

By: Senator(s) Doxey

To: Judiciary, Division B

SENATE BILL NO. 2805

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO CONFORM THE UNIT MEASURE FOR A QUANTITY OF A CONTROLLED
3 SUBSTANCE POSSESSED ILLEGALLY TO THE WEIGHTS AND MEASURES UNITS
4 COMPUTATION LISTED IN THE PENALTY SUBSECTION OF THE STATUTE; AND
5 FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 41-29-139, Mississippi Code of 1972, is
8 amended as follows:

9 41-29-139. (a) Except as authorized by this article, it is
10 unlawful for any person knowingly or intentionally:

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

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

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

20 (1) In the case of controlled substances classified in
21 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
22 except thirty (30) grams or less of marihuana, and except a first
23 offender as defined in Section 41-29-149(e) who violates
24 subsection (a) of this section with respect to less than one (1)
25 kilogram but more than thirty (30) grams of marihuana, such person
26 may, upon conviction, be imprisoned for not more than thirty (30)
27 years and shall be fined not less than Five Thousand Dollars

28 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
29 both;

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

37 (3) In the case of thirty (30) grams or less of
38 marihuana, such person may, upon conviction, be imprisoned for not
39 more than three (3) years or fined not more than Three Thousand
40 Dollars (\$3,000.00), or both;

41 (4) In the case of controlled substances classified in
42 Schedules III and IV, as set out in Sections 41-29-117 and
43 41-29-119, such person may, upon conviction, be imprisoned for not
44 more than twenty (20) years and shall be fined not less than One
45 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
46 Thousand Dollars (\$250,000.00), or both; and

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

52 (c) It is unlawful for any person knowingly or intentionally
53 to possess any controlled substance unless the substance was
54 obtained directly from, or pursuant to, a valid prescription or
55 order of a practitioner while acting in the course of his
56 professional practice, or except as otherwise authorized by this
57 article. The penalties for any violation of this subsection (c)
58 with respect to a controlled substance classified in Schedules I,
59 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
60 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be

61 based on dosage unit as defined herein or the weight of the
62 controlled substance as set forth herein as appropriate:

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

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

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

74 If a mixture or substance contains more than one (1)
75 controlled substance, the weight of the mixture or substance is
76 assigned to the controlled substance that results in the greater
77 punishment.

78 Any person who violates this subsection with respect to:

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

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

89 (B) One-tenth (0.1) gram but less than two (2)
90 grams or two (2) dosage units but less than ten (10) dosage units,
91 by imprisonment for not less than two (2) years nor more than
92 eight (8) years and a fine of not more than Fifty Thousand Dollars
93 (\$50,000.00).

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

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

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

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

110 (A) Thirty (30) grams or less by a fine of not
111 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
112 Fifty Dollars (\$250.00). The provisions of this paragraph shall
113 be enforceable by summons, provided the offender provides proof of
114 identity satisfactory to the arresting officer and gives written
115 promise to appear in court satisfactory to the arresting officer,
116 as directed by the summons. A second conviction under this
117 section within two (2) years shall be punished by a fine of Two
118 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
119 nor more than sixty (60) days in the county jail and mandatory
120 participation in a drug education program, approved by the
121 Division of Alcohol and Drug Abuse of the State Department of
122 Mental Health, unless the court enters a written finding that such
123 drug education program is inappropriate. A third or subsequent
124 conviction under this section within two (2) years is a
125 misdemeanor punishable by a fine of not less than Two Hundred
126 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars

127 (\$500.00) and confinement for not less than five (5) days nor more
128 than six (6) months in the county jail. Upon a first or second
129 conviction under this section the courts shall forward a report of
130 such conviction to the Mississippi Bureau of Narcotics which shall
131 make and maintain a private, nonpublic record for a period not to
132 exceed two (2) years from the date of conviction. The private,
133 nonpublic record shall be solely for the use of the courts in
134 determining the penalties which attach upon conviction under this
135 section and shall not constitute a criminal record for the purpose
136 of private or administrative inquiry and the record of each
137 conviction shall be expunged at the end of the period of two (2)
138 years following the date of such conviction;

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

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

158 (D) Two hundred fifty (250) grams but less than
159 five hundred (500) grams, by imprisonment for not less than two

160 (2) years nor more than eight (8) years and by a fine of not more
161 than Fifty Thousand Dollars (\$50,000.00);

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

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

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

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

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

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

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

190 (D) Three hundred (300) grams but less than five
191 hundred (500) grams or one thousand (1,000) dosage units but less
192 than two thousand five hundred (2,500) dosage units, by

193 imprisonment for not less than four (4) years nor more than
194 sixteen (16) years and a fine of not more than Two Hundred Fifty
195 Thousand Dollars (\$250,000.00).

