

By: Senator(s) Albritton, Browning, Burton, Butler, Carmichael, Chaney, Cuevas, Dawkins, Dearing, Gordon, Harden, Harvey, Hyde-Smith, Jackson (15th), Jackson (11th), Jackson (32nd), Jordan, King, Kirby, Lee (35th), Lee (47th), Mettetal, Morgan, Nunnelee, Pickering, Posey, Ross, Thames, Tollison, Walls, Williamson

To: Judiciary, Division B

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2235

1 AN ACT TO AMEND SECTION 41-29-153, MISSISSIPPI CODE OF 1972,  
2 TO EXTEND THE PROVISIONS OF THE DRUG FORFEITURE LAW TO VIOLATIONS  
3 OF THE METHAMPHETAMINE PRECURSOR LAW; TO AMEND SECTION 41-29-139,  
4 MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTY FOR TRAFFICKING IN  
5 CERTAIN DRUGS; TO AMEND SECTION 41-29-181, MISSISSIPPI CODE OF  
6 1972, TO REVISE DISTRIBUTION OF PROCEEDS IN FORFEITURES INVOLVING  
7 MULTIPLE LAW ENFORCEMENT AGENCIES; TO AMEND SECTION 41-29-313,  
8 MISSISSIPPI CODE OF 1972, TO EXPAND THE LIST OF POSSIBLE PRECURSOR  
9 DRUGS AND CHEMICALS POSSESSED IN VIOLATION OF LAW FOR THE  
10 MANUFACTURE OF METHAMPHETAMINE, TO MAKE MANUFACTURE OF THE  
11 PRECURSORS THEMSELVES UNLAWFUL, TO CRIMINALIZE DAMAGE TO AN  
12 ANHYDROUS AMMONIA TANK VALVE, AND TO PROVIDE AN ENHANCED PENALTY  
13 FOR VIOLATION OF THE METHAMPHETAMINE PRECURSOR LAW WHEN IN  
14 POSSESSION OF A FIREARM OR ON BOOBY TRAPPED PREMISES; TO AMEND  
15 SECTION 49-17-603, MISSISSIPPI CODE OF 1972, TO CONFORM INTERNAL  
16 REFERENCES; TO AMEND SECTION 41-29-501, MISSISSIPPI CODE OF 1972,  
17 TO REVISE THE DEFINITION OF "INVESTIGATIVE OR LAW ENFORCEMENT  
18 OFFICER" UNDER THE WIRETAPPING LAW; TO SPECIFY THE ELEMENTS OF A  
19 DEFENSE OF ENTRAPMENT AND RESTRICT THE AVAILABILITY OF THE  
20 DEFENSE; TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO  
21 REVISE THE CRIME OF NEGLECT OR CONTRIBUTING TO THE DELINQUENCY OF  
22 A CHILD AND THE FELONIOUS ABUSE OR BATTERY OF A CHILD; TO CREATE  
23 THE CRIME OF CHILD ENDANGERMENT IMPOSED BY MANUFACTURE OF ILLEGAL  
24 DRUGS; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 41-29-153, Mississippi Code of 1972, is  
27 amended as follows:

28 41-29-153. (a) The following are subject to forfeiture:

29 (1) All controlled substances which have been  
30 manufactured, distributed, dispensed or acquired in violation of  
31 this article or in violation of Article 5 of this chapter;

32 (2) All raw materials, products and equipment of any  
33 kind which are used, or intended for use, in manufacturing,  
34 compounding, processing, delivering, importing, or exporting any  
35 controlled substance in violation of this article or in violation  
36 of Article 5 of this chapter;

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

40           (4) All conveyances, including aircraft, vehicles or  
41 vessels, which are used, or intended for use, to transport, or in  
42 any manner to facilitate the transportation, sale, receipt,  
43 possession or concealment of property described in paragraph (1)  
44 or (2) of this section, however:

45           A. No conveyance used by any person as a common  
46 carrier in the transaction of business as a common carrier is  
47 subject to forfeiture under this section unless it appears that  
48 the owner or other person in charge of the conveyance is a  
49 consenting party or privy to a violation of this article;

50           B. No conveyance is subject to forfeiture under  
51 this section by reason of any act or omission proved by the owner  
52 thereof to have been committed or omitted without his knowledge or  
53 consent; if the confiscating authority has reason to believe that  
54 the conveyance is a leased or rented conveyance, then the  
55 confiscating authority shall notify the owner of the conveyance  
56 within five (5) days of the confiscation;

57           C. A forfeiture of a conveyance encumbered by a  
58 bona fide security interest is subject to the interest of the  
59 secured party if he neither had knowledge of nor consented to the  
60 act or omission;

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

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

67           (6) All drug paraphernalia as defined in Section  
68 41-29-105(v); and

69           (7) Everything of value, including real estate,  
70 furnished, or intended to be furnished, in exchange for a  
71 controlled substance in violation of this article, all proceeds  
72 traceable to such an exchange, and all monies, negotiable  
73 instruments, businesses or business investments, securities, and  
74 other things of value used, or intended to be used, to facilitate  
75 any violation of this article. All monies, coin and currency  
76 found in close proximity to forfeitable controlled substances, to  
77 forfeitable drug manufacturing or distributing paraphernalia, or  
78 to forfeitable records of the importation, manufacture or  
79 distribution of controlled substances are presumed to be  
80 forfeitable under this paragraph; the burden of proof is upon  
81 claimants of the property to rebut this presumption.

