I, II, III, IV or V, as set out
663 in Section 41-29-113, 41-29-115, 41-29-117, 41-29-119 or
664 41-29-121, including marihuana, shall be based on dosage unit as
665 defined herein or the weight of the controlled substance as set
666 forth herein as appropriate:

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

672 For any controlled substance or controlled substance analogue
673 that does not fall within the definition of the term "dosage
674 unit," the penalties shall be based upon the weight of the
675 controlled substance or controlled substance analogue.

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

679 If a mixture or substance contains more than one (1)
680 controlled substance or controlled substance analogue, the weight
681 of the mixture or substance is assigned to the controlled
682 substance or controlled substance analogue that results in the
683 greater punishment.

684 Any person who violates this subsection with respect to:

685 (1) A controlled substance classified in Schedule I or
686 II, GHB as listed in Schedule III, or a controlled substance

687 analogue except marihuana, in the following amounts shall be
688 charged and sentenced as follows:

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

696 (B) One-tenth (0.1) gram but less than two (2)
697 grams or two (2) dosage units but less than ten (10) dosage units,
698 by imprisonment for not less than two (2) years nor more than
699 eight (8) years and a fine of not more than Fifty Thousand Dollars
700 (\$50,000.00).

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

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

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

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

717 (A) Thirty (30) grams or less by a fine of not
718 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
719 Fifty Dollars (\$250.00). The provisions of this paragraph shall

720 be enforceable by summons, provided the offender provides proof of
721 identity satisfactory to the arresting officer and gives written
722 promise to appear in court satisfactory to the arresting officer,
723 as directed by the summons. A second conviction under this
724 section within two (2) years shall be punished by a fine of Two
725 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
726 nor more than sixty (60) days in the county jail and mandatory
727 participation in a drug education program, approved by the
728 Division of Alcohol and Drug Abuse of the State Department of
729 Mental Health, unless the court enters a written finding that such
730 drug education program is inappropriate. A third or subsequent
731 conviction under this section within two (2) years is a
732 misdemeanor punishable by a fine of not less than Two Hundred
733 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
734 (\$500.00) and confinement for not less than five (5) days nor more
735 than six (6) months in the county jail. Upon a first or second
736 conviction under this section the courts shall forward a report of
737 such conviction to the Mississippi Bureau of Narcotics which shall
738 make and maintain a private, nonpublic record for a period not to
739 exceed two (2) years from the date of conviction. The private,
740 nonpublic record shall be solely for the use of the courts in
741 determining the penalties which attach upon conviction under this
742 section and shall not constitute a criminal record for the purpose
743 of private or administrative inquiry and the record of each
744 conviction shall be expunged at the end of the period of two (2)
745 years following the date of such conviction;

746 (B) Additionally, a person who is the operator of
747 a motor vehicle, who possesses on his person or knowingly keeps or
748 allows to be kept in a motor vehicle within the area of the
749 vehicle normally occupied by the driver or passengers, more than
750 one (1) gram, but not more than thirty (30) grams, of marihuana is
751 guilty of a misdemeanor and upon conviction may be fined not more
752 than One Thousand Dollars (\$1,000.00) and confined for not more

753 than ninety (90) days in the county jail. For the purposes of
754 this subsection, such area of the vehicle shall not include the
755 trunk of the motor vehicle or the areas not normally occupied by
756 the driver or passengers if the vehicle is not equipped with a
757 trunk. A utility or glove compartment shall be deemed to be
758 within the area occupied by the driver and passengers;

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

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

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

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

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

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

784 (A) Less than fifty (50) grams or less than one
785 hundred (100) dosage units is a misdemeanor and punishable by not

786 more than one (1) year and a fine of not more than One Thousand
787 Dollars (\$1,000.00).

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

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

798 (D) Three hundred (300) grams but less than five
799 hundred (500) grams or one thousand (1,000) dosage units but less
800 than two thousand five hundred (2,500) dosage units, by
801 imprisonment for not less than four (4) years nor more than
802 sixteen (16) years and a fine of not more than Two Hundred Fifty
803 Thousand Dollars (\$250,000.00).

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

809 (d) (1) It is unlawful for a person who is not authorized
810 by the State Board of Medical Licensure, State Board of Pharmacy,
811 or other lawful authority to use, or to possess with intent to
812 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
813 manufacture, compound, convert, produce, process, prepare, test,
814 analyze, pack, repack, store, contain, conceal, inject, ingest,
815 inhale or otherwise introduce into the human body a controlled
816 substance or controlled substance analogue in violation of the
817 Uniform Controlled Substances Law. Any person who violates this
818 subsection is guilty of a misdemeanor and upon conviction may be

819 confined in the county jail for not more than six (6) months, or
820 fined not more than Five Hundred Dollars (\$500.00), or both;
821 however, no person shall be charged with a violation of this
822 subsection when such person is also charged with the possession of
823 one (1) ounce or less of marihuana under subsection (c)(2)(A) of
824 this section.

825 (2) It is unlawful for any person to deliver, sell,
826 possess with intent to deliver or sell, or manufacture with intent
827 to deliver or sell, paraphernalia, knowing, or under circumstances
828 where one reasonably should know, that it will be used to plant,
829 propagate, cultivate, grow, harvest, manufacture, compound,
830 convert, produce, process, prepare, test, analyze, pack, repack,
831 store, contain, conceal, inject, ingest, inhale, or otherwise
832 introduce into the human body a controlled substance or controlled
833 substance analogue in violation of the Uniform Controlled
834 Substances Law. Any person who violates this subsection is guilty
835 of a misdemeanor and upon conviction may be confined in the county
836 jail for not more than six (6) months, or fined not more than Five
837 Hundred Dollars (\$500.00), or both.

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

845 (4) It is unlawful for any person to place in any
846 newspaper, magazine, handbill, or other publication any
847 advertisement, knowing, or under circumstances where one
848 reasonably should know, that the purpose of the advertisement, in
849 whole or in part, is to promote the sale of objects designed or
850 intended for use as paraphernalia. Any person who violates this
851 subsection is guilty of a misdemeanor and upon conviction may be

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

854 (e) It shall be unlawful for any physician practicing
855 medicine in this state to prescribe, dispense or administer any
856 amphetamine or amphetamine-like anorectics and/or central nervous
857 system stimulants classified in Schedule II, pursuant to Section
858 41-29-115, for the exclusive treatment of obesity, weight control
859 or weight loss. Any person who violates this subsection, upon
860 conviction, is guilty of a misdemeanor and may be confined for a
861 period not to exceed six (6) months, or fined not more than One
862 Thousand Dollars (\$1,000.00), or both.

