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To: Judiciary, Division B

SENATE BILL NO. 2235
(As Sent to Governor)

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, AS AMENDED BY HOUSE BILL 607, 2005
9 REGULAR SESSION, TO EXPAND THE LIST OF POSSIBLE PRECURSOR DRUGS
10 AND CHEMICALS POSSESSED IN VIOLATION OF LAW FOR THE MANUFACTURE OF
11 METHAMPHETAMINE, TO MAKE MANUFACTURE OF THE PRECURSORS THEMSELVES
12 UNLAWFUL, TO CRIMINALIZE DAMAGE TO AN ANHYDROUS AMMONIA TANK
13 VALVE, AND TO PROVIDE AN ENHANCED PENALTY FOR VIOLATION OF THE
14 METHAMPHETAMINE PRECURSOR LAW WHEN IN POSSESSION OF A FIREARM OR
15 ON BOOBY TRAPPED PREMISES; TO AMEND SECTION 49-17-603, MISSISSIPPI
16 CODE OF 1972, TO CONFORM INTERNAL REFERENCES; TO AMEND SECTION
17 41-29-501, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
18 "INVESTIGATIVE OR LAW ENFORCEMENT OFFICER" UNDER THE WIRETAPPING
19 LAW; TO SPECIFY THE ELEMENTS OF A DEFENSE OF ENTRAPMENT AND
20 RESTRICT THE AVAILABILITY OF THE DEFENSE; AND FOR RELATED
21 PURPOSES.

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

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

25 41-29-153. (a) The following are subject to forfeiture:

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

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

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

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

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

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

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

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

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

64 (6) All drug paraphernalia as defined in Section
65 41-29-105(v); and

66 (7) Everything of value, including real estate,
67 furnished, or intended to be furnished, in exchange for a
68 controlled substance in violation of this article, all proceeds
69 traceable to such an exchange, and all monies, negotiable

70 instruments, businesses or business investments, securities, and
71 other things of value used, or intended to be used, to facilitate
72 any violation of this article. All monies, coin and currency
73 found in close proximity to forfeitable controlled substances, to
74 forfeitable drug manufacturing or distributing paraphernalia, or
75 to forfeitable records of the importation, manufacture or
76 distribution of controlled substances are presumed to be
77 forfeitable under this paragraph; the burden of proof is upon
78 claimants of the property to rebut this presumption.

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

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

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

97 Seizure without process may be made if:

98 (1) The seizure is incident to an arrest or a search
99 under a search warrant or an inspection under an administrative
100 inspection warrant;

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

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

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

114 (c) Controlled substances listed in Schedule I of Section
115 41-29-113 that are possessed, transferred, sold, or offered for
116 sale in violation of this article are contraband and shall be
117 seized and summarily forfeited to the state. Controlled
118 substances listed in the said Schedule I, which are seized or come
119 into the possession of the state, the owners of which are unknown,
120 are contraband and shall be summarily forfeited to the state.

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

127 (e) The failure, upon demand by the bureau and/or local law
128 enforcement officers, or their authorized agents, or highway
129 patrolmen designated by the bureau, the board, or the State Board
130 of Pharmacy, of the person in occupancy or in control of land or
131 premises upon which the species of plants are growing or being
132 stored, to produce an appropriate registration, or proof that he

133 is the holder thereof, constitutes authority for the seizure and
134 forfeiture of the plants.

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

137 41-29-139. (a) Except as authorized by this article, it is
138 unlawful for any person knowingly or intentionally:

139 (1) To sell, barter, transfer, manufacture, distribute,
140 dispense or possess with intent to sell, barter, transfer,
141 manufacture, distribute or dispense, a controlled substance; or

142 (2) To create, sell, barter, transfer, distribute,
143 dispense or possess with intent to create, sell, barter, transfer,
144 distribute or dispense, a counterfeit substance.

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

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

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

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

169 (4) In the case of controlled substances classified in
170 Schedules III and IV, as set out in Sections 41-29-117 and
171 41-29-119, such person may, upon conviction, be imprisoned for not
172 more than twenty (20) years and shall be fined not less than One
173 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
174 Thousand Dollars (\$250,000.00), or both; and

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

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

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

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

199 The weight set forth refers to the entire weight of any
200 mixture or substance containing a detectable amount of the
201 controlled substance.

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

206 Any person who violates this subsection with respect to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

431 41-29-181. (1) Regarding all controlled substances, raw
432 materials and paraphernalia which have been forfeited, the circuit
433 court shall by its order direct the Bureau of Narcotics to:

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

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

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

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

441 (2) All other property, real or personal, which is forfeited
442 under this article, except as otherwise provided in Section
443 41-29-185, and except as provided in subsections (3), (7) and (8)
444 of this section, shall be liquidated and, after deduction of court
445 costs and the expenses of liquidation, the proceeds shall be
446 divided and deposited as follows:

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

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

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

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

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

483 (4) All property forfeited, deposited and credited to the
484 Mississippi Bureau of Narcotics under this article shall be
485 forwarded to the State Treasurer and deposited in a special fund
486 for use by the Mississippi Bureau of Narcotics upon appropriation
487 by the Legislature.