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

87           B. Neither personal property encumbered by a bona  
88 fide security interest nor real estate encumbered by a bona fide  
89 mortgage, deed of trust, lien or encumbrance shall be forfeited  
90 under the provisions of paragraph (a)(7) of this section, to the  
91 extent of the interest of the secured party or the interest of the  
92 mortgagee, holder of a deed of trust, lien or encumbrance by  
93 reason of any act or omission established by him to have been  
94 committed or omitted without his knowledge or consent.

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

100 Seizure without process may be made if:

101           (1) The seizure is incident to an arrest or a search  
102 under a search warrant or an inspection under an administrative  
103 inspection warrant;

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

107           (3) The bureau, the board, local law enforcement  
108 officers, enforcement officers of the Mississippi Department of  
109 Transportation, or highway patrolmen, or the State Board of  
110 Pharmacy have probable cause to believe that the property is  
111 directly or indirectly dangerous to health or safety; or

112           (4) The bureau, local law enforcement officers,  
113 enforcement officers of the Mississippi Department of  
114 Transportation, highway patrolmen, the board, or the State Board  
115 of Pharmacy have probable cause to believe that the property was  
116 used or is intended to be used in violation of this article.

117           (c) Controlled substances listed in Schedule I of Section  
118 41-29-113 that are possessed, transferred, sold, or offered for  
119 sale in violation of this article are contraband and shall be  
120 seized and summarily forfeited to the state. Controlled  
121 substances listed in the said Schedule I, which are seized or come  
122 into the possession of the state, the owners of which are unknown,  
123 are contraband and shall be summarily forfeited to the state.

124           (d) Species of plants from which controlled substances in  
125 Schedules I and II of Sections 41-29-113 and 41-29-115 may be  
126 derived which have been planted or cultivated in violation of this  
127 article, or of which the owners or cultivators are unknown, or  
128 which are wild growths, may be seized and summarily forfeited to  
129 the state.

130           (e) The failure, upon demand by the bureau and/or local law  
131 enforcement officers, or their authorized agents, or highway  
132 patrolmen designated by the bureau, the board, or the State Board  
133 of Pharmacy, of the person in occupancy or in control of land or

134 premises upon which the species of plants are growing or being  
135 stored, to produce an appropriate registration, or proof that he  
136 is the holder thereof, constitutes authority for the seizure and  
137 forfeiture of the plants.

138 **SECTION 2.** Section 41-29-139, Mississippi Code of 1972, is  
139 amended as follows:

140 41-29-139. (a) Except as authorized by this article, it is  
141 unlawful for any person knowingly or intentionally:

142 (1) To sell, barter, transfer, manufacture, distribute,  
143 dispense or possess with intent to sell, barter, transfer,

144 manufacture, distribute or dispense, a controlled substance; or

145 (2) To create, sell, barter, transfer, distribute,  
146 dispense or possess with intent to create, sell, barter, transfer,  
147 distribute or dispense, a counterfeit substance.

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

151 (1) In the case of controlled substances classified in  
152 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,  
153 except thirty (30) grams or less of marihuana, and except a first  
154 offender as defined in Section 41-29-149(e) who violates  
155 subsection (a) of this section with respect to less than one (1)  
156 kilogram but more than thirty (30) grams of marihuana, such person  
157 may, upon conviction, be imprisoned for not more than thirty (30)  
158 years and shall be fined not less than Five Thousand Dollars  
159 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or  
160 both;

161 (2) In the case of a first offender who violates  
162 subsection (a) of this section with an amount less than one (1)  
163 kilogram but more than thirty (30) grams of marihuana as  
164 classified in Schedule I, as set out in Section 41-29-113, such  
165 person is guilty of a felony and upon conviction may be imprisoned

166 for not more than twenty (20) years or fined not more than Thirty  
167 Thousand Dollars (\$30,000.00), or both;

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

172 (4) In the case of controlled substances classified in  
173 Schedules III and IV, as set out in Sections 41-29-117 and  
174 41-29-119, such person may, upon conviction, be imprisoned for not  
175 more than twenty (20) years and shall be fined not less than One  
176 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty  
177 Thousand Dollars (\$250,000.00), or both; and

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

183 (c) It is unlawful for any person knowingly or intentionally  
184 to possess any controlled substance unless the substance was  
185 obtained directly from, or pursuant to, a valid prescription or  
186 order of a practitioner while acting in the course of his  
187 professional practice, or except as otherwise authorized by this  
188 article. The penalties for any violation of this subsection (c)  
189 with respect to a controlled substance classified in Schedules I,  
190 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,  
191 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be  
192 based on dosage unit as defined herein or the weight of the  
193 controlled substance as set forth herein as appropriate:

194 "Dosage unit (d.u.)" means a tablet or capsule, or in the  
195 case of a liquid solution, one (1) milliliter. In the case of  
196 lysergic acid diethylamide (LSD) the term, "dosage unit" means a  
197 stamp, square, dot, microdot, tablet or capsule of a controlled  
198 substance.

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

202 The weight set forth refers to the entire weight of any  
203 mixture or substance containing a detectable amount of the  
204 controlled substance.

205 If a mixture or substance contains more than one (1)  
206 controlled substance, the weight of the mixture or substance is  
207 assigned to the controlled substance that results in the greater  
208 punishment.

209 Any person who violates this subsection with respect to:

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

213 (A) Less than one-tenth (0.1) gram or one (1)  
214 dosage unit or less may be charged as a misdemeanor or felony. If  
215 charged by indictment as a felony: by imprisonment not less than  
216 one (1) nor more than four (4) years and a fine not more than Ten  
217 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by  
218 imprisonment for up to one (1) year and a fine not more than One  
219 Thousand Dollars (\$1,000.00).

