

**Lost
AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2441

BY: Representative Blackmon

1 **AMEND** after line 90 by inserting the following as new
2 Sections 2, 3, 4 and 5 and by renumbering succeeding section:

3 **"SECTION 2.** Section 41-29-107, Mississippi Code of 1972, is
4 amended as follows:

5 41-29-107. There is hereby created the Bureau of Narcotics
6 within, and under the supervision of, the Mississippi Department
7 of Public Safety. The said bureau shall have as chief
8 administrative officer a director who shall be appointed by the
9 Governor with the advice and consent of the Senate. To be
10 eligible for appointment as director, a person must possess at
11 least ten (10) years of experience either in the practice of law
12 or as a certified law enforcement officer, with at least four (4)
13 years of experience at an administrative level. The director is
14 empowered to employ or appoint necessary agents. The said
15 director may also employ such secretarial, clerical and
16 administrative personnel, including a duly licensed attorney, as
17 necessary for the operation of the bureau, and shall have such
18 quarters, equipment and facilities as needed. The salary and
19 qualifications of the attorney authorized by this section shall be
20 fixed by the director, but the salary shall not exceed the salary
21 authorized for an assistant attorney general who performs similar
22 duties.

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

40 During the period of the first twelve (12) months after
41 appointment, any employee of the bureau shall be subject to
42 dismissal at the will of the director. After twelve (12) months'
43 service, no employee of the bureau shall be subject to dismissal
44 unless charges have been filed with the director showing cause for
45 dismissal * * *. A date shall be set for hearing before the
46 director and the employee notified in writing of the date of such
47 hearing and of the charges filed. The hearing shall be held not
48 less than ten (10) days after notification to the employee. After
49 the hearing, at which the employee shall be entitled to legal
50 counsel, a written order of the director shall be necessary for
51 dismissal and the decision shall be final. Any such order of the
52 director shall be a public record and subject to inspection as
53 such.

54 The Commissioner of Public Safety may assign members of the
55 Mississippi Highway Safety Patrol, regardless of age, to the
56 bureau at the request of the director of the bureau; however, when
57 any highway patrolman or other employee, agent or official of the
58 Mississippi Department of Public Safety is assigned to duty with,
59 or is employed by, the bureau, he shall not be subject to
60 assignment or transfer to any other bureau or department within
61 the Mississippi Department of Public Safety except by the
62 director. Any highway patrolman assigned to duty with the bureau
63 shall retain his status as a highway patrolman, but shall be under
64 the supervision of the director. For purposes of seniority within
65 the Highway Safety Patrol and for purposes of retirement under the
66 Mississippi Highway Safety Patrol Retirement System, highway
67 patrolmen assigned to the bureau will be credited as if performing
68 duty with the Highway Safety Patrol.

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

72 The director may enter into agreements with bureaus or
73 departments of other states or of the United States for the
74 exchange or temporary assignment of agents for special undercover
75 assignments and for performance of specific duties.

76 The director is hereby authorized to assign agents of the
77 bureau to such duty and to request and accept agents from such
78 other bureaus or departments for such duty.

79 **SECTION 3.** Section 41-29-153, Mississippi Code of 1972, is
80 amended as follows:

81 41-29-153. (a) The following are subject to forfeiture:

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

85 (2) All raw materials, products and equipment of any
86 kind which are used, or intended for use, in manufacturing,
87 compounding, processing, delivering, importing, or exporting any
88 controlled substance in violation of this Article 3 or in
89 violation of Article 5 of this chapter;

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

93 (4) All conveyances, including aircraft, vehicles or
94 vessels, which are used, or intended for use, to transport, or in
95 any manner to facilitate the transportation, sale, receipt,
96 possession or concealment of property described in paragraph (1)
97 or (2) of this section, however:

98 A. No conveyance used by any person as a
99 common carrier in the transaction of business as a common carrier
100 is subject to forfeiture under this section unless it appears that
101 the owner or other person in charge of the conveyance is a
102 consenting party or privy to a violation of this article;

103 B. No conveyance is subject to forfeiture
104 under this section by reason of any act or omission proved by the
105 owner thereof to have been committed or omitted without his
106 knowledge or consent; if the confiscating authority has reason to
107 believe that the conveyance is a leased or rented conveyance, then
108 the confiscating authority shall notify the owner of the
109 conveyance within five (5) days of the confiscation;

110 C. A forfeiture of a conveyance encumbered by
111 a bona fide security interest is subject to the interest of the
112 secured party if he neither had knowledge of nor consented to the
113 act or omission;

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

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

120 (6) All drug paraphernalia as defined in Section
121 41-29-105(v); and

122 (7) Everything of value, including real estate,
123 furnished, or intended to be furnished, in exchange for a
124 controlled substance in violation of this article, all proceeds
125 traceable to such an exchange, and all monies, negotiable
126 instruments, businesses or business investments, securities, and
127 other things of value used, or intended to be used, to facilitate
128 any violation of this article. All monies, coin and currency
129 found in close proximity to forfeitable controlled substances, to
130 forfeitable drug manufacturing or distributing paraphernalia, or
131 to forfeitable records of the importation, manufacture or
132 distribution of controlled substances are presumed to be
133 forfeitable under this paragraph; the burden of proof is upon
134 claimants of the property to rebut this presumption.

