

By: Senator(s) Robertson

To: Judiciary, Division B

## SENATE BILL NO. 2789

1 AN ACT TO AMEND SECTION 41-29-107, MISSISSIPPI CODE OF 1972,  
2 TO REMOVE THE MAXIMUM AGE RESTRICTION ON FIRST-TIME HIRES AS  
3 NARCOTICS AGENTS; TO AMEND SECTION 41-29-153, MISSISSIPPI CODE OF  
4 1972, TO ALLOW EXISTING FORFEITURE STATUTES TO APPLY TO VIOLATIONS  
5 OF THE PRECURSOR LAW; TO AMEND SECTION 41-29-313, MISSISSIPPI CODE  
6 OF 1972, TO EXPAND THE LIST OF PRECURSOR DRUG AND CHEMICALS AND TO  
7 INCLUDE MANUFACTURING OF PRECURSORS WITH INTENT TO MANUFACTURE A  
8 CONTROLLED SUBSTANCE AS A VIOLATION; TO AMEND SECTION 41-29-501,  
9 MISSISSIPPI CODE OF 1972, TO REVISE THE WIRETAP LAW TO ALLOW THE  
10 USE OF ADDITIONAL MANPOWER FROM OTHER AGENCIES IN ONGOING  
11 INVESTIGATIONS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 41-29-107, Mississippi Code of 1972, is  
14 amended as follows:

15 41-29-107. There is hereby created the Bureau of Narcotics  
16 within, and under the supervision of, the Mississippi Department  
17 of Public Safety. The said bureau shall have as chief  
18 administrative officer a director who shall be appointed by the  
19 Governor with the advice and consent of the Senate. To be  
20 eligible for appointment as director, a person must possess at  
21 least ten (10) years of experience either in the practice of law  
22 or as a certified law enforcement officer, with at least four (4)  
23 years of experience at an administrative level. The director is  
24 empowered to employ or appoint necessary agents. The said  
25 director may also employ such secretarial, clerical and  
26 administrative personnel, including a duly licensed attorney, as  
27 necessary for the operation of the bureau, and shall have such  
28 quarters, equipment and facilities as needed. The salary and  
29 qualifications of the attorney authorized by this section shall be  
30 fixed by the director, but the salary shall not exceed the salary

31 authorized for an assistant attorney general who performs similar  
32 duties.

33         The director and agents so appointed shall be citizens of the  
34 United States and of the State of Mississippi, and of good moral  
35 character. The agents shall be not less than twenty-one  
36 (21) \* \* \* years of age at the time of such appointment. In  
37 addition thereto, those appointed shall have satisfactorily  
38 completed at least two (2) years of college studies. However, two  
39 (2) years of satisfactory service as a law enforcement officer and  
40 the completion of the prescribed course of study at a school  
41 operated by the Bureau of Narcotics and Dangerous Drugs, United  
42 States Justice Department, shall satisfy one (1) year of such  
43 college studies, and four (4) years of satisfactory service as a  
44 law enforcement officer and the completion of the prescribed  
45 course of study at such federal bureau school as stated heretofore  
46 shall fully satisfy the two (2) years of college requirement. The  
47 director shall also be required to complete a prescribed course of  
48 study at a school operated by the Bureau of Narcotics and  
49 Dangerous Drugs, United States Justice Department.

50                         During the period of the first twelve (12)  
51 months after appointment, any employee of the bureau shall be  
52 subject to dismissal at the will of the director. After twelve  
53 (12) months' service, no employee of the bureau shall be subject  
54 to dismissal unless charges have been filed with the director  
55 showing cause for dismissal \* \* \*. A date shall be set for  
56 hearing before the director and the employee notified in writing  
57 of the date of such hearing and of the charges filed. The hearing  
58 shall be held not less than ten (10) days after notification to  
59 the employee. After the hearing, at which the employee shall be  
60 entitled to legal counsel, a written order of the director shall  
61 be necessary for dismissal and the decision shall be final. Any  
62 such order of the director shall be a public record and subject to  
63 inspection as such.

64           The Commissioner of Public Safety may assign members of the  
65 Mississippi Highway Safety Patrol, regardless of age, to the  
66 bureau at the request of the director of the bureau; however, when  
67 any highway patrolman or other employee, agent or official of the  
68 Mississippi Department of Public Safety is assigned to duty with,  
69 or is employed by, the bureau, he shall not be subject to  
70 assignment or transfer to any other bureau or department within  
71 the Mississippi Department of Public Safety except by the  
72 director. Any highway patrolman assigned to duty with the bureau  
73 shall retain his status as a highway patrolman, but shall be under  
74 the supervision of the director. For purposes of seniority within  
75 the Highway Safety Patrol and for purposes of retirement under the  
76 Mississippi Highway Safety Patrol Retirement System, highway  
77 patrolmen assigned to the bureau will be credited as if performing  
78 duty with the Highway Safety Patrol.