220 (B) One-tenth (0.1) gram but less than two (2)  
221 grams or two (2) dosage units but less than ten (10) dosage units,  
222 by imprisonment for not less than two (2) years nor more than  
223 eight (8) years and a fine of not more than Fifty Thousand Dollars  
224 (\$50,000.00).

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

230 (D) Ten (10) grams but less than thirty (30) grams  
231 or twenty (20) dosage units but not more than forty (40) dosage

232 units, by imprisonment for not less than six (6) years nor more  
233 than twenty-four (24) years and a fine of not more than Five  
234 Hundred Thousand Dollars (\$500,000.00).

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

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

241 (A) Thirty (30) grams or less by a fine of not  
242 less than One Hundred Dollars (\$100.00) nor more than Two Hundred  
243 Fifty Dollars (\$250.00). The provisions of this paragraph shall  
244 be enforceable by summons, provided the offender provides proof of  
245 identity satisfactory to the arresting officer and gives written  
246 promise to appear in court satisfactory to the arresting officer,  
247 as directed by the summons. A second conviction under this  
248 section within two (2) years shall be punished by a fine of Two  
249 Hundred Fifty Dollars (\$250.00) and not less than five (5) days  
250 nor more than sixty (60) days in the county jail and mandatory  
251 participation in a drug education program, approved by the  
252 Division of Alcohol and Drug Abuse of the State Department of  
253 Mental Health, unless the court enters a written finding that such  
254 drug education program is inappropriate. A third or subsequent  
255 conviction under this section within two (2) years is a  
256 misdemeanor punishable by a fine of not less than Two Hundred  
257 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars  
258 (\$500.00) and confinement for not less than five (5) days nor more  
259 than six (6) months in the county jail. Upon a first or second  
260 conviction under this section the courts shall forward a report of  
261 such conviction to the Mississippi Bureau of Narcotics which shall  
262 make and maintain a private, nonpublic record for a period not to  
263 exceed two (2) years from the date of conviction. The private,  
264 nonpublic record shall be solely for the use of the courts in



265 determining the penalties which attach upon conviction under this  
266 section and shall not constitute a criminal record for the purpose  
267 of private or administrative inquiry and the record of each  
268 conviction shall be expunged at the end of the period of two (2)  
269 years following the date of such conviction;

270 (B) Additionally, a person who is the operator of  
271 a motor vehicle, who possesses on his person or knowingly keeps or  
272 allows to be kept in a motor vehicle within the area of the  
273 vehicle normally occupied by the driver or passengers, more than  
274 one (1) gram, but not more than thirty (30) grams, of marihuana is  
275 guilty of a misdemeanor and upon conviction may be fined not more  
276 than One Thousand Dollars (\$1,000.00) and confined for not more  
277 than ninety (90) days in the county jail. For the purposes of  
278 this subsection, such area of the vehicle shall not include the  
279 trunk of the motor vehicle or the areas not normally occupied by  
280 the driver or passengers if the vehicle is not equipped with a  
281 trunk. A utility or glove compartment shall be deemed to be  
282 within the area occupied by the driver and passengers;

283 (C) More than thirty (30) grams but less than two  
284 hundred fifty (250) grams may be fined not more than One Thousand  
285 Dollars (\$1,000.00), or confined in the county jail for not more  
286 than one (1) year, or both; or fined not more than Three Thousand  
287 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for  
288 not more than three (3) years, or both;

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

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

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

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

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

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

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

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

321 (D) Three hundred (300) grams but less than five  
322 hundred (500) grams or one thousand (1,000) dosage units but less  
323 than two thousand five hundred (2,500) dosage units, by  
324 imprisonment for not less than four (4) years nor more than  
325 sixteen (16) years and a fine of not more than Two Hundred Fifty  
326 Thousand Dollars (\$250,000.00).

327 (E) Five hundred (500) grams or more or two  
328 thousand five hundred (2,500) dosage units or more, by  
329 imprisonment for not less than six (6) years nor more than

330 twenty-four (24) years and a fine of not more than Five Hundred  
331 Thousand Dollars (\$500,000.00).

332 (d) (1) It is unlawful for a person who is not authorized  
333 by the State Board of Medical Licensure, State Board of Pharmacy,  
334 or other lawful authority to use, or to possess with intent to  
335 use, paraphernalia to plant, propagate, cultivate, grow, harvest,  
336 manufacture, compound, convert, produce, process, prepare, test,  
337 analyze, pack, repack, store, contain, conceal, inject, ingest,  
338 inhale or otherwise introduce into the human body a controlled  
339 substance in violation of the Uniform Controlled Substances Law.  
340 Any person who violates this subsection is guilty of a misdemeanor  
341 and upon conviction may be confined in the county jail for not  
342 more than six (6) months, or fined not more than Five Hundred  
343 Dollars (\$500.00), or both; however, no person shall be charged  
344 with a violation of this subsection when such person is also  
345 charged with the possession of one (1) ounce or less of marihuana  
346 under subsection (c)(2)(A) of this section.

347 (2) It is unlawful for any person to deliver, sell,  
348 possess with intent to deliver or sell, or manufacture with intent  
349 to deliver or sell, paraphernalia, knowing, or under circumstances  
350 where one reasonably should know, that it will be used to plant,  
351 propagate, cultivate, grow, harvest, manufacture, compound,  
352 convert, produce, process, prepare, test, analyze, pack, repack,  
353 store, contain, conceal, inject, ingest, inhale, or otherwise  
354 introduce into the human body a controlled substance in violation  
355 of the Uniform Controlled Substances Law. Any person who violates  
356 this subsection is guilty of a misdemeanor and upon conviction may  
357 be confined in the county jail for not more than six (6) months,  
358 or fined not more than Five Hundred Dollars (\$500.00), or both.

