

By: Representative Formby

To: Judiciary A

HOUSE BILL NO. 446

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT IT SHALL BE A FELONY TO POSSESS OR BRING ANY
3 CONTROLLED SUBSTANCES INTO ANY STATE, COUNTY OR MUNICIPAL BUILDING
4 OR FACILITY; AND FOR RELATED PURPOSES.

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

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

8 41-29-139. (a) Except as authorized by this article, it is
9 unlawful for any person knowingly or intentionally:

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

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

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

19 (1) In the case of controlled substances classified in
20 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
21 except thirty (30) grams or less of marihuana, and except a first
22 offender as defined in Section 41-29-149(e) who violates
23 subsection (a) of this section with respect to less than one (1)
24 kilogram but more than thirty (30) grams of marihuana, such person
25 may, upon conviction, be imprisoned for not more than thirty (30)
26 years and shall be fined not less than Five Thousand Dollars
27 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
28 both;

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

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

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

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

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

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

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

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

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

77 Any person who violates this subsection with respect to:

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

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

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

93 (C) Two (2) grams but less than ten (10) grams or
94 ten (10) dosage units but less than twenty (20) dosage units, by

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

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

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

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

109 (A) Thirty (30) grams or less by a fine of not
110 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
111 Fifty Dollars (\$250.00). The provisions of this paragraph shall
112 be enforceable by summons, provided the offender provides proof of
113 identity satisfactory to the arresting officer and gives written
114 promise to appear in court satisfactory to the arresting officer,
115 as directed by the summons. A second conviction under this
116 section within two (2) years shall be punished by a fine of Two
117 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
118 nor more than sixty (60) days in the county jail and mandatory
119 participation in a drug education program, approved by the
120 Division of Alcohol and Drug Abuse of the State Department of
121 Mental Health, unless the court enters a written finding that such
122 drug education program is inappropriate. A third or subsequent
123 conviction under this section within two (2) years is a
124 misdemeanor punishable by a fine of not less than Two Hundred
125 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
126 (\$500.00) and confinement for not less than five (5) days nor more
127 than six (6) months in the county jail. Upon a first or second

128 conviction under this section the courts shall forward a report of
129 such conviction to the Mississippi Bureau of Narcotics which shall
130 make and maintain a private, nonpublic record for a period not to
131 exceed two (2) years from the date of conviction. The private,
132 nonpublic record shall be solely for the use of the courts in
133 determining the penalties which attach upon conviction under this
134 section and shall not constitute a criminal record for the purpose
135 of private or administrative inquiry and the record of each
136 conviction shall be expunged at the end of the period of two (2)
137 years following the date of such conviction;

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

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

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

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

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

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

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

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

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

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

189 (D) Three hundred (300) grams but less than five
190 hundred (500) grams or one thousand (1,000) dosage units but less
191 than two thousand five hundred (2,500) dosage units, by
192 imprisonment for not less than four (4) years nor more than

193 sixteen (16) years and a fine of not more than Two Hundred Fifty
194 Thousand Dollars (\$250,000.00).

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

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

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

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

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

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

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

252 (f) Except as otherwise authorized in this article, any
253 person twenty-one (21) years of age or older who knowingly sells,
254 barter, transfers, manufactures, distributes or dispenses during
255 any twelve (12) consecutive month period: (i) ten (10) pounds or
256 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
257 two (2) or more ounces of cocaine or of any mixture containing

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

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

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

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

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

297 (h) Any person who carries any controlled substance into any
298 state, county or municipally owned building or facility or who
299 possesses any controlled substance in such facilities shall be
300 guilty of a felony and upon conviction shall be imprisoned for not
301 less than one (1) year nor more than five (5) years and shall be
302 fined not less than One Thousand Dollars (\$1,000.00) nor more than
303 Ten Thousand Dollars (\$10,000.00).

304 **SECTION 2.** This act shall take effect and be in force from
305 and after July 1, 2005.