863 (f) Except as otherwise authorized in this article, any
864 person twenty-one (21) years of age or older who knowingly sells,
865 barter, transfers, manufactures, distributes or dispenses during
866 any twelve (12) consecutive month period: (i) ten (10) pounds or
867 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
868 two (2) or more ounces of cocaine or of any mixture containing
869 cocaine as described in Section 41-29-105(s), Mississippi Code of
870 1972; or (iv) one hundred (100) or more dosage units of morphine,
871 Demerol or Dilaudid, shall be guilty of a felony and, upon
872 conviction thereof, shall be sentenced to life imprisonment and
873 such sentence shall not be reduced or suspended nor shall such
874 person be eligible for probation or parole, the provisions of
875 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
876 of 1972, to the contrary notwithstanding. The provisions of this
877 subsection shall not apply to any person who furnishes information
878 and assistance to the bureau or its designee which, in the opinion
879 of the trial judge objectively should or would have aided in the
880 arrest or prosecution of others who violate this subsection. The
881 accused shall have adequate opportunity to develop and make a
882 record of all information and assistance so furnished.

883 (g) (1) Any person trafficking in controlled substances or
884 controlled substance analogues shall be guilty of a felony and

885 upon conviction shall be imprisoned for a term of thirty (30)
886 years and such sentence shall not be reduced or suspended nor
887 shall such person be eligible for probation or parole, the
888 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,
889 Mississippi Code of 1972, to the contrary notwithstanding and
890 shall be fined not less than Five Thousand Dollars (\$5,000.00) nor
891 more than One Million Dollars (\$1,000,000.00).

892 (2) "Trafficking in controlled substances or controlled
893 substance analogues" as used herein means to engage in three (3)
894 or more component offenses within any twelve (12) consecutive
895 month period where at least two (2) of the component offenses
896 occurred in different counties. A component offense is any act
897 which would constitute a violation of subsection (a) of this
898 section. Prior convictions shall not be used as component
899 offenses to establish the charge of trafficking in controlled
900 substances or controlled substance analogues.

901 (3) The charge of trafficking in controlled substances
902 or controlled substance analogues shall be set forth in one (1)
903 count of an indictment with each of the component offenses alleged
904 therein and it may be charged and tried in any county where a
905 component offense occurred. An indictment for trafficking in
906 controlled substances or controlled substance analogues may also
907 be returned by the State Grand Jury of Mississippi provided at
908 least two (2) of the component offenses occurred in different
909 circuit court districts.

910 **SECTION 6.** Section 97-3-97, Mississippi Code of 1972, is
911 amended as follows:

912 97-3-97. For purposes of Sections 97-3-95 through 97-3-103
913 the following words shall have the meaning ascribed herein unless
914 the context otherwise requires:

915 (a) "Sexual penetration" includes cunnilingus,
916 fellatio, buggery or pederasty, any penetration of the genital or
917 anal openings of another person's body by any part of a person's

918 body, and insertion of any object into the genital or anal
919 openings of another person's body.

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

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

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

932 **SECTION 7.** Section 41-29-313, Mississippi Code of 1972, is
933 amended as follows:

934 41-29-313. (1) (a) Except as authorized in this section,
935 it is unlawful for any person to knowingly or intentionally:

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

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

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

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

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

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

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

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

982 (a) Ether;

983 (b) Anhydrous ammonia;

- 984 (c) Pseudoephedrine;
- 985 (d) Ephedrine;
- 986 (e) Denatured alcohol (Ethanol);
- 987 (f) Lithium;
- 988 (g) Freon;
- 989 (h) Hydrochloric acid;
- 990 (i) Hydriodic acid;
- 991 (j) Red phosphorous;
- 992 (k) Iodine;
- 993 (l) Sodium metal;
- 994 (m) Muriatic acid;
- 995 (n) Sulfuric acid;
- 996 (o) Hydrogen chloride gas;
- 997 (p) Potassium;
- 998 (q) Methanol;
- 999 (r) Isopropyl alcohol;
- 1000 (s) Hexanes;
- 1001 (t) Heptanes;
- 1002 (u) Acetone;
- 1003 (v) Toluene;
- 1004 (w) Xylenes;
- 1005 (x) Gamma-butrolactone, including butyrolactone;
- 1006 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
- 1007 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
- 1008 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
- 1009 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
- 1010 with Chemical Abstract Service number (96-48-0).
- 1011 (y) 1,4-butanediol, including butanediol;
- 1012 butane-1,4-diol; 1,4-butylene gylcol; butylene gylcol;
- 1013 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene
- 1014 gylcol; tetramethylene 1,4-diol with Chemical Abstract Service
- 1015 number (110-63-4).

1016 (4) Nothing in this section shall preclude any farmer from
1017 storing or using any of the listed * * * drugs or chemicals listed
1018 in this section in the normal pursuit of farming operations.

1019 (5) Nothing in this section shall preclude any wholesaler,
1020 retailer or pharmacist from possessing or selling the listed * * *
1021 drugs or chemicals in the normal pursuit of business.

1022 (6) Any person who violates the provisions of this section
1023 with children under the age of eighteen (18) years present may be
1024 subject to a term of imprisonment or a fine, or both, of twice
1025 that provided in this section.

1026 (7) Any person who violates the provisions of this section
1027 when the offense occurs in any hotel or apartment building or
1028 complexz may be subject to a term of imprisonment or a fine, or
1029 both, of twice that provided in this section. For the purposes of
1030 this subsection (7), the following terms shall have the meanings
1031 ascribed to them:

1032 (a) "Hotel" means a hotel, inn, motel, tourist court,
1033 apartment house, rooming house, or any other place where sleeping
1034 accommodations are furnished or offered for pay if four (4) or
1035 more rooms are available for transient guests.

1036 (b) "Apartment building" means any building, including
1037 without limitation a condominium building, having four (4) or more
1038 dwelling units.

1039 (8) Nothing in this section shall preclude any manufacturer,
1040 producer, distributor, transporter or retailer from possessing,
1041 using, selling or storing any of the listed drugs or chemicals in
1042 the normal pursuit of business and not intended for human
1043 consumption.

1044 **SECTION 8.** Section 41-29-127, Mississippi Code of 1972, is
1045 amended as follows:

1046 41-29-127. (a) The State Board of Pharmacy shall register
1047 an applicant to manufacture or distribute controlled substances
1048 included in Sections 41-29-113 through 41-29-121 unless it

1049 determines that the issuance of that registration would be
1050 inconsistent with the public interest. In determining the public
1051 interest, the State Board of Pharmacy shall consider the following
1052 factors:

1053 (1) Maintenance of effective controls against diversion
1054 of controlled substances into other than legitimate medical,
1055 scientific, or industrial channels;

1056 (2) Compliance with applicable state and local law;

1057 (3) Any convictions of the applicant under any federal
1058 and state laws relating to any controlled substance or controlled
1059 substance analogue;

1060 (4) Past experience in the manufacture or distribution
1061 of controlled substances and the existence in the applicant's
1062 establishment of effective controls against diversion;

1063 (5) Furnishing by the applicant of false or fraudulent
1064 material in any application filed under this article;

1065 (6) Suspension or revocation of the applicant's federal
1066 registration to manufacture, distribute or dispense controlled
1067 substances as authorized by federal law; and

1068 (7) Any other factors relevant to and consistent with
1069 the public health and safety.