359 (3) Any person eighteen (18) years of age or over who  
360 violates subsection (d)(2) of this section by delivering or  
361 selling paraphernalia to a person under eighteen (18) years of age  
362 who is at least three (3) years his junior is guilty of a

363 misdemeanor and upon conviction may be confined in the county jail  
364 for not more than one (1) year, or fined not more than One  
365 Thousand Dollars (\$1,000.00), or both.

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

375 (e) It shall be unlawful for any physician practicing  
376 medicine in this state to prescribe, dispense or administer any  
377 amphetamine or amphetamine-like anorectics and/or central nervous  
378 system stimulants classified in Schedule II, pursuant to Section  
379 41-29-115, for the exclusive treatment of obesity, weight control  
380 or weight loss. Any person who violates this subsection, upon  
381 conviction, is guilty of a misdemeanor and may be confined for a  
382 period not to exceed six (6) months, or fined not more than One  
383 Thousand Dollars (\$1,000.00), or both.

384 (f) Except as otherwise authorized in this article, any  
385 person twenty-one (21) years of age or older who knowingly sells,  
386 barter, transfers, manufactures, distributes or dispenses during  
387 any twelve (12) consecutive month period: (i) ten (10) pounds or  
388 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)  
389 two (2) or more ounces of cocaine or of any mixture containing  
390 cocaine as described in Section 41-29-105(s), Mississippi Code of  
391 1972; \* \* \* (iv) two (2) or more ounces of methamphetamine; or (v)  
392 one hundred (100) or more dosage units of morphine, Demerol, \* \* \*  
393 Dilaudid, oxycodone hydrochloride or a derivative thereof, or  
394 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a  
395 felony and, upon conviction thereof, shall be sentenced to life

396 imprisonment and such sentence shall not be reduced or suspended  
397 nor shall such person be eligible for probation or parole, the  
398 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,  
399 Mississippi Code of 1972, to the contrary notwithstanding. The  
400 provisions of this subsection shall not apply to any person who  
401 furnishes information and assistance to the bureau or its designee  
402 which, in the opinion of the trial judge objectively should or  
403 would have aided in the arrest or prosecution of others who  
404 violate this subsection. The accused shall have adequate  
405 opportunity to develop and make a record of all information and  
406 assistance so furnished.

407 (g) (1) Any person trafficking in controlled substances  
408 shall be guilty of a felony and upon conviction shall be  
409 imprisoned for a term of thirty (30) years and such sentence shall  
410 not be reduced or suspended nor shall such person be eligible for  
411 probation or parole, the provisions of Sections 41-29-149,  
412 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the  
413 contrary notwithstanding and shall be fined not less than Five  
414 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
415 (\$1,000,000.00).

416 (2) "Trafficking in controlled substances" as used  
417 herein means to engage in three (3) or more component offenses  
418 within any twelve (12) consecutive month period where at least two  
419 (2) of the component offenses occurred in different counties. A  
420 component offense is any act which would constitute a violation of  
421 subsection (a) of this section. Prior convictions shall not be  
422 used as component offenses to establish the charge of trafficking  
423 in controlled substances.

424 (3) The charge of trafficking in controlled substances  
425 shall be set forth in one (1) count of an indictment with each of  
426 the component offenses alleged therein and it may be charged and  
427 tried in any county where a component offense occurred. An  
428 indictment for trafficking in controlled substances may also be

429 returned by the State Grand Jury of Mississippi provided at least  
430 two (2) of the component offenses occurred in different circuit  
431 court districts.

432 **SECTION 3.** Section 41-29-181, Mississippi Code of 1972, is  
433 amended as follows:

434 41-29-181. (1) Regarding all controlled substances, raw  
435 materials and paraphernalia which have been forfeited, the circuit  
436 court shall by its order direct the Bureau of Narcotics to:

437 (a) Retain the property for its official purposes;

438 (b) Deliver the property to a government agency or  
439 department for official purposes;

440 (c) Deliver the property to a person authorized by the  
441 court to receive it; or

442 (d) Destroy the property that is not otherwise  
443 disposed, pursuant to the provisions of Section 41-29-154.

444 (2) All other property, real or personal, which is forfeited  
445 under this article, except as otherwise provided in Section  
446 41-29-185, and except as provided in subsections (3), (7) and (8)  
447 of this section, shall be liquidated and, after deduction of court  
448 costs and the expenses of liquidation, the proceeds shall be  
449 divided and deposited as follows:

450 (a) In the event only one (1) law enforcement agency  
451 participates in the underlying criminal case out of which the  
452 forfeiture arises, twenty percent (20%) of the proceeds shall be  
453 forwarded to the State Treasurer and deposited in the General Fund  
454 of the state and eighty percent (80%) of the proceeds shall be  
455 deposited and credited to the budget of the participating law  
456 enforcement agency.

457 (b) In the event more than one (1) law enforcement  
458 agency participates in the underlying criminal case out of which  
459 the forfeiture arises, eighty percent (80%) of the proceeds shall  
460 be deposited and credited to the budget of the law enforcement  
461 agency whose officers initiated the criminal case \* \* \* and twenty

462 percent (20%) shall be divided equitably between or among the  
463 other participating law enforcement agencies, and shall be  
464 deposited and credited to the budgets of the participating law  
465 enforcement agencies. In the event that the other participating  
466 law enforcement agencies cannot agree on the division of their  
467 twenty percent (20%), a petition shall be filed by any one of them  
468 in the court in which the civil forfeiture case is brought and the  
469 court shall make an equitable division.