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

140 B. Neither personal property encumbered by a
141 bona fide security interest nor real estate encumbered by a bona
142 fide mortgage, deed of trust, lien or encumbrance shall be
143 forfeited under the provisions of paragraph (a)(7) of this
144 section, to the extent of the interest of the secured party or the
145 interest of the mortgagee, holder of a deed of trust, lien or
146 encumbrance by reason of any act or omission established by him to
147 have been committed or omitted without his knowledge or consent.

148 (b) Property subject to forfeiture may be seized by the
149 bureau, local law enforcement officers, enforcement officers of
150 the Mississippi Department of Transportation, highway patrolmen,
151 the board, or the State Board of Pharmacy upon process issued by
152 any appropriate court having jurisdiction over the property.

153 Seizure without process may be made if:

154 (1) The seizure is incident to an arrest or a search
155 under a search warrant or an inspection under an administrative
156 inspection warrant;

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

160 (3) The bureau, the board, local law enforcement
161 officers, enforcement officers of the Mississippi Department of
162 Transportation, or highway patrolmen, or the State Board of
163 Pharmacy have probable cause to believe that the property is
164 directly or indirectly dangerous to health or safety; or

165 (4) The bureau, local law enforcement officers,
166 enforcement officers of the Mississippi Department of
167 Transportation, highway patrolmen, the board, or the State Board
168 of Pharmacy have probable cause to believe that the property was
169 used or is intended to be used in violation of this article.

170 (c) Controlled substances listed in Schedule I of Section
171 41-29-113 that are possessed, transferred, sold, or offered for
172 sale in violation of this article are contraband and shall be
173 seized and summarily forfeited to the state. Controlled
174 substances listed in the said Schedule I, which are seized or come
175 into the possession of the state, the owners of which are unknown,
176 are contraband and shall be summarily forfeited to the state.

177 (d) Species of plants from which controlled substances in
178 Schedules I and II of Sections 41-29-113 and 41-29-115 may be
179 derived which have been planted or cultivated in violation of this

180 article, or of which the owners or cultivators are unknown, or
181 which are wild growths, may be seized and summarily forfeited to
182 the state.

183 (e) The failure, upon demand by the bureau and/or local law
184 enforcement officers, or their authorized agents, or highway
185 patrolmen designated by the bureau, the board, or the State Board
186 of Pharmacy, of the person in occupancy or in control of land or
187 premises upon which the species of plants are growing or being
188 stored, to produce an appropriate registration, or proof that he
189 is the holder thereof, constitutes authority for the seizure and
190 forfeiture of the plants.

191 **SECTION 4.** Section 41-29-313, Mississippi Code of 1972, is
192 amended as follows:

193 41-29-313. (1) (a) Except as authorized in this section,
194 it is unlawful for any person to knowingly or intentionally:

195 (i) Purchase, possess, transfer or distribute any
196 two (2) or more of the listed precursor chemicals or drugs in any
197 amount with the intent to unlawfully manufacture a controlled
198 substance;

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

204 (iii) Manufacture or attempt to manufacture any
205 listed precursor drug or chemical with intent to unlawfully
206 manufacture a controlled substance.

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

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

215 (b) It is unlawful for any person to purchase, possess,
216 transfer or distribute any amount of anhydrous ammonia, knowing,
217 or under circumstances where one reasonably should know, that the
218 anhydrous ammonia will be used to unlawfully manufacture a
219 controlled substance.

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

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

232 (3) The term "listed precursor drug or chemical" means a
233 precursor drug or chemical that, in addition to legitimate uses,
234 may be used in manufacturing a controlled substance in violation
235 of this chapter. Such term includes any salt, optical isomer or
236 salt of an optical isomer, whenever the existence of such salt,
237 optical isomer or salt of optical isomer is possible within the
238 specific chemical designation. The chemicals or drugs listed in
239 this section are included by whatever official, common, usual,
240 chemical or trade name designated. The following are "listed
241 precursor drugs or chemicals":

242 (a) Ether;

243 (b) Anhydrous ammonia;

- 244 (c) Pseudoephedrine;
- 245 (d) Ephedrine;
- 246 (e) Denatured alcohol (Ethanol);
- 247 (f) Lithium;
- 248 (g) Freon;
- 249 (h) Hydrochloric acid;
- 250 (i) Hydriodic acid;
- 251 (j) Red phosphorous;
- 252 (k) Iodine;
- 253 (l) Sodium metal;
- 254 (m) Muriatic acid;
- 255 (n) Sulfuric acid;
- 256 (o) Hydrogen chloride gas;
- 257 (p) Potassium;
- 258 (q) Methanol;
- 259 (r) Isopropyl alcohol;
- 260 (s) Hexanes;
- 261 (t) Heptanes;
- 262 (u) Acetone;
- 263 (v) Toluene;
- 264 (w) Xylenes;
- 265 (x) Sodium hydroxide;
- 266 (y) Hypophosphorous acid.