1070 (b) Registration under subsection (a) does not entitle a
1071 registrant to manufacture and distribute controlled substances in
1072 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
1073 other than those specified in the registration.

1074 (c) Practitioners must be registered to dispense any
1075 controlled substances or to conduct research with controlled
1076 substances in Schedules II through V, as set out in Sections
1077 41-29-115 through 41-29-121, if they are authorized to dispense or
1078 conduct research under the law of this state. The State Board of
1079 Pharmacy need not require separate registration under this section
1080 for practitioners engaging in research with nonnarcotic controlled
1081 substances in the said Schedules II through V where the registrant

1082 is already registered therein in another capacity. Practitioners
1083 registered under federal law to conduct research with Schedule I
1084 substances, as set out in Section 41-29-113, may conduct research
1085 with Schedule I substances within this state upon furnishing the
1086 State Board of Health evidence of that federal registration.

1087 (d) Compliance by manufacturers and distributors with the
1088 provisions of the federal law respecting registration (excluding
1089 fees) entitles them to be registered under this article.

1090 **SECTION 9.** Section 41-29-129, Mississippi Code of 1972, is
1091 amended as follows:

1092 41-29-129. (1) A registration to manufacture, distribute or
1093 dispense a controlled substance may be suspended or revoked by the
1094 State Board of Pharmacy upon a finding that the registrant:

1095 (a) Has willfully furnished false or fraudulent
1096 material information in any application filed under this article;

1097 (b) Has been convicted of a felony within the past five
1098 (5) years and has not been pardoned and his citizenship restored
1099 under any state or federal law relating to any controlled
1100 substance or controlled substance analogue;

1101 (c) Has had his federal registration suspended or
1102 revoked to manufacture, distribute or dispense controlled
1103 substances;

1104 (d) Has violated or failed to comply with any duly
1105 promulgated regulation of the State Board of Pharmacy which
1106 reflects adversely on the registrant's reliability and integrity
1107 with respect to controlled substances;

1108 (e) Has violated the Uniform Controlled Substances Law
1109 of the State of Mississippi;

1110 (f) Has violated any duly promulgated rule or
1111 regulation of the State Board of Pharmacy pertaining to the
1112 manufacture, distribution, storage, possession, control or
1113 dispensing of controlled substances;

1114 (g) Has been convicted of a violation relating to any
1115 substance defined in this article as a controlled substance.

1116 (2) The State Board of Pharmacy may limit revocation or
1117 suspension of a registration to the particular controlled
1118 substance with respect to which grounds for revocation or
1119 suspension exist.

1120 (3) If the board or the State Board of Pharmacy suspends or
1121 revokes a registration, all controlled substances owned or
1122 possessed by the registrant at the time of suspension or the
1123 effective date of the revocation order may be placed under seal.
1124 No disposition may be made of substances under seal until the time
1125 for taking an appeal has elapsed or until all appeals have been
1126 concluded unless a court, upon application therefor, orders the
1127 sale of perishable substances and the deposit of the proceeds of
1128 the sale with the court. Upon a revocation order becoming final,
1129 all controlled substances may be forfeited to the state. All
1130 state professional or business licensing agencies shall promptly
1131 notify the bureau of all orders of suspensions or revocations
1132 which are the result of drug violations or drug-related matters.

1133 (4) The bureau shall promptly notify the federal Bureau of
1134 Narcotics and dangerous drugs of all orders suspending or revoking
1135 registration and all forfeitures of controlled substances.

1136 **SECTION 10.** Section 41-29-142, Mississippi Code of 1972, is
1137 amended as follows:

1138 41-29-142. (1) Except as provided in subsection (f) of
1139 Section 41-29-139 or in subsection (2) of this section, any person
1140 who violates or conspires to violate Section 41-29-139(a)(1),
1141 Mississippi Code of 1972, by selling, bartering, transferring,
1142 manufacturing, distributing, dispensing or possessing with intent
1143 to sell, barter, transfer, manufacture, distribute or dispense, a
1144 controlled substance or controlled substance analogue, in or on,
1145 or within one thousand five hundred (1,500) feet of, a building or
1146 outbuilding which is all or part of a public or private

1147 elementary, vocational or secondary school, or any church, public
1148 park, ballpark, public gymnasium, youth center or movie theater or
1149 within one thousand (1,000) feet of, the real property comprising
1150 such public or private elementary, vocational or secondary school,
1151 or any church, public park, ballpark, public gymnasium, youth
1152 center or movie theater shall, upon conviction thereof, be
1153 punished by the term of imprisonment or a fine, or both, of that
1154 authorized by Section 41-29-139(b) and, in the discretion of the
1155 court, may be punished by a term of imprisonment or a fine, or
1156 both, of up to twice that authorized by Section 41-29-139(b).

1157 (2) Except as otherwise provided in subsection (f) of
1158 Section 41-29-139, any person who violates or conspires to violate
1159 Section 41-29-139(a)(1), Mississippi Code of 1972, by selling,
1160 bartering, transferring, manufacturing, distributing, dispensing
1161 or possessing with intent to sell, barter, transfer, manufacture,
1162 distribute or dispense, a controlled substance or controlled
1163 substance analogue, in or on, or within one thousand five hundred
1164 (1,500) feet of, a building or outbuilding which is all or part of
1165 a public or private elementary, vocational or secondary school, or
1166 any church, public park, ballpark, public gymnasium, youth center
1167 or movie theater or within one thousand (1,000) feet of, the real
1168 property comprising such public or private elementary, vocational
1169 or secondary school, or any church, public park, ballpark, public
1170 gymnasium, youth center or movie theater after a prior conviction
1171 under subsection (1) of this section has become final, shall, upon
1172 conviction thereof, be punished by a term of imprisonment of not
1173 less than three (3) years and not more than life, and in the
1174 discretion of the court, may be punished by a term of imprisonment
1175 of up to three (3) times that authorized by Section 41-29-139(b),
1176 for a first offense, or a fine of up to three (3) times that
1177 authorized by Section 41-29-139(b), for a first offense, or both.

1178 **SECTION 11.** Section 41-29-144, Mississippi Code of 1972, is
1179 amended as follows:

1180 41-29-144. (1) It is unlawful for any person knowingly or
1181 intentionally to acquire or obtain possession or attempt to
1182 acquire or obtain possession of a controlled substance or a
1183 controlled substance analogue by misrepresentation, fraud,
1184 forgery, deception or subterfuge.

1185 (2) It is unlawful for any person knowingly or intentionally
1186 to possess, sell, deliver, transfer or attempt to possess, sell,
1187 deliver or transfer a false, fraudulent or forged prescription of
1188 a practitioner.

1189 (3) Any person who violates this section is guilty of a
1190 crime and upon conviction shall be confined for not less than one
1191 (1) year nor more than five (5) years and fined not more than One
1192 Thousand Dollars (\$1,000.00) or both.