470 If the criminal case is initiated by an officer of the  
471 Mississippi Bureau of Narcotics and more than one (1) law  
472 enforcement agency participates in the underlying criminal case  
473 out of which the forfeiture arises, \* \* \* eighty percent (80%) of  
474 the proceeds shall be deposited and credited to the budget of the  
475 Mississippi Bureau of Narcotics and twenty percent (20%) shall be  
476 divided equitably between or among the other participating law  
477 enforcement agencies and shall be deposited and credited to the  
478 budgets of the participating law enforcement agencies. In the  
479 event that the other participating law enforcement agencies cannot  
480 agree on the division of their twenty percent (20%), a petition  
481 shall be filed by any one of them in the court in which the civil  
482 forfeiture case is brought and the court shall make an equitable  
483 division.

484 (3) All money which is forfeited under this article, except  
485 as otherwise provided by Section 41-29-185, shall be divided,  
486 deposited and credited in the same manner as set forth in  
487 subsection (2) of this section.

488 (4) All property forfeited, deposited and credited to the  
489 Mississippi Bureau of Narcotics under this article shall be  
490 forwarded to the State Treasurer and deposited in a special fund  
491 for use by the Mississippi Bureau of Narcotics upon appropriation  
492 by the Legislature.

493 (5) All real estate which is forfeited under the provisions  
494 of this article shall be sold to the highest and best bidder at a

495 public auction for cash, such auction to be conducted by the chief  
496 law enforcement officer of the initiating law enforcement agency,  
497 or his designee, at such place, on such notice and in accordance  
498 with the same procedure, as far as practicable, as is required in  
499 the case of sales of land under execution at law. The proceeds of  
500 such sale shall first be applied to the cost and expense in  
501 administering and conducting such sale, then to the satisfaction  
502 of all mortgages, deeds of trust, liens and encumbrances of record  
503 on such property. The remaining proceeds shall be divided,  
504 forwarded and deposited in the same manner set out in subsection  
505 (2) of this section.

506 (6) All other property that has been forfeited shall, except  
507 as otherwise provided, be sold at a public auction for cash by the  
508 chief law enforcement officer of the initiating law enforcement  
509 agency, or his designee, to the highest and best bidder after  
510 advertising the sale for at least once each week for three (3)  
511 consecutive weeks, the last notice to appear not more than ten  
512 (10) days nor less than five (5) days prior to such sale, in a  
513 newspaper having a general circulation in the jurisdiction in  
514 which said law enforcement agency is located. Such notices shall  
515 contain a description of the property to be sold and a statement  
516 of the time and place of sale. It shall not be necessary to the  
517 validity of such sale either to have the property present at the  
518 place of sale or to have the name of the owner thereof stated in  
519 such notice. The proceeds of the sale shall be disposed of as  
520 follows:

521 (a) To any bona fide lienholder, secured party, or  
522 other party holding an interest in the property in the nature of a  
523 security interest, to the extent of his interest; and

524 (b) The balance, if any, remaining after deduction of  
525 all storage, court costs and expenses of liquidation shall be  
526 divided, forwarded and deposited in the same manner set out in  
527 subsection (2) of this section.



528           (7) (a) Any county or municipal law enforcement agency may  
529 maintain, repair, use and operate for official purposes all  
530 property, other than real property, money or such property that is  
531 described in subsection (1) of this section, that has been  
532 forfeited to the agency if it is free from any interest of a bona  
533 fide lienholder, secured party or other party who holds an  
534 interest in the property in the nature of a security interest.  
535 Such county or municipal law enforcement agency may purchase the  
536 interest of a bona fide lienholder, secured party or other party  
537 who holds an interest so that the property can be released for its  
538 use. If the property is a motor vehicle susceptible of titling  
539 under the Mississippi Motor Vehicle Title Law, the law enforcement  
540 agency shall be deemed to be the purchaser, and the certificate of  
541 title shall be issued to it as required by subsection (9) of this  
542 section.

543           (b) (i) If a vehicle is forfeited to or transferred to  
544 a sheriff's department, then the sheriff may transfer the vehicle  
545 to the county for official or governmental use as the board of  
546 supervisors may direct.

547           (ii) If a vehicle is forfeited to or transferred  
548 to a police department, then the police chief may transfer the  
549 vehicle to the municipality for official or governmental use as  
550 the governing authority of the municipality may direct.

551           (c) If a motor vehicle forfeited to a county or  
552 municipal law enforcement agency becomes obsolete or is no longer  
553 needed for official or governmental purposes, it may be disposed  
554 of in accordance with Section 19-7-5 or in the manner provided by  
555 law for disposing of municipal property.

556           (8) The Mississippi Bureau of Narcotics may maintain,  
557 repair, use and operate for official purposes all property, other  
558 than real property, money or such property as is described in  
559 subsection (1) of this section, that has been forfeited to the  
560 bureau if it is free from any interest of a bona fide lienholder,

561 secured party, or other party who holds an interest in the  
562 property in the nature of a security interest. In such case, the  
563 bureau may purchase the interest of a bona fide lienholder,  
564 secured party, or other party who holds an interest so that such  
565 property can be released for use by the bureau.