79           The director may enter into contracts or agreements with the  
80 State Board of Health for purposes of recruitment and screening of  
81 applicants through the merit system.

82           The director may enter into agreements with bureaus or  
83 departments of other states or of the United States for the  
84 exchange or temporary assignment of agents for special undercover  
85 assignments and for performance of specific duties.

86           The director is hereby authorized to assign agents of the  
87 bureau to such duty and to request and accept agents from such  
88 other bureaus or departments for such duty.

89           **SECTION 2.** Section 41-29-153, Mississippi Code of 1972, is  
90 amended as follows:

91           41-29-153. (a) The following are subject to forfeiture:

92                   (1) All controlled substances which have been  
93 manufactured, distributed, dispensed or acquired in violation of  
94 this Article 3 or in violation of Article 5 of this chapter;

95                   (2) All raw materials, products and equipment of any  
96 kind which are used, or intended for use, in manufacturing,

97 compounding, processing, delivering, importing, or exporting any  
98 controlled substance in violation of this Article 3 or in  
99 violation of Article 5 of this chapter;

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

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

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

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

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

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

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

130 (6) All drug paraphernalia as defined in Section  
131 41-29-105(v); and

132 (7) Everything of value, including real estate,  
133 furnished, or intended to be furnished, in exchange for a  
134 controlled substance in violation of this article, all proceeds  
135 traceable to such an exchange, and all monies, negotiable  
136 instruments, businesses or business investments, securities, and  
137 other things of value used, or intended to be used, to facilitate  
138 any violation of this article. All monies, coin and currency  
139 found in close proximity to forfeitable controlled substances, to  
140 forfeitable drug manufacturing or distributing paraphernalia, or  
141 to forfeitable records of the importation, manufacture or  
142 distribution of controlled substances are presumed to be  
143 forfeitable under this paragraph; the burden of proof is upon  
144 claimants of the property to rebut this presumption.

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

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

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

162 any appropriate court having jurisdiction over the property.

163 Seizure without process may be made if:

164 (1) The seizure is incident to an arrest or a search  
165 under a search warrant or an inspection under an administrative  
166 inspection warrant;

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

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

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

180 (c) Controlled substances listed in Schedule I of Section  
181 41-29-113 that are possessed, transferred, sold, or offered for  
182 sale in violation of this article are contraband and shall be  
183 seized and summarily forfeited to the state. Controlled  
184 substances listed in the said Schedule I, which are seized or come  
185 into the possession of the state, the owners of which are unknown,  
186 are contraband and shall be summarily forfeited to the state.

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

193 (e) The failure, upon demand by the bureau and/or local law  
194 enforcement officers, or their authorized agents, or highway

195 patrolmen designated by the bureau, the board, or the State Board  
196 of Pharmacy, of the person in occupancy or in control of land or  
197 premises upon which the species of plants are growing or being  
198 stored, to produce an appropriate registration, or proof that he  
199 is the holder thereof, constitutes authority for the seizure and  
200 forfeiture of the plants.

201       **SECTION 3.** Section 41-29-313, Mississippi Code of 1972, is  
202 amended as follows:

203       41-29-313. (1) (a) Except as authorized in this section,  
204 it is unlawful for any person to knowingly or intentionally:

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

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

214               (iii) Manufacture or attempt to manufacture any  
215 listed precursor drug or chemical with intent to unlawfully  
216 manufacture a controlled substance.

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

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

225       (b) It is unlawful for any person to purchase, possess,  
226 transfer or distribute any amount of anhydrous ammonia, knowing,  
227 or under circumstances where one reasonably should know, that the

228 anhydrous ammonia will be used to unlawfully manufacture a  
229 controlled substance.

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

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

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

- 252 (a) Ether;
- 253 (b) Anhydrous ammonia;
- 254 (c) Pseudoephedrine;
- 255 (d) Ephedrine;
- 256 (e) Denatured alcohol (Ethanol);
- 257 (f) Lithium;
- 258 (g) Freon;
- 259 (h) Hydrochloric acid;
- 260 (i) Hydriodic acid;



- 261 (j) Red phosphorous;
- 262 (k) Iodine;
- 263 (l) Sodium metal;
- 264 (m) Muriatic acid;
- 265 (n) Sulfuric acid;
- 266 (o) Hydrogen chloride gas;
- 267 (p) Potassium;
- 268 (q) Methanol;
- 269 (r) Isopropyl alcohol;
- 270 (s) Hexanes;
- 271 (t) Heptanes;
- 272 (u) Acetone;
- 273 (v) Toluene;
- 274 (w) Xylenes;
- 275 (x) Sodium hydroxide;
- 276 (y) Hypophosphorous acid.