1193 **SECTION 12.** Section 41-29-145, Mississippi Code of 1972, is
1194 amended as follows:

1195 41-29-145. Any person twenty-one (21) years of age or over
1196 who violates subsections (a) and (b) of Section 41-29-139 with
1197 reference to a controlled substance listed in Schedules I, II,
1198 III, IV and V as set out in Sections 41-29-113 through 41-29-121
1199 or a controlled substance analogue, inclusive, to a person under
1200 twenty-one (21) years of age may be punished by the fine
1201 authorized by Section 41-29-139, or by a term of imprisonment or
1202 confinement up to twice that authorized by said Section 41-29-139,
1203 or both, or he may be punished as provided in Section 41-29-142.

1204 **SECTION 13.** Section 41-29-146, Mississippi Code of 1972, is
1205 amended as follows:

1206 41-29-146. (1) It shall be unlawful for any person to sell,
1207 produce, manufacture or possess with the intent to sell, produce,
1208 manufacture, distribute or dispense any substance which is falsely
1209 represented to be a controlled substance or controlled substance
1210 analogue or which is falsely represented to be a counterfeit
1211 substance as defined in Section 41-29-105.

1212 (2) The provisions of this section shall not apply to a law
1213 enforcement officer acting in the course and scope of his
1214 employment or to a medical practitioner, pharmacist or other
1215 person authorized to dispense or administer controlled substances.

1216 (3) Any person who violates this section shall, upon
1217 conviction, be guilty of a misdemeanor and may be punished by
1218 imprisonment in the county jail for not more than one (1) year or
1219 by a fine of not more than One Thousand Dollars (\$1,000.00) or by
1220 both.

1221 **SECTION 14.** Section 41-29-152, Mississippi Code of 1972, is
1222 amended as follows:

1223 41-29-152. (1) Any person who violates Section 41-29-313 or
1224 who violates Section 41-29-139 with reference to a controlled
1225 substance listed in Schedule I, II, III, IV or V as set out in
1226 Sections 41-29-113 through 41-29-121, Mississippi Code of 1972, or
1227 a controlled substance analogue, inclusive, and has in his
1228 possession any firearm, either at the time of the commission of
1229 the offense or at the time any arrest is made, may be punished by
1230 a fine up to twice that authorized by Section 41-29-139 or
1231 41-29-313, or by a term of imprisonment or confinement up to twice
1232 that authorized by Section 41-29-139 or 41-29-313, or both.

1233 (2) "Firearm" means any weapon, including a starter gun,
1234 which will or is designed to or may readily be converted to expel
1235 a projectile by the action of an explosive.

1236 **SECTION 15.** Section 41-29-153, Mississippi Code of 1972, is
1237 amended as follows:

1238 41-29-153. (a) The following are subject to forfeiture:

1239 (1) All controlled substances or controlled substance
1240 analogues which have been manufactured, distributed, dispensed or
1241 acquired in violation of this article;

1242 (2) All raw materials, products and equipment of any
1243 kind which are used, or intended for use, in manufacturing,
1244 compounding, processing, delivering, importing, or exporting any

1245 controlled substance or controlled substance analogues in
1246 violation of this article;

1247 (3) All property which is used, or intended for use, as
1248 a container for property described in paragraph (1) or (2) of this
1249 section;

1250 (4) All conveyances, including aircraft, vehicles or
1251 vessels, which are used, or intended for use, to transport, or in
1252 any manner to facilitate the transportation, sale, receipt,
1253 possession or concealment of property described in paragraph (1)
1254 or (2) of this section, however:

1255 A. No conveyance used by any person as a common
1256 carrier in the transaction of business as a common carrier is
1257 subject to forfeiture under this section unless it appears that
1258 the owner or other person in charge of the conveyance is a
1259 consenting party or privy to a violation of this article;

1260 B. No conveyance is subject to forfeiture under
1261 this section by reason of any act or omission proved by the owner
1262 thereof to have been committed or omitted without his knowledge or
1263 consent; if the confiscating authority has reason to believe that
1264 the conveyance is a leased or rented conveyance, then the
1265 confiscating authority shall notify the owner of the conveyance
1266 within five (5) days of the confiscation;

1267 C. A forfeiture of a conveyance encumbered by a
1268 bona fide security interest is subject to the interest of the
1269 secured party if he neither had knowledge of nor consented to the
1270 act or omission;

1271 D. A conveyance is not subject to forfeiture for a
1272 violation of Section 41-29-139(c)(2)(A), (B) or (C);

1273 (5) All money, deadly weapons, books, records, and
1274 research products and materials, including formulas, microfilm,
1275 tapes and data which are used, or intended for use, in violation
1276 of this article;

1277 (6) All drug paraphernalia as defined in Section
1278 41-29-105(v); and

1279 (7) Everything of value, including real estate,
1280 furnished, or intended to be furnished, in exchange for a
1281 controlled substance in violation of this article, all proceeds
1282 traceable to such an exchange, and all monies, negotiable
1283 instruments, businesses or business investments, securities, and
1284 other things of value used, or intended to be used, to facilitate
1285 any violation of this article. All monies, coin and currency
1286 found in close proximity to forfeitable controlled substances, to
1287 forfeitable drug manufacturing or distributing paraphernalia, or
1288 to forfeitable records of the importation, manufacture or
1289 distribution of controlled substances are presumed to be
1290 forfeitable under this paragraph; the burden of proof is upon
1291 claimants of the property to rebut this presumption.

1292 A. No property shall be forfeited under the
1293 provisions of paragraph (a)(7) of this section, to the extent of
1294 the interest of an owner, by reason of any act or omission
1295 established by him to have been committed or omitted without his
1296 knowledge or consent.

1297 B. Neither personal property encumbered by a bona
1298 fide security interest nor real estate encumbered by a bona fide
1299 mortgage, deed of trust, lien or encumbrance shall be forfeited
1300 under the provisions of paragraph (a)(7) of this section, to the
1301 extent of the interest of the secured party or the interest of the
1302 mortgagee, holder of a deed of trust, lien or encumbrance by
1303 reason of any act or omission established by him to have been
1304 committed or omitted without his knowledge or consent.

1305 (b) Property subject to forfeiture may be seized by the
1306 bureau, local law enforcement officers, enforcement officers of
1307 the Mississippi Department of Transportation, highway patrolmen,
1308 the board, or the State Board of Pharmacy upon process issued by

1309 any appropriate court having jurisdiction over the property.

1310 Seizure without process may be made if:

1311 (1) The seizure is incident to an arrest or a search
1312 under a search warrant or an inspection under an administrative
1313 inspection warrant;

1314 (2) The property subject to seizure has been the
1315 subject of a prior judgment in favor of the state in a criminal
1316 injunction or forfeiture proceeding based upon this article;

1317 (3) The bureau, the board, local law enforcement
1318 officers, enforcement officers of the Mississippi Department of
1319 Transportation, or highway patrolmen, or the State Board of
1320 Pharmacy have probable cause to believe that the property is
1321 directly or indirectly dangerous to health or safety; or

1322 (4) The bureau, local law enforcement officers,
1323 enforcement officers of the Mississippi Department of
1324 Transportation, highway patrolmen, the board, or the State Board
1325 of Pharmacy have probable cause to believe that the property was
1326 used or is intended to be used in violation of this article.