566 The bureau may maintain, repair, use and operate such  
567 property with money appropriated to the bureau for current  
568 operations. If the property is a motor vehicle susceptible of  
569 titling under the Mississippi Motor Vehicle Title Law, the bureau  
570 is deemed to be the purchaser and the certificate of title shall  
571 be issued to it as required by subsection (9) of this section.

572 (9) The State Tax Commission shall issue a certificate of  
573 title to any person who purchases property under the provisions of  
574 this section when a certificate of title is required under the  
575 laws of this state.

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

578 41-29-313. (1) (a) Except as authorized in this section,  
579 it is unlawful for any person to knowingly or intentionally:

580 (i) Purchase, possess, transfer, manufacture,  
581 attempt to manufacture or distribute any two (2) or more of the  
582 listed precursor chemicals or drugs in any amount with the intent  
583 to unlawfully manufacture a controlled substance;

584 (ii) Purchase, possess, transfer, manufacture,  
585 attempt to manufacture or distribute any two (2) or more of the  
586 listed precursor chemicals or drugs in any amount, knowing, or  
587 under circumstances where one reasonably should know, that the  
588 listed precursor chemical or drug will be used to unlawfully  
589 manufacture a controlled substance;

590 (b) The term "precursor drug or chemical" means a drug  
591 or chemical that, in addition to legitimate uses, may be used in  
592 manufacturing a controlled substance in violation of this chapter.  
593 The term includes any salt, optical isomer or salt of an optical

594 isomer, whenever the existence of a salt, optical isomer or salt  
595 of optical isomer is possible within the specific chemical  
596 designation. The chemicals or drugs listed in this section are  
597 included by whatever official, common, usual, chemical or trade  
598 name designated. A "precursor drug or chemical" includes, but is  
599 not limited to, the following:

- 600 (i) Ether;
- 601 (ii) Anhydrous ammonia;
- 602 (iii) Ammonium nitrate;
- 603 (iv) Pseudoephedrine;
- 604 (v) Ephedrine;
- 605 (vi) Denatured alcohol (Ethanol);
- 606 (vii) Lithium;
- 607 (viii) Freon;
- 608 (ix) Hydrochloric acid;
- 609 (x) Hydriodic acid;
- 610 (xi) Red phosphorous;
- 611 (xii) Iodine;
- 612 (xiii) Sodium metal;
- 613 (xiv) Sodium hydroxide;
- 614 (xv) Muriatic acid;
- 615 (xvi) Sulfuric acid;
- 616 (xvii) Hydrogen chloride gas;
- 617 (xviii) Potassium;
- 618 (xix) Methanol;
- 619 (xx) Isopropyl alcohol;
- 620 (xxi) Hydrogen peroxide;
- 621 (xxii) Hexanes;
- 622 (xxiii) Heptanes;
- 623 (xxiv) Acetone;
- 624 (xxv) Toluene;
- 625 (xxvi) Xylenes.

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

631           (2) (a) It is unlawful for any person to knowingly or  
632 intentionally steal or unlawfully take or carry away any amount of  
633 anhydrous ammonia or to break, cut, or in any manner damage the  
634 valve or locking mechanism on an anhydrous ammonia tank with the  
635 intent to steal or unlawfully take or carry away anhydrous  
636 ammonia.

637           (b) (i) It is unlawful for any person to purchase,  
638 possess, transfer or distribute any amount of anhydrous ammonia,  
639 knowing, or under circumstances where one reasonably should know,  
640 that the anhydrous ammonia will be used to unlawfully manufacture  
641 a controlled substance.

642                       (ii) The possession of any amount of anhydrous  
643 ammonia in a container unauthorized for containment of anhydrous  
644 ammonia pursuant to Section 75-57-9 shall be prima facie evidence  
645 of intent to use the anhydrous ammonia to unlawfully manufacture a  
646 controlled substance.

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

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

659 \* \* \*

660 (3) Nothing in this section shall preclude any farmer from  
661 storing or using any of the listed precursor drugs or chemicals  
662 listed in this section in the normal pursuit of farming  
663 operations.

664 (4) Nothing in this section shall preclude any wholesaler,  
665 retailer or pharmacist from possessing or selling the listed  
666 precursor drugs or chemicals in the normal pursuit of business.

667 (5) Any person who violates the provisions of this section  
668 with children under the age of eighteen (18) years present may be  
669 subject to a term of imprisonment or a fine, or both, of twice  
670 that provided in this section.

671 (6) Any person who violates the provisions of this section  
672 when the offense occurs in any hotel or apartment building or  
673 complex may be subject to a term of imprisonment or a fine, or  
674 both, of twice that provided in this section. For the purposes of  
675 this subsection (6), the following terms shall have the meanings  
676 ascribed to them:

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

681 (b) "Apartment building" means any building \* \* \*  
682 having four (4) or more dwelling units, including, without  
683 limitation, a condominium building.

684 (7) Any person who violates the provisions of this section  
685 who has in his possession any firearm, either at the time of the  
686 commission of the offense or at the time any arrest is made, may  
687 be subject to a term of imprisonment or a fine, or both, of twice  
688 that provided in this section.

689 (8) Any person who violates the provisions of this section  
690 upon any premises upon which any booby trap has been installed or  
691 rigged may be subject to a term of imprisonment or a fine, or

692 both, of twice that provided in this section. For the purposes of  
693 this subsection, the term "booby trap" means any concealed or  
694 camouflaged device designed to cause bodily injury when triggered  
695 by any action of a person making contact with the device. The  
696 term includes guns, ammunition or explosive devices attached to  
697 trip wires or other triggering mechanisms, sharpened stakes,  
698 nails, spikes, electrical devices, lines or wires with hooks  
699 attached, and devices designed for the production of toxic fumes  
700 or gases.