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

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

284 (6) Nothing in this section shall preclude any farmer,  
285 wholesaler, retailer, manufacturer or pharmacist from  
286 manufacturing any of the listed precursor drugs or chemicals in  
287 the normal pursuit of business.

288 (7) Any person who violates the provisions of this section  
289 with children under the age of eighteen (18) years present may be  
290 subject to a term of imprisonment or a fine, or both, of twice  
291 that provided in this section.

292 (8) Any person who violates the provisions of this section  
293 when the offense occurs in any hotel or apartment building or

294 complex may be subject to a term of imprisonment or a fine, or  
295 both, of twice that provided in this section. For the purposes of  
296 this subsection (8), the following terms shall have the meanings  
297 ascribed to them:

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

302 (b) "Apartment building" means any building, including,  
303 without limitation, a condominium building, having four (4) or  
304 more dwelling units.

305 **SECTION 4.** Section 41-29-501, Mississippi Code of 1972, is  
306 amended as follows:

307 41-29-501. As used in this article, the following terms  
308 shall have the meaning ascribed to them herein unless the context  
309 requires otherwise:

310 (a) "Aggrieved person" means a person who was a party  
311 to an intercepted wire, oral or other communication or a person  
312 against whom the interception was directed.

313 (b) "Communication common carrier" has the meaning  
314 given the term "common carrier" by 47 USCS 153(h) and shall also  
315 mean a provider of communication services.

316 (c) "Contents," when used with respect to a wire, oral  
317 or other communication, includes any information concerning the  
318 identity of the parties to the communication or the existence,  
319 substance, purport or meaning of that communication.

320 (d) "Covert entry" means any entry into or onto  
321 premises which if made without a court order allowing such an  
322 entry under this article would be a violation of criminal law.

323 (e) "Director" means the Director of the Bureau of  
324 Narcotics or, if the director is absent or unable to serve, the  
325 Assistant Director of the Bureau of Narcotics.

326           (f) "Electronic, mechanical or other device" means a  
327 device or apparatus primarily designed or used for the  
328 nonconsensual interception of wire, oral or other communications.

329           (g) "Intercept" means the aural or other acquisition of  
330 the contents of a wire, oral or other communication through the  
331 use of an electronic, mechanical or other device.

332           (h) "Investigative or law enforcement officer" means an  
333 officer of this state or of a political subdivision of this state  
334 who is empowered by law to conduct investigations of, or to make  
335 arrests for, offenses enumerated in Section 41-29-505, or an  
336 attorney authorized by law to prosecute or participate in the  
337 prosecution of such offenses, or any other person designated by  
338 the director.

339           (i) "Judge of competent jurisdiction" means a justice  
340 of the Supreme Court or a circuit court judge.

341           (j) "Oral communication" means an oral communication  
342 uttered by a person exhibiting an expectation that the  
343 communication is not subject to interception under circumstances  
344 justifying that expectation.

345           (k) "Other communication" means any transfer of an  
346 electronic or other signal, including fax signals, computer  
347 generated signals, other similar signals, or any scrambled or  
348 encrypted signal transferred via wire, radio, electromagnetic,  
349 photoelectric or photooptical system from one party to another in  
350 which the involved parties may reasonably expect the communication  
351 to be private.

352           (l) "Prosecutor" means a district attorney with  
353 jurisdiction in the county in which the facility or place where  
354 the communication to be intercepted is located or a legal  
355 assistant to the district attorney if designated in writing by the  
356 district attorney on a case-by-case basis.

357           (m) "Residence" means a structure or the portion of a  
358 structure used as a person's home or fixed place of habitation to

359 which the person indicates an intent to return after any temporary  
360 absence.

361           (n) "Wire communication" means a communication made in  
362 whole or in part through the use of facilities for the  
363 transmission of communications by the aid of wire, cable or other  
364 like connection between the point of origin and the point of  
365 reception furnished or operated by a person engaged as a common  
366 carrier in providing or operating the facilities for the  
367 transmission of communications and includes cordless telephones,  
368 voice pagers, cellular telephones, any mobile telephone, or any  
369 communication conducted through the facilities of a provider of  
370 communication services.

371           **SECTION 5.** This act shall take effect and be in force from  
372 and after July 1, 2004.