1327 (c) Controlled substances listed in Schedule I of Section
1328 41-29-113 or controlled substance analogues that are possessed,
1329 transferred, sold or offered for sale in violation of this article
1330 are contraband and shall be seized and summarily forfeited to the
1331 state. Controlled substances listed in the said Schedule I or
1332 controlled substance analogues, which are seized or come into the
1333 possession of the state, the owners of which are unknown, are
1334 contraband and shall be summarily forfeited to the state.

1335 (d) Species of plants from which controlled substances in
1336 Schedules I and II of Sections 41-29-113 and 41-29-115 or
1337 controlled substance analogues may be derived which have been
1338 planted or cultivated in violation of this article, or of which
1339 the owners or cultivators are unknown, or which are wild growths,
1340 may be seized and summarily forfeited to the state.

1341 (e) The failure, upon demand by the bureau and/or local law
1342 enforcement officers, or their authorized agents, or highway
1343 patrolmen designated by the bureau, the board, or the State Board
1344 of Pharmacy, of the person in occupancy or in control of land or
1345 premises upon which the species of plants are growing or being
1346 stored, to produce an appropriate registration, or proof that he
1347 is the holder thereof, constitutes authority for the seizure and
1348 forfeiture of the plants.

1349 **SECTION 16.** Section 41-29-154, Mississippi Code of 1972, is
1350 amended as follows:

1351 41-29-154. Any controlled substance, controlled substance
1352 analogue or paraphernalia seized under the authority of this
1353 article or any other law of Mississippi or of the United States,
1354 shall be destroyed, adulterated and disposed of or otherwise
1355 rendered harmless and disposed of, upon written authorization of
1356 the director, after such substance or paraphernalia has served its
1357 usefulness as evidence or after such substance or paraphernalia is
1358 no longer useful for training or demonstration purposes.

1359 A record of the disposition of such substances and
1360 paraphernalia and the method of destruction or adulteration
1361 employed along with the names of witnesses to such destruction or
1362 adulteration shall be retained by the director.

1363 No substance or paraphernalia shall be disposed of, destroyed
1364 or rendered harmless under the authority of this section without
1365 an order from the director and without at least two (2) officers
1366 or agents of the bureau present as witnesses.

1367 **SECTION 17.** Section 41-29-169, Mississippi Code of 1972, is
1368 amended as follows:

1369 41-29-169. The Mississippi Bureau of Drug Enforcement and
1370 State Board of Education shall carry out educational programs
1371 designed to prevent and deter misuse and abuse of controlled
1372 substances or controlled substance analogues. In connection with
1373 these programs they may:

1374 (1) Promote better recognition of the problems of
1375 misuse and abuse of controlled substances or controlled substance
1376 analogues within the regulated industry and among interested
1377 groups and organizations;

1378 (2) Assist the regulated industry and interested groups
1379 and organizations in contributing to the reduction of misuse and
1380 abuse of controlled substances or controlled substance analogues;

1381 (3) Consult with interested groups and organizations to
1382 aid them in solving administrative and organizational problems;

1383 (4) Evaluate procedures, projects, techniques and
1384 controls conducted or proposed as part of educational programs on
1385 misuse and abuse of controlled substances or controlled substance
1386 analogues;

1387 (5) Disseminate the results of research on misuse and
1388 abuse of controlled substances or controlled substance analogues
1389 to promote a better public understanding of what problems exist
1390 and what can be done to combat them; and

1391 (6) Assist in the education and training of state and
1392 local law enforcement officials in their efforts to control misuse
1393 and abuse of controlled substances or controlled substance
1394 analogues.

1395 **SECTION 18.** Section 41-29-171, Mississippi Code of 1972, is
1396 amended as follows:

1397 41-29-171. (a) The Mississippi Bureau of Narcotics, the
1398 State Board of Pharmacy, the State Board of Medical Licensure,
1399 the State Board of Dental Examiners and the Mississippi Board of
1400 Nursing shall encourage research on misuse and abuse of controlled
1401 substances or controlled substance analogues. In connection with
1402 the research, and in furtherance of the enforcement of this
1403 article they may:

1404 (1) Establish methods to assess accurately the effects
1405 of controlled substances or controlled substance analogues and
1406 identify and characterize those with potential for abuse;

1407 (2) Make studies and undertake programs of research to:
1408 (A) Develop new or improved approaches,
1409 techniques, systems, equipment and devices to strengthen the
1410 enforcement of this article;

1411 (B) Determine patterns of misuse and abuse of
1412 controlled substances or controlled substance analogues and the
1413 social effects thereof; and

1414 (C) Improve methods for preventing, predicting,
1415 understanding and dealing with the misuse and abuse of controlled
1416 substances or controlled substance analogues;

1417 (3) Enter into contracts with public agencies,
1418 institutions of higher education, and private organizations or
1419 individuals for the purpose of conducting research,
1420 demonstrations, or special projects which bear directly on misuse
1421 and abuse of controlled substances or controlled substance
1422 analogues.

1423 (b) The Mississippi Bureau of Narcotics and the State Board
1424 of Education may enter into contracts for educational and research
1425 activities without performance bonds.

1426 (c) The board may authorize the possession and distribution
1427 of controlled substances or controlled substance analogues by
1428 persons engaged in research. Persons who obtain this
1429 authorization are exempt from state prosecution for possession and
1430 distribution of controlled substances or controlled substance
1431 analogues to the extent of the authorization.

1432 **SECTION 19.** Section 41-29-176, Mississippi Code of 1972, is
1433 amended as follows:

1434 41-29-176. (1) When any property other than a controlled
1435 substance, controlled substance analogue, raw material or
1436 paraphernalia, the value of which does not exceed Ten Thousand
1437 Dollars (\$10,000.00), is seized under the Uniform Controlled
1438 Substances Law, the property may be forfeited by the
1439 administrative forfeiture procedures provided for in this section.

1440 (2) The attorney for or any representative of the seizing
1441 law enforcement agency shall provide notice of intention to
1442 forfeit the seized property administratively, either by certified
1443 mail, return receipt requested, or by personal delivery, to all
1444 persons who are required to be notified pursuant to Section
1445 41-29-177(2), Mississippi Code of 1972.

1446 (3) In the event that notice of intention to forfeit the
1447 seized property administratively cannot be given as provided in
1448 subsection (2) of this section because of refusal, failure to
1449 claim, insufficient address or any other reason, the attorney for
1450 or representative of the seizing law enforcement agency shall
1451 provide notice by publication in a newspaper of general
1452 circulation in the county in which the seizure occurred for once a
1453 week for three (3) consecutive weeks.