701       **SECTION 5.** Section 49-17-603, Mississippi Code of 1972, is  
702 amended as follows:

703       49-17-603. (1) The definitions used in this section are  
704 expressly limited to this section only, and the inclusion of  
705 indoor air in the definition of "waste" does not expand the  
706 jurisdiction of the Commission on Environmental Quality or the  
707 Department of Environmental Quality to include the regulation of  
708 indoor air:

709           (a) "By-product" means a substance produced without a  
710 separate intent during the manufacture, processing, use or  
711 disposal of another substance or mixture; and

712           (b) "Waste" means all liquid, gaseous, solid,  
713 radioactive or other substances that may pollute or tend to  
714 pollute any waters of the state or soil within the state, and any  
715 particulate matter, dust, fumes, gas, mist, smoke or vapor, or any  
716 combination thereof, that may pollute or tend to pollute air in  
717 the state, including indoor air.

718       (2) The generation of waste in any quantity by any person  
719 caused by the mixing, combining, processing or cooking together of  
720 two (2) or more precursor drugs or chemicals listed in Section  
721 41-29-313 \* \* \* is unlawful unless:

722           (a) The person has first obtained a generator  
723 identification number pursuant to the Resource Conservation and

724 Recovery Act, 42 USCS Section 6901 et seq., and the regulations  
725 promulgated thereunder; or

726 (b) The person has first obtained a treatment, storage  
727 or disposal permit pursuant to the Resource Conservation and  
728 Recovery Act, 42 USCS Section 6901 et seq., and the regulations  
729 promulgated thereunder; or

730 (c) The process that generated the waste also, as part  
731 of the same process:

732 (i) Created a product that is not illegal to  
733 possess pursuant to Section 41-29-139(c);

734 (ii) Created a by-product that is not illegal to  
735 possess pursuant to Section 41-29-139(c), while not at the same  
736 time producing a controlled substance; or

737 (iii) Was a process of servicing, maintaining or  
738 cleaning an item or product that is not illegal to possess  
739 pursuant to Section 41-29-139(c).

740 (3) Any person who violates this section, upon conviction,  
741 is guilty of a felony and may be imprisoned for a period not to  
742 exceed thirty (30) years and shall be fined not less than Five  
743 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
744 (\$1,000,000.00), or may be both fined and imprisoned.

745 (4) Nothing in this section shall preclude any farmer or  
746 manufacturer from storing or using any of the listed precursor  
747 drugs or chemicals listed in Section 41-29-313 in the normal  
748 pursuit of farming or manufacturing operations.

749 (5) Nothing in this section shall preclude any wholesaler,  
750 retailer or pharmacist from possessing or selling precursor drugs  
751 or chemicals listed in Section 41-29-313 in the normal pursuit of  
752 business.

753 (6) Except as may be otherwise provided, a property owner or  
754 occupant of land shall not be criminally or civilly liable for the  
755 generation of waste caused by the criminal acts of persons other  
756 than the property owner or occupant of such land if the property

757 owner or occupant did not have prior knowledge of the criminal  
758 activity.

759 **SECTION 6.** Section 41-29-501, Mississippi Code of 1972, is  
760 amended as follows:

761 41-29-501. As used in this article, the following terms  
762 shall have the meaning ascribed to them herein unless the context  
763 requires otherwise:

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

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

770 (c) "Contents," when used with respect to a wire, oral  
771 or other communication, includes any information concerning the  
772 identity of the parties to the communication or the existence,  
773 substance, purport or meaning of that communication.

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

777 (e) "Director" means the Director of the Bureau of  
778 Narcotics or, if the director is absent or unable to serve, the  
779 Assistant Director of the Bureau of Narcotics.

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

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

786 (h) "Investigative or law enforcement officer" means an  
787 officer of this state or of a political subdivision of this state  
788 who is empowered by law to conduct investigations of, or to make  
789 arrests for, offenses enumerated in Section 41-29-505, \* \* \* an



790 attorney authorized by law to prosecute or participate in the  
791 prosecution of such offenses, or a federal law enforcement officer  
792 designated by the director.

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

795 (j) "Oral communication" means an oral communication  
796 uttered by a person exhibiting an expectation that the  
797 communication is not subject to interception under circumstances  
798 justifying that expectation.

799 (k) "Other communication" means any transfer of an  
800 electronic or other signal, including fax signals, computer  
801 generated signals, other similar signals, or any scrambled or  
802 encrypted signal transferred via wire, radio, electromagnetic,  
803 photoelectric or photooptical system from one party to another in  
804 which the involved parties may reasonably expect the communication  
805 to be private.

806 (l) "Prosecutor" means a district attorney with  
807 jurisdiction in the county in which the facility or place where  
808 the communication to be intercepted is located or a legal  
809 assistant to the district attorney if designated in writing by the  
810 district attorney on a case-by-case basis.

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

815 (n) "Wire communication" means a communication made in  
816 whole or in part through the use of facilities for the  
817 transmission of communications by the aid of wire, cable or other  
818 like connection between the point of origin and the point of  
819 reception furnished or operated by a person engaged as a common  
820 carrier in providing or operating the facilities for the  
821 transmission of communications and includes cordless telephones,  
822 voice pagers, cellular telephones, any mobile telephone, or any

823 communication conducted through the facilities of a provider of  
824 communication services.