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

201 (d) (1) It is unlawful for a person who is not authorized
202 by the State Board of Medical Licensure, State Board of Pharmacy,
203 or other lawful authority to use, or to possess with intent to
204 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
205 manufacture, compound, convert, produce, process, prepare, test,
206 analyze, pack, repack, store, contain, conceal, inject, ingest,
207 inhale or otherwise introduce into the human body a controlled
208 substance in violation of the Uniform Controlled Substances Law.
209 Any person who violates this subsection is guilty of a misdemeanor
210 and upon conviction may be confined in the county jail for not
211 more than six (6) months, or fined not more than Five Hundred
212 Dollars (\$500.00), or both; however, no person shall be charged
213 with a violation of this subsection when such person is also
214 charged with the possession of thirty (30) grams or less of
215 marihuana under subsection (c)(2)(A) of this section.

216 (2) It is unlawful for any person to deliver, sell,
217 possess with intent to deliver or sell, or manufacture with intent
218 to deliver or sell, paraphernalia, knowing, or under circumstances
219 where one reasonably should know, that it will be used to plant,
220 propagate, cultivate, grow, harvest, manufacture, compound,
221 convert, produce, process, prepare, test, analyze, pack, repack,
222 store, contain, conceal, inject, ingest, inhale, or otherwise
223 introduce into the human body a controlled substance in violation
224 of the Uniform Controlled Substances Law. Any person who violates
225 this subsection is guilty of a misdemeanor and upon conviction may

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

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

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

244 (e) It shall be unlawful for any physician practicing
245 medicine in this state to prescribe, dispense or administer any
246 amphetamine or amphetamine-like anorectics and/or central nervous
247 system stimulants classified in Schedule II, pursuant to Section
248 41-29-115, for the exclusive treatment of obesity, weight control
249 or weight loss. Any person who violates this subsection, upon
250 conviction, is guilty of a misdemeanor and may be confined for a
251 period not to exceed six (6) months, or fined not more than One
252 Thousand Dollars (\$1,000.00), or both.

253 (f) Except as otherwise authorized in this article, any
254 person twenty-one (21) years of age or older who knowingly sells,
255 barter, transfers, manufactures, distributes or dispenses during
256 any twelve (12) consecutive month period: (i) ten (10) pounds or
257 more of marihuana; (ii) sixty (60) grams or more of heroin; (iii)
258 sixty (60) grams or more of cocaine or of any mixture containing

259 cocaine as described in Section 41-29-105(s), Mississippi Code of
260 1972; or (iv) one hundred (100) or more dosage units of morphine,
261 Demerol or Dilaudid, shall be guilty of a felony and, upon
262 conviction thereof, shall be sentenced to life imprisonment and
263 such sentence shall not be reduced or suspended nor shall such
264 person be eligible for probation or parole, the provisions of
265 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
266 of 1972, to the contrary notwithstanding. The provisions of this
267 subsection shall not apply to any person who furnishes information
268 and assistance to the bureau or its designee which, in the opinion
269 of the trial judge objectively should or would have aided in the
270 arrest or prosecution of others who violate this subsection. The
271 accused shall have adequate opportunity to develop and make a
272 record of all information and assistance so furnished.

273 (g) (1) Any person trafficking in controlled substances
274 shall be guilty of a felony and upon conviction shall be
275 imprisoned for a term of thirty (30) years and such sentence shall
276 not be reduced or suspended nor shall such person be eligible for
277 probation or parole, the provisions of Sections 41-29-149,
278 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
279 contrary notwithstanding and shall be fined not less than Five
280 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
281 (\$1,000,000.00).

282 (2) "Trafficking in controlled substances" as used
283 herein means to engage in three (3) or more component offenses
284 within any twelve (12) consecutive month period where at least two
285 (2) of the component offenses occurred in different counties. A
286 component offense is any act which would constitute a violation of
287 subsection (a) of this section. Prior convictions shall not be
288 used as component offenses to establish the charge of trafficking
289 in controlled substances.

290 (3) The charge of trafficking in controlled substances
291 shall be set forth in one (1) count of an indictment with each of

292 the component offenses alleged therein and it may be charged and
293 tried in any county where a component offense occurred. An
294 indictment for trafficking in controlled substances may also be
295 returned by the State Grand Jury of Mississippi provided at least
296 two (2) of the component offenses occurred in different circuit
297 court districts.

298 **SECTION 2.** This act shall take effect and be in force from
299 and after July 1, 2004.