1454 (4) Notice pursuant to subsections (2) and (3) of this
1455 section shall include the following information:

1456 (a) A description of the property;

1457 (b) The approximate value of the property;

1458 (c) The date and place of the seizure;

1459 (d) The connection between the property and the
1460 violation of the Uniform Controlled Substances Law;

1461 (e) The instructions for filing a request for judicial
1462 review; and

1463 (f) A statement that the property will be forfeited to
1464 the seizing law enforcement agency if a request for judicial
1465 review is not timely filed.

1466 (5) Any person claiming an interest in property which is the
1467 subject of a notice under this section may, within thirty (30)
1468 days after receipt of the notice or of the date of the first
1469 publication of the notice, file a petition to contest forfeiture
1470 signed by the claimant in the county court, if a county court
1471 exists, or otherwise in the circuit court of the county in which
1472 the seizure is made or the county in which the criminal

1473 prosecution is brought, in order to claim an interest in the
1474 property. Upon the filing of the petition and the payment of the
1475 filing fees, service of the petition shall be made on the attorney
1476 for or representative of the seizing law enforcement agency, and
1477 the proceedings shall thereafter be governed by the rules of civil
1478 procedure.

1479 (6) If no petition to contest forfeiture is timely filed,
1480 the attorney for the seizing law enforcement agency shall prepare
1481 a written declaration of forfeiture of the subject property and
1482 the forfeited property shall be used, distributed or disposed of
1483 in accordance with the provisions of Section 41-29-181,
1484 Mississippi Code of 1972.

1485 **SECTION 20.** Section 41-29-177, Mississippi Code of 1972, is
1486 amended as follows:

1487 41-29-177. (1) Except as otherwise provided in Section
1488 41-29-176, Mississippi Code of 1972, when any property, other than
1489 a controlled substance, controlled substance analogue, raw
1490 material or paraphernalia, is seized under the Uniform Controlled
1491 Substances Law, proceedings under this section shall be instituted
1492 within thirty (30) days from the date of seizure or the subject
1493 property shall be immediately returned to the party from whom
1494 seized.

1495 (2) A petition for forfeiture shall be filed in the name of
1496 the State of Mississippi, the county or the municipality and may
1497 be filed in the county in which the seizure is made, the county in
1498 which the criminal prosecution is brought or the county in which
1499 the owner of the seized property is found. Forfeiture proceedings
1500 may be brought in the circuit court or the county court if a
1501 county court exists in the county and the value of the seized
1502 property is within the jurisdictional limits of the county court
1503 as set forth in Section 9-9-21, Mississippi Code of 1972. A copy
1504 of such petition shall be served upon the following persons by
1505 service of process in the same manner as in civil cases:

1506 (a) The owner of the property, if address is known;

1507 (b) Any secured party who has registered his lien or
1508 filed a financing statement as provided by law, if the identity of
1509 such secured party can be ascertained by the Bureau of Narcotics
1510 or the local law enforcement agency by making a good faith effort
1511 to ascertain the identity of such secured party as described in
1512 subsections (3), (4), (5), (6) and (7) of this section;

1513 (c) Any other bona fide lienholder or secured party or
1514 other person holding an interest in the property in the nature of
1515 a security interest of whom the Mississippi Bureau of Narcotics or
1516 the local law enforcement agency has actual knowledge;

1517 (d) Any holder of a mortgage, deed of trust, lien or
1518 encumbrance of record, if the property is real estate, by making a
1519 good faith inquiry as described in subsection (8) of this section;
1520 and

1521 (e) Any person in possession of property subject to
1522 forfeiture at the time that it was seized.

1523 (3) If the property is a motor vehicle susceptible of
1524 titling under the Mississippi Motor Vehicle Title Law and if there
1525 is any reasonable cause to believe that the vehicle has been
1526 titled, the Bureau of Narcotics or the local law enforcement
1527 agency shall make inquiry of the State Tax Commission as to what
1528 the records of the State Tax Commission show as to who is the
1529 record owner of the vehicle and who, if anyone, holds any lien or
1530 security interest which affects the vehicle.

1531 (4) If the property is a motor vehicle and is not titled in
1532 the State of Mississippi, then the Bureau of Narcotics or the
1533 local law enforcement agency shall attempt to ascertain the name
1534 and address of the person in whose name the vehicle is licensed,
1535 and if the vehicle is licensed in a state which has in effect a
1536 certificate of title law, the bureau or the local law enforcement
1537 agency shall make inquiry of the appropriate agency of that state
1538 as to what the records of the agency show as to who is the record

1539 owner of the vehicle and who, if anyone, holds any lien, security
1540 interest or other instrument in the nature of a security device
1541 which affects the vehicle.

1542 (5) If the property is of a nature that a financing
1543 statement is required by the laws of this state to be filed to
1544 perfect a security interest affecting the property and if there is
1545 any reasonable cause to believe that a financing statement
1546 covering the security interest has been filed under the laws of
1547 this state, the Bureau of Narcotics or the local law enforcement
1548 agency shall make inquiry of the appropriate office designated in
1549 Section 75-9-501, Mississippi Code of 1972, as to what the records
1550 show as to who is the record owner of the property and who, if
1551 anyone, has filed a financing statement affecting the property.

1552 (6) If the property is an aircraft or part thereof and if
1553 there is any reasonable cause to believe that an instrument in the
1554 nature of a security device affects the property, then the Bureau
1555 of Narcotics or the local law enforcement agency shall make
1556 inquiry of the Mississippi Department of Transportation as to what
1557 the records of the Federal Aviation Administration show as to who
1558 is the record owner of the property and who, if anyone, holds an
1559 instrument in the nature of a security device which affects the
1560 property.

1561 (7) In the case of all other personal property subject to
1562 forfeiture, if there is any reasonable cause to believe that an
1563 instrument in the nature of a security device affects the
1564 property, then the Bureau of Narcotics or the local law
1565 enforcement agency shall make a good faith inquiry to identify the
1566 holder of any such instrument.

1567 (8) If the property is real estate, the Bureau of Narcotics
1568 or the local law enforcement agency shall make inquiry of the
1569 chancery clerk of the county wherein the property is located to
1570 determine who is the owner of record and who, if anyone, is a

1571 holder of a bona fide mortgage, deed of trust, lien or
1572 encumbrance.

1573 (9) In the event the answer to an inquiry states that the
1574 record owner of the property is any person other than the person
1575 who was in possession of it when it was seized, or states that any
1576 person holds any lien, encumbrance, security interest, other
1577 interest in the nature of a security interest, mortgage or deed of
1578 trust which affects the property, the Bureau of Narcotics or the
1579 local law enforcement agency shall cause any record owner and also
1580 any lienholder, secured party, other person who holds an interest
1581 in the property in the nature of a security interest, or holder of
1582 an encumbrance, mortgage or deed of trust which affects the
1583 property to be named in the petition of forfeiture and to be
1584 served with process in the same manner as in civil cases.