267 (4) Nothing in this section shall preclude any farmer from
268 storing or using any of the listed precursor drugs or chemicals
269 listed in this section in the normal pursuit of farming
270 operations.

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

274 (6) Nothing in this section shall preclude any farmer,
275 wholesaler, retailer, manufacturer or pharmacist from

276 manufacturing any of the listed precursor drugs or chemicals in
277 the normal pursuit of business.

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

282 (8) Any person who violates the provisions of this section
283 when the offense occurs in any hotel or apartment building or
284 complex may be subject to a term of imprisonment or a fine, or
285 both, of twice that provided in this section. For the purposes of
286 this subsection (8), the following terms shall have the meanings
287 ascribed to them:

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

292 (b) "Apartment building" means any building, including,
293 without limitation, a condominium building, having four (4) or
294 more dwelling units.

295 **SECTION 5.** Section 41-29-501, Mississippi Code of 1972, is
296 amended as follows:

297 41-29-501. As used in this article, the following terms
298 shall have the meaning ascribed to them herein unless the context
299 requires otherwise:

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

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

306 (c) "Contents," when used with respect to a wire, oral
307 or other communication, includes any information concerning the

308 identity of the parties to the communication or the existence,
309 substance, purport or meaning of that communication.

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

313 (e) "Director" means the Director of the Bureau of
314 Narcotics or, if the director is absent or unable to serve, the
315 Assistant Director of the Bureau of Narcotics.

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

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

322 (h) "Investigative or law enforcement officer" means an
323 officer of this state or of a political subdivision of this state
324 who is empowered by law to conduct investigations of, or to make
325 arrests for, offenses enumerated in Section 41-29-505, or an
326 attorney authorized by law to prosecute or participate in the
327 prosecution of such offenses, or any other person designated by
328 the director.

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

331 (j) "Oral communication" means an oral communication
332 uttered by a person exhibiting an expectation that the
333 communication is not subject to interception under circumstances
334 justifying that expectation.

335 (k) "Other communication" means any transfer of an
336 electronic or other signal, including fax signals, computer
337 generated signals, other similar signals, or any scrambled or
338 encrypted signal transferred via wire, radio, electromagnetic,
339 photoelectric or photooptical system from one party to another in

340 which the involved parties may reasonably expect the communication
341 to be private.

342 (l) "Prosecutor" means a district attorney with
343 jurisdiction in the county in which the facility or place where
344 the communication to be intercepted is located or a legal
345 assistant to the district attorney if designated in writing by the
346 district attorney on a case-by-case basis.

347 (m) "Residence" means a structure or the portion of a
348 structure used as a person's home or fixed place of habitation to
349 which the person indicates an intent to return after any temporary
350 absence.

351 (n) "Wire communication" means a communication made in
352 whole or in part through the use of facilities for the
353 transmission of communications by the aid of wire, cable or other
354 like connection between the point of origin and the point of
355 reception furnished or operated by a person engaged as a common
356 carrier in providing or operating the facilities for the
357 transmission of communications and includes cordless telephones,
358 voice pagers, cellular telephones, any mobile telephone, or any
359 communication conducted through the facilities of a provider of
360 communication services."

361 **AMEND further** the title on line 3 by inserting the following
362 after the semicolon:

363 "TO AMEND SECTION 41-29-107, MISSISSIPPI CODE OF 1972, TO REMOVE
364 THE MAXIMUM AGE RESTRICTION ON FIRST-TIME HIRES AS NARCOTICS
365 AGENTS; TO AMEND SECTION 41-29-153, MISSISSIPPI CODE OF 1972, TO
366 ALLOW EXISTING FORFEITURE STATUTES TO APPLY TO VIOLATIONS OF THE
367 PRECURSOR LAW; TO AMEND SECTION 41-29-313, MISSISSIPPI CODE OF
368 1972, TO EXPAND THE LIST OF PRECURSOR DRUG AND CHEMICALS AND TO
369 INCLUDE MANUFACTURING OF PRECURSORS WITH INTENT TO MANUFACTURE A
370 CONTROLLED SUBSTANCE AS A VIOLATION; TO AMEND SECTION 41-29-501,
371 MISSISSIPPI CODE OF 1972, TO REVISE THE WIRETAP LAW TO ALLOW THE
372 USE OF ADDITIONAL MANPOWER FROM OTHER AGENCIES IN ONGOING
373 INVESTIGATIONS;"