825         SECTION 7. (1) It is an affirmative defense to a criminal  
826 charge that the person was entrapped. To claim entrapment, the  
827 person must admit by the person's testimony or other evidence the  
828 substantial elements of the offense charged.

829         (2) A person who asserts an entrapment defense has the  
830 burden of proving each of the following by clear and convincing  
831 evidence:

832                 (a) The idea of committing the offense was initiated by  
833 law enforcement officers or their agents rather than by the  
834 person.

835                 (b) The law enforcement officers or their agents urged  
836 and induced the person to commit the offense.

837                 (c) The person was not predisposed to commit the type  
838 of offense charged before the law enforcement officers or their  
839 agents urged and induced the person to commit the offense.

840         (3) A person does not establish entrapment if the person was  
841 predisposed to commit the offense and the law enforcement officers  
842 or their agents merely provided the person with an opportunity to  
843 commit the offense. It is not entrapment for law enforcement  
844 officers or their agents merely to use a ruse or to conceal their  
845 identity, nor is it entrapment for law enforcement officers or  
846 their agents to supply, furnish or sell contraband to an  
847 individual where:

848                 (a) There is a reasonable indication, based on  
849 information developed through informants or other means, that the  
850 subject is engaging, has engaged, or is likely to engage in  
851 illegal activity of a similar type; or

852                 (b) The opportunity for illegal activity has been  
853 structured so that there is reason for believing that persons  
854 drawn to the opportunity, or brought to it, are predisposed to  
855 engage in the contemplated illegal activity.

856 (4) The issue of entrapment shall be tried by the trier of  
857 fact. The conduct of law enforcement officers and their agents  
858 may be considered in determining if a person has proven  
859 entrapment.

860 **SECTION 8.** Section 97-5-39, Mississippi Code of 1972, is  
861 amended as follows:

862 97-5-39. (1) (a) Any parent, legal guardian or other  
863 person who willfully deprives a child of necessary food, clothing,  
864 shelter, health care or supervision appropriate to the child's  
865 age, when the parent, guardian or other person is reasonably able  
866 to make the necessary provisions and the deprivation harms or is  
867 likely to substantially harm the child's physical, mental or  
868 emotional health is guilty of neglect of a child and may be  
869 sentenced to imprisonment for not more than one (1) year or to  
870 payment of a fine of not more than Three Thousand Dollars  
871 (\$3,000.00), or both. If the deprivation results in substantial  
872 harm to the child's physical, mental or emotional health, the  
873 person may be sentenced to imprisonment for not more than five (5)  
874 years or to payment of a fine of not more than Ten Thousand  
875 Dollars (\$10,000.00), or both.

876 (b) A parent, legal guardian or other person who  
877 knowingly permits the continuing physical or sexual abuse of a  
878 child is guilty of neglect of a child and may be sentenced to  
879 imprisonment for not more than three (3) years or to payment of a  
880 fine of not more than Three Thousand Dollars (\$3,000.00), or both.

881 (2) (a) A parent, legal guardian or caretaker who endangers  
882 the child's person or health by:

883 (i) Intentionally or recklessly causing or  
884 permitting a child to be placed in a situation likely to  
885 substantially harm the child's physical, mental or emotional  
886 health or cause the child's death; or

887 (ii) Knowingly causing or permitting the child to  
888 be present where any person is selling, manufacturing, possessing

889 immediate precursors or chemical substances with intent to  
890 manufacture, sell or possess a controlled substance, as defined in  
891 Section 41-29-139 or 41-29-313, is guilty of child endangerment  
892 and may be sentenced to imprisonment for not more than three (3)  
893 years or to payment of a fine of not more than Three Thousand  
894 Dollars (\$3,000.00), or both.

895 (b) If the endangerment results in substantial harm to  
896 the child's physical, mental or emotional health, the person may  
897 be sentenced to imprisonment for not more than seven (7) years or  
898 to payment of a fine of not more than Ten Thousand Dollars  
899 (\$10,000.00), or both.

900 (c) This subsection (2) does not prevent a parent,  
901 legal guardian or other person from causing or permitting a child  
902 to engage in activities that are appropriate to the child's age,  
903 stage of development and experience.

904 (3) Nothing contained in this section shall prevent  
905 proceedings against such parent, guardian or other person under  
906 any statute of this state or any municipal ordinance defining any  
907 act as a crime or misdemeanor. Nothing in the provisions of this  
908 section shall preclude any person from having a right to trial by  
909 jury when charged with having violated the provisions of this  
910 section.

911 (4) After consultation with the Department of Human  
912 Services, a regional mental health center or an appropriate  
913 professional person, a judge may suspend imposition or execution  
914 of a sentence provided in subsections (1) and (2) of this section  
915 and in lieu thereof require treatment over a specified period of  
916 time at any approved public or private treatment facility.

917 (5) In any proceeding resulting from a report made pursuant  
918 to Section 43-21-353 of the Youth Court Law, the testimony of the  
919 physician making the said report regarding the child's injuries or  
920 condition or cause thereof shall not be excluded on the ground  
921 that such physician's testimony violates the physician-patient

922 privilege or similar privilege or rule against disclosure. The  
923 physician's report shall not be considered as evidence unless  
924 introduced as an exhibit to his testimony.

925 (6) Any criminal prosecution arising from a violation of  
926 this section shall be tried in the circuit, county, justice or  
927 municipal court having jurisdiction; provided, however, that  
928 nothing herein shall abridge or dilute the contempt powers of the  
929 youth court.

930 **SECTION 9.** This act shall take effect and be in force from  
931 and after July 1, 2005.