1585 (10) If the owner of the property cannot be found and served
1586 with a copy of the petition of forfeiture, or if no person was in
1587 possession of the property subject to forfeiture at the time that
1588 it was seized and the owner of the property is unknown, the Bureau
1589 of Narcotics or the local law enforcement agency shall file with
1590 the clerk of the court in which the proceeding is pending an
1591 affidavit to such effect, whereupon the clerk of the court shall
1592 publish notice of the hearing addressed to "the Unknown Owner of
1593 _____," filling in the blank space with a reasonably
1594 detailed description of the property subject to forfeiture.
1595 Service by publication shall contain the other requisites
1596 prescribed in Section 11-33-41, and shall be served as provided in
1597 Section 11-33-37, Mississippi Code of 1972, for publication of
1598 notice for attachments at law.

1599 (11) No proceedings instituted pursuant to the provisions of
1600 this article shall proceed to hearing unless the judge conducting
1601 the hearing is satisfied that this section has been complied with.
1602 Any answer received from an inquiry required by subsections (3)

1603 through (8) of this section shall be introduced into evidence at
1604 the hearing.

1605 **SECTION 21.** Section 41-29-179, Mississippi Code of 1972, is
1606 amended as follows:

1607 41-29-179. (1) Except as otherwise provided in Section
1608 41-29-176, an owner of property, other than a controlled
1609 substance, a controlled substance analogue, raw material or
1610 paraphernalia, that has been seized shall file an answer within
1611 thirty (30) days after the completion of service of process. If
1612 an answer is not filed, the court shall hear evidence that the
1613 property is subject to forfeiture and forfeit the property to the
1614 Mississippi Bureau of Narcotics or the local law enforcement
1615 agency. If an answer is filed, a time for hearing on forfeiture
1616 shall be set within thirty (30) days of filing the answer or at
1617 the succeeding term of court if court would not be in progress
1618 within thirty (30) days after filing the answer. Provided,
1619 however, that upon request by the Bureau of Narcotics, the local
1620 law enforcement agency or the owner of the property, the court may
1621 postpone said forfeiture hearing to a date past the time any
1622 criminal action is pending against said owner.

1623 (2) If the owner of the property has filed an answer denying
1624 that the property is subject to forfeiture, then the burden is on
1625 the petitioner to prove that the property is subject to
1626 forfeiture. However, if an answer has not been filed by the owner
1627 of the property, the petition for forfeiture may be introduced
1628 into evidence and is prima facie evidence that the property is
1629 subject to forfeiture. The standard of proof placed upon the
1630 petitioner in regard to property forfeited under the provisions of
1631 this article shall be by a preponderance of the evidence.

1632 (3) At the hearing any claimant of any right, title or
1633 interest in the property may prove his lien, encumbrance, security
1634 interest, other interest in the nature of a security interest,
1635 mortgage or deed of trust to be bona fide and created without

1636 knowledge or consent that the property was to be used so as to
1637 cause the property to be subject to forfeiture.

1638 (4) If it is found that the property is subject to
1639 forfeiture, then the judge shall forfeit the property to the
1640 Mississippi Bureau of Narcotics or the local law enforcement
1641 agency. However, if proof at the hearing discloses that the
1642 interest of any bona fide lienholder, secured party, other person
1643 holding an interest in the property in the nature of a security
1644 interest, or any holder of a bona fide encumbrance, mortgage or
1645 deed of trust is greater than or equal to the present value of the
1646 property, the court shall order the property released to him. If
1647 such interest is less than the present value of the property and
1648 if the proof shows that the property is subject to forfeiture, the
1649 court shall order the property forfeited to the Mississippi Bureau
1650 of Narcotics or the local law enforcement agency.

1651 (5) Upon a petition filed in the name of the State of
1652 Mississippi, the county or the municipality with the clerk of the
1653 circuit court of the county in which the seizure of any controlled
1654 substance, controlled substance analogue or raw material is made,
1655 the circuit court having jurisdiction may order the controlled
1656 substance, controlled substance analogue or raw material summarily
1657 forfeited except when lawful possession and title can be
1658 ascertained. If a person is found to have had lawful possession
1659 and title prior to seizure, the court shall order the controlled
1660 substance or raw material returned to the owner, if the owner so
1661 desires. Upon a petition filed in the name of the State of
1662 Mississippi, the county or the municipality with the clerk of the
1663 circuit court of the county in which the seizure of any purported
1664 paraphernalia is made, the circuit court having jurisdiction may
1665 order such seized property summarily forfeited when the court has
1666 determined the seized property to be paraphernalia as defined in
1667 Section 41-29-105(v).

1668 **SECTION 22.** Section 63-1-71, Mississippi Code of 1972, is
1669 amended as follows:
1670 63-1-71. (1) In addition to any penalty authorized by the
1671 Uniform Controlled Substances Law or any other statute indicating
1672 the dispositions that can be ordered for an adjudication of
1673 delinquency, every person convicted of, or entering a plea of nolo
1674 contendere to, or adjudicated delinquent in a court of this state
1675 for a violation of any offense defined in the Uniform Controlled
1676 Substances Law, and every person convicted of, or entering a plea
1677 of nolo contendere to, or adjudicated delinquent under the laws of
1678 the United States, another state, a territory or possession of the
1679 United States, the District of Columbia or the Commonwealth of
1680 Puerto Rico of a violation for the use, distribution, possession,
1681 manufacture, sale, barter, transfer or dispensing of a "controlled
1682 substance," "counterfeit substance," "controlled substance
1683 analogue," "narcotic drug" or "drug," as such terms are defined
1684 under Section 41-29-105, shall forthwith forfeit his right to
1685 operate a motor vehicle over the highways of this state for a
1686 period of six (6) months. Notwithstanding the provisions of
1687 Section 63-11-30(2)(a) and in addition to any penalty authorized
1688 by the Uniform Controlled Substances Law or any other statute
1689 indicating the dispositions that can be ordered for an
1690 adjudication of delinquency, every person convicted of driving
1691 under the influence of a controlled substance, or entering a plea
1692 of nolo contendere thereto, or adjudicated delinquent therefor, in
1693 a court of this state, and every person convicted of driving under
1694 the influence of a controlled substance or controlled substance
1695 analogue, or entering a plea of nolo contendere thereto, or
1696 adjudicated delinquent therefor, under the laws of the United
1697 States, another state, a territory or possession of the United
1698 States, the District of Columbia or the Commonwealth of Puerto
1699 Rico, shall forthwith forfeit his right to operate a motor vehicle
1700 over the highways of this state for a period of not less than six

1701 (6) months. In the case of any person who at the time of the
1702 imposition of sentence does not have a driver's license or is less
1703 than fifteen (15) years of age, the period of the suspension of
1704 driving privileges authorized herein shall commence on the day the
1705 sentence is imposed and shall run for a period of not less than
1706 six (6) months after the day the person obtains a driver's license
1707 or reaches the age of fifteen (15) years. If the driving
1708 privilege of any person is under revocation or suspension at the
1709 time of any conviction or adjudication of delinquency for a
1710 violation of any offense defined in the Uniform Controlled
1711 Substances Law, the revocation or suspension period imposed herein
1712 shall commence as of the date of termination of the existing
1713 revocation or suspension.

