

By: Representatives Carlton, Bentz, Pierce,
Eaton, Beckett, Ellington, Fillingane,
Formby, Fredericks, Holland, Moore, Snowden,
Weathersby, Whittington

To: Judiciary A

HOUSE BILL NO. 792

1 AN ACT TO AMEND SECTIONS 41-29-139 AND 41-29-313, MISSISSIPPI
2 CODE OF 1972, TO REVISE PENALTIES FOR MANUFACTURING CONTROLLED
3 SUBSTANCES WITH CHILDREN PRESENT; 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

296 (h) Any person who shall manufacture any controlled
297 substance with children under the age of eighteen (18) years
298 present shall, upon conviction, be guilty of a felony punishable
299 by a fine of One Thousand Dollars (\$1,000.00) and by imprisonment
300 in the State Penitentiary for five (5) years.

301 **SECTION 2.** Section 41-29-313, Mississippi Code of 1972, is
302 amended as follows:

303 41-29-313. (1) (a) Except as authorized in this section,
304 it is unlawful for any person to knowingly or intentionally:

305 (i) Purchase, possess, transfer or distribute any
306 two (2) or more of the listed precursor chemicals or drugs in any
307 amount with the intent to unlawfully manufacture a controlled
308 substance;

309 (ii) Purchase, possess, transfer or distribute any
310 two (2) or more of the listed precursor chemicals or drugs in any
311 amount, knowing, or under circumstances where one reasonably
312 should know, that the listed precursor chemical or drug will be
313 used to unlawfully manufacture a controlled substance.

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

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

322 (b) It is unlawful for any person to purchase, possess,
323 transfer or distribute any amount of anhydrous ammonia, knowing,
324 or under circumstances where one reasonably should know, that the
325 anhydrous ammonia will be used to unlawfully manufacture a
326 controlled substance.

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

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

339 (3) The terms "listed precursor drug or chemical" means a
340 precursor drug or chemical that, in addition to legitimate uses,
341 may be used in manufacturing a controlled substance in violation
342 of this chapter. Such term includes any salt, optical isomer or
343 salt of an optical isomer, whenever the existence of such salt,
344 optical isomer or salt of optical isomer is possible within the
345 specific chemical designation. The chemicals or drugs listed in
346 this section are included by whatever official, common, usual,
347 chemical or trade name designated. The following are "listed
348 precursor drugs or chemicals":

- 349 (a) Ether;
- 350 (b) Anhydrous ammonia;
- 351 (c) Pseudoephedrine;
- 352 (d) Ephedrine;
- 353 (e) Denatured alcohol (Ethanol);
- 354 (f) Lithium;

- 355 (g) Freon;
- 356 (h) Hydrochloric acid;
- 357 (i) Hydriodic acid;
- 358 (j) Red phosphorous;
- 359 (k) Iodine;
- 360 (l) Sodium metal;
- 361 (m) Muriatic acid;
- 362 (n) Sulfuric acid;
- 363 (o) Hydrogen chloride gas;
- 364 (p) Potassium;
- 365 (q) Methanol;
- 366 (r) Isopropyl alcohol;
- 367 (s) Hexanes;
- 368 (t) Heptanes;
- 369 (u) Acetone;
- 370 (v) Toluene;
- 371 (w) Xylenes.

372 (4) Nothing in this section shall preclude any farmer from
373 storing or using any of the listed precursor drugs or chemicals
374 listed in this section in the normal pursuit of farming
375 operations.

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

379 (6) Any person who violates the provisions of this section
380 with children under the age of eighteen (18) years present shall
381 be subject to a term of imprisonment and a fine, * * * of twice
382 that provided in this section.

383 (7) Any person who violates the provisions of this section
384 when the offense occurs in any hotel or apartment building or
385 complex may be subject to a term of imprisonment or a fine, or
386 both, of twice that provided in this section. For the purposes of

387 this subsection (7), the following terms shall have the meanings
388 ascribed to them:

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

393 (b) "Apartment building" means any building, including,
394 without limitation, a condominium building, having four (4) or
395 more dwelling units.

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