

By: Representatives Mims, Barnett

To: Judiciary A

HOUSE BILL NO. 652

1 AN ACT TO AMEND SECTIONS 41-29-139 AND 41-29-142, MISSISSIPPI
2 CODE OF 1972, TO REVISE PENALTIES FOR MARIJUANA POSSESSION ON OR
3 NEAR SCHOOL PROPERTY; AND FOR RELATED PURPOSES.

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

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

7 41-29-139. (a) Except as authorized by this article, it is
8 unlawful for any person knowingly or intentionally:

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

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

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

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

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

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

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

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

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

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

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

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

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

76 Any person who violates this subsection with respect to:

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

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

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

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

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

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

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

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

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

127 conviction under this section the courts shall forward a report of
128 such conviction to the Mississippi Bureau of Narcotics which shall
129 make and maintain a private, nonpublic record for a period not to
130 exceed two (2) years from the date of conviction. The private,
131 nonpublic record shall be solely for the use of the courts in
132 determining the penalties which attach upon conviction under this
133 section and shall not constitute a criminal record for the purpose
134 of private or administrative inquiry and the record of each
135 conviction shall be expunged at the end of the period of two (2)
136 years following the date of such conviction. A person who is
137 convicted of a violation of this subsection (c)(2)(A) where the
138 violation occurs within one thousand five hundred feet (1,500) of
139 a building or outbuilding which is all or part of a school shall
140 be incarcerated for seventy-two (72) hours and shall be fined One
141 Thousand Dollars (\$1,000.00);

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

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

159 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
160 not more than three (3) years, or both;

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

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

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

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

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

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

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

188 (C) One hundred fifty (150) grams but less than
189 three hundred (300) grams or five hundred (500) dosage units but
190 less than one thousand (1,000) dosage units, by imprisonment for

191 not less than two (2) years nor more than eight (8) years and a
192 fine of not more than Fifty Thousand Dollars (\$50,000.00).

193 (D) Three hundred (300) grams but less than five
194 hundred (500) grams or one thousand (1,000) dosage units but less
195 than two thousand five hundred (2,500) dosage units, by
196 imprisonment for not less than four (4) years nor more than
197 sixteen (16) years and a fine of not more than Two Hundred Fifty
198 Thousand Dollars (\$250,000.00).

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

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

219 (2) It is unlawful for any person to deliver, sell,
220 possess with intent to deliver or sell, or manufacture with intent
221 to deliver or sell, paraphernalia, knowing, or under circumstances
222 where one reasonably should know, that it will be used to plant,
223 propagate, cultivate, grow, harvest, manufacture, compound,

224 convert, produce, process, prepare, test, analyze, pack, repack,
225 store, contain, conceal, inject, ingest, inhale, or otherwise
226 introduce into the human body a controlled substance in violation
227 of the Uniform Controlled Substances Law. Any person who violates
228 this subsection is guilty of a misdemeanor and upon conviction may
229 be confined in the county jail for not more than six (6) months,
230 or fined not more than Five Hundred Dollars (\$500.00), or both.

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

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

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

256 (f) Except as otherwise authorized in this article, any
257 person twenty-one (21) years of age or older who knowingly sells,
258 barter, transfers, manufactures, distributes or dispenses during
259 any twelve (12) consecutive month period: (i) ten (10) pounds or
260 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
261 two (2) or more ounces of cocaine or of any mixture containing
262 cocaine as described in Section 41-29-105(s), Mississippi Code of
263 1972; or (iv) one hundred (100) or more dosage units of morphine,
264 Demerol or Dilaudid, shall be guilty of a felony and, upon
265 conviction thereof, shall be sentenced to life imprisonment and
266 such sentence shall not be reduced or suspended nor shall such
267 person be eligible for probation or parole, the provisions of
268 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
269 of 1972, to the contrary notwithstanding. The provisions of this
270 subsection shall not apply to any person who furnishes information
271 and assistance to the bureau or its designee which, in the opinion
272 of the trial judge objectively should or would have aided in the
273 arrest or prosecution of others who violate this subsection. The
274 accused shall have adequate opportunity to develop and make a
275 record of all information and assistance so furnished.