1714 (2) The court in this state before whom any person is
1715 convicted of or adjudicated delinquent for a violation of an
1716 offense under subsection (1) of this section shall collect
1717 forthwith the Mississippi driver's license of the person and
1718 forward such license to the Department of Public Safety along with
1719 a report indicating the first and last day of the suspension or
1720 revocation period imposed pursuant to this section. If the court
1721 is for any reason unable to collect the license of the person, the
1722 court shall cause a report of the conviction or adjudication of
1723 delinquency to be filed with the Commissioner of Public Safety.
1724 That report shall include the complete name, address, date of
1725 birth, eye color and sex of the person and shall indicate the
1726 first and last day of the suspension or revocation period imposed
1727 by the court pursuant to this section. The court shall inform the
1728 person orally and in writing that if the person is convicted of
1729 personally operating a motor vehicle during the period of license
1730 suspension or revocation imposed pursuant to this section, the
1731 person shall, upon conviction, be subject to the penalties set
1732 forth in Section 63-11-40. A person shall be required to
1733 acknowledge receipt of the written notice in writing. Failure to

1734 receive a written notice or failure to acknowledge in writing the
1735 receipt of a written notice shall not be a defense to a subsequent
1736 charge of a violation of Section 63-11-40. If the person is the
1737 holder of a driver's license from another jurisdiction, the court
1738 shall not collect the license but shall notify forthwith the
1739 Commissioner of Public Safety who shall notify the appropriate
1740 officials in the licensing jurisdiction. The court shall,
1741 however, in accordance with the provisions of this section, revoke
1742 the person's nonresident driving privilege in this state.

1743 (3) The county court or circuit court having jurisdiction,
1744 on petition, may reduce the suspension of driving privileges under
1745 this section if the denial of which would constitute a hardship on
1746 the offender. When the petition is filed, such person shall pay
1747 to the circuit clerk of the court where the petition is filed a
1748 fee of Twenty Dollars (\$20.00) for each year, or portion thereof,
1749 of license revocation or suspension remaining under the original
1750 sentence, which shall be deposited into the State General Fund to
1751 the credit of a special fund hereby created in the State Treasury
1752 to be used for alcohol or drug abuse treatment and education, upon
1753 appropriation by the Legislature. This fee shall be in addition
1754 to any other court costs or fees required for the filing of
1755 petitions.

1756 **SECTION 23.** Section 63-1-83, Mississippi Code of 1972, is
1757 amended as follows:

1758 63-1-83. (1) From and after April 1, 1992, it shall be a
1759 violation of this article and the Commissioner of Public Safety
1760 shall suspend for a period of one (1) year the commercial driver's
1761 license of any person whom he determines to have committed a first
1762 violation of:

1763 (a) Driving a commercial motor vehicle for which a
1764 commercial driver instruction permit or commercial driver's
1765 license is required under this article while under the influence

1766 of alcohol or a controlled substance or a controlled substance
1767 analogue;

1768 (b) Driving a commercial motor vehicle for which a
1769 commercial driver instruction permit or commercial driver's
1770 license is required under this article while the alcohol
1771 concentration of the person's blood, breath or urine is four
1772 one-hundredths percent (.04%) or more;

1773 (c) Knowingly and willfully leaving the scene of an
1774 accident involving a commercial motor vehicle for which a
1775 commercial driver instruction permit or commercial driver's
1776 license is required under this article, if the vehicle was driven
1777 by such person;

1778 (d) Using a commercial motor vehicle for which a
1779 commercial driver instruction permit or commercial driver's
1780 license is required under this article in the commission of any
1781 felony as defined in this article; or

1782 (e) Refusing to submit to a test to determine the
1783 driver's alcohol concentration while driving a commercial motor
1784 vehicle for which a commercial driver instruction permit or
1785 commercial driver's license is required under this article.

1786 If any of the violations in subsection (1) of this section
1787 occurred while transporting hazardous materials required to be
1788 placarded under the Hazardous Materials Transportation Act, the
1789 commissioner shall suspend the commercial driver's license of such
1790 person for a period of three (3) years.

1791 (2) The Commissioner of Public Safety shall suspend the
1792 commercial driver's license of a person for life, or such lesser
1793 minimum period of time as shall be required under applicable
1794 federal law or regulations, if a person is determined to have
1795 committed two (2) or more of the violations specified in
1796 subsection (1) of this section or any combination of such
1797 violations arising from two (2) or more separate incidents. The

1798 provisions of this subsection (2) shall apply only to violations
1799 occurring on or after April 1, 1992.

1800 (3) The Commissioner of Public Safety shall suspend for life
1801 the commercial driver's license of any person who uses a
1802 commercial motor vehicle for which a commercial driver instruction
1803 permit or commercial driver's license is required under this
1804 article in the commission of any felony involving the manufacture,
1805 distribution or dispensing of a controlled substance or controlled
1806 substance analogue, or possession with intent to manufacture,
1807 distribute or dispense a controlled substance or controlled
1808 substance analogue. The provisions of this subsection (3) shall
1809 apply only to violations occurring on or after April 1, 1992.

1810 (4) The Commissioner of Public Safety shall suspend for a
1811 period of sixty (60) days the commercial driver's license of any
1812 person convicted of two (2) serious traffic violations, or one
1813 hundred twenty (120) days if convicted of three (3) serious
1814 traffic violations, committed in a commercial motor vehicle for
1815 which a commercial driver instruction permit or commercial
1816 driver's license is required under this article arising from
1817 separate incidents occurring within a period of three (3) years.
1818 The provisions of this subsection (4) shall apply only to
1819 violations occurring on or after April 1, 1992.

1820 (5) In addition to the reasons specified in this section for
1821 suspension of the commercial driver's license, the Commissioner of
1822 Public Safety shall be authorized to suspend the commercial
1823 driver's license of any person for being out of compliance with an
1824 order for support, as defined in Section 93-11-153. The procedure
1825 for suspension of a commercial driver's license for being out of
1826 compliance with an order for support, and the procedure for the
1827 reissuance or reinstatement of a commercial driver's license
1828 suspended for that purpose, and the payment of any fees for the
1829 reissuance or reinstatement of a commercial driver's license
1830 suspended for that purpose, shall be governed by Section 93-11-157

1831 or 93-11-163, as the case may be. If there is any conflict
1832 between any provision of Section 93-11-157 or 93-11-163 and any
1833 provision of this article, the provisions of Section 93-11-157 or
1834 93-11-163, as the case may be, shall control.

1835 **SECTION 24.** This act shall take effect and be in force from
1836 and after July 1, 2004.