276 (g) (1) Any person trafficking in controlled substances
277 shall be guilty of a felony and upon conviction shall be
278 imprisoned for a term of thirty (30) years and such sentence shall
279 not be reduced or suspended nor shall such person be eligible for
280 probation or parole, the provisions of Sections 41-29-149,
281 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
282 contrary notwithstanding and shall be fined not less than Five
283 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
284 (\$1,000,000.00).

285 (2) "Trafficking in controlled substances" as used
286 herein means to engage in three (3) or more component offenses
287 within any twelve (12) consecutive month period where at least two
288 (2) of the component offenses occurred in different counties. A

289 component offense is any act which would constitute a violation of
290 subsection (a) of this section. Prior convictions shall not be
291 used as component offenses to establish the charge of trafficking
292 in controlled substances.

293 (3) The charge of trafficking in controlled substances
294 shall be set forth in one (1) count of an indictment with each of
295 the component offenses alleged therein and it may be charged and
296 tried in any county where a component offense occurred. An
297 indictment for trafficking in controlled substances may also be
298 returned by the State Grand Jury of Mississippi provided at least
299 two (2) of the component offenses occurred in different circuit
300 court districts.

301 **SECTION 2.** Section 41-29-142, Mississippi Code of 1972, is
302 amended as follows:

303 41-29-142. (1) Except as provided in subsection (f) of
304 Section 41-29-139 or in subsection (2) of this section, any person
305 who violates or conspires to violate Section 41-29-139(a)(1),
306 Mississippi Code of 1972, by selling, bartering, transferring,
307 manufacturing, distributing, dispensing or possessing with intent
308 to sell, barter, transfer, manufacture, distribute or dispense, a
309 controlled substance, in or on, or within one thousand five
310 hundred (1,500) feet of, a building or outbuilding which is all or
311 part of a public or private elementary, vocational or secondary
312 school, or any church, public park, ballpark, public gymnasium,
313 youth center or movie theater or within one thousand (1,000) feet
314 of, the real property comprising such public or private
315 elementary, vocational or secondary school, or any church, public
316 park, ballpark, public gymnasium, youth center or movie theater
317 shall, upon conviction thereof, be punished by the term of
318 imprisonment or a fine, or both, of that authorized by Section
319 41-29-139(b) and, in the discretion of the court, may be punished
320 by a term of imprisonment or a fine, or both, of up to twice that
321 authorized by Section 41-29-139(b).

322 (2) Except as otherwise provided in subsection (f) of
323 Section 41-29-139, any person who violates or conspires to violate
324 Section 41-29-139(a)(1), Mississippi Code of 1972, by selling,
325 bartering, transferring, manufacturing, distributing, dispensing
326 or possessing with intent to sell, barter, transfer, manufacture,
327 distribute or dispense, a controlled substance, in or on, or
328 within one thousand five hundred (1,500) feet of, a building or
329 outbuilding which is all or part of a public or private
330 elementary, vocational or secondary school, or any church, public
331 park, ballpark, public gymnasium, youth center or movie theater or
332 within one thousand (1,000) feet of, the real property comprising
333 such public or private elementary, vocational or secondary school,
334 or any church, public park, ballpark, public gymnasium, youth
335 center or movie theater after a prior conviction under subsection
336 (1) of this section has become final, shall, upon conviction
337 thereof, be punished by a term of imprisonment of not less than
338 three (3) years and not more than life, and in the discretion of
339 the court, may be punished by a term of imprisonment of up to
340 three (3) times that authorized by Section 41-29-139(b), for a
341 first offense, or a fine of up to three (3) times that authorized
342 by Section 41-29-139(b), for a first offense, or both.

343 (3) Except as provided in subsection (f) of Section
344 41-29-139, any person who violates Section 41-29-139(c)(2)(A)
345 within one thousand five hundred (1,500) feet of a building or
346 outbuilding which is all or part of a school shall, upon
347 conviction, be punished as provided in Section 41-29-139(c)(2)(A).

348 **SECTION 3.** This act shall take effect and be in force from
349 and after July 1, 2005.