488 (5) All real estate which is forfeited under the provisions
489 of this article shall be sold to the highest and best bidder at a
490 public auction for cash, such auction to be conducted by the chief
491 law enforcement officer of the initiating law enforcement agency,

492 or his designee, at such place, on such notice and in accordance
493 with the same procedure, as far as practicable, as is required in
494 the case of sales of land under execution at law. The proceeds of
495 such sale shall first be applied to the cost and expense in
496 administering and conducting such sale, then to the satisfaction
497 of all mortgages, deeds of trust, liens and encumbrances of record
498 on such property. The remaining proceeds shall be divided,
499 forwarded and deposited in the same manner set out in subsection
500 (2) of this section.

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

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

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

523 (7) (a) Any county or municipal law enforcement agency may
524 maintain, repair, use and operate for official purposes all

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

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

542 (ii) If a vehicle is forfeited to or transferred
543 to a police department, then the police chief may transfer the
544 vehicle to the municipality for official or governmental use as
545 the governing authority of the municipality may direct.

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

551 (8) The Mississippi Bureau of Narcotics may maintain,
552 repair, use and operate for official purposes all property, other
553 than real property, money or such property as is described in
554 subsection (1) of this section, that has been forfeited to the
555 bureau if it is free from any interest of a bona fide lienholder,
556 secured party, or other party who holds an interest in the
557 property in the nature of a security interest. In such case, the

558 bureau may purchase the interest of a bona fide lienholder,
559 secured party, or other party who holds an interest so that such
560 property can be released for use by the bureau.

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

567 (9) The State Tax Commission shall issue a certificate of
568 title to any person who purchases property under the provisions of
569 this section when a certificate of title is required under the
570 laws of this state.

571 **SECTION 4.** Section 41-29-313, Mississippi Code of 1972, as
572 amended by House Bill 607, 2005 Regular Session, is amended as
573 follows:

574 41-29-313. (1) (a) Except as authorized in this section
575 and in Section 1 of House Bill 607, 2005 Regular Session, it is
576 unlawful for any person to knowingly or intentionally:

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

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

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

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

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

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

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

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

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

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

651 (ii) Except as provided in this subparagraph,
652 possession of one or more products containing more than
653 twenty-four (24) grams of ephedrine or pseudoephedrine shall
654 constitute a rebuttable presumption of intent to use the product
655 as a precursor to methamphetamine or another controlled substance.

656 The rebuttable presumption established by this subparagraph shall
657 not apply to the following persons who are lawfully possessing the
658 identified drug products in the course of legitimate business:

659 1. A retail distributor of the drug products
660 described in this subparagraph possessing a valid business license
661 or wholesaler;

662 2. A wholesale drug distributor, or its
663 agents, licensed by the Mississippi State Board of Pharmacy;

664 3. A manufacturer of drug products described
665 in this subparagraph, or its agents, licensed by the Mississippi
666 State Board of Pharmacy;

667 4. A pharmacist licensed by the Mississippi
668 State Board of Pharmacy; or

669 5. A licensed health care professional
670 possessing the drug products described in this subparagraph (ii)
671 in the course of carrying out his profession.

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

677 * * *

678 (3) Nothing in this section shall preclude any farmer from
679 storing or using any of the listed precursor drugs or chemicals
680 listed in this section in the normal pursuit of farming
681 operations.

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

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

689 (6) Any person who violates the provisions of this section
690 when the offense occurs in any hotel or apartment building or
691 complex 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 (6), the following terms shall have the meanings
694 ascribed to them:

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

699 (b) "Apartment building" means any building * * *
700 having four (4) or more dwelling units, including, without
701 limitation, a condominium building.

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

707 (8) Any person who violates the provisions of this section
708 upon any premises upon which any booby trap has been installed or
709 rigged may be subject to a term of imprisonment or a fine, or
710 both, of twice that provided in this section. For the purposes of
711 this subsection, the term "booby trap" means any concealed or
712 camouflaged device designed to cause bodily injury when triggered
713 by any action of a person making contact with the device. The
714 term includes guns, ammunition or explosive devices attached to
715 trip wires or other triggering mechanisms, sharpened stakes,
716 nails, spikes, electrical devices, lines or wires with hooks
717 attached, and devices designed for the production of toxic fumes
718 or gases.

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

721 49-17-603. (1) The definitions used in this section are
722 expressly limited to this section only, and the inclusion of
723 indoor air in the definition of "waste" does not expand the
724 jurisdiction of the Commission on Environmental Quality or the
725 Department of Environmental Quality to include the regulation of
726 indoor air:

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

730 (b) "Waste" means all liquid, gaseous, solid,
731 radioactive or other substances that may pollute or tend to
732 pollute any waters of the state or soil within the state, and any
733 particulate matter, dust, fumes, gas, mist, smoke or vapor, or any
734 combination thereof, that may pollute or tend to pollute air in
735 the state, including indoor air.

736 (2) The generation of waste in any quantity by any person
737 caused by the mixing, combining, processing or cooking together of
738 two (2) or more precursor drugs or chemicals listed in Section
739 41-29-313 * * * is unlawful unless:

740 (a) The person has first obtained a generator
741 identification number pursuant to the Resource Conservation and
742 Recovery Act, 42 USCS Section 6901 et seq., and the regulations
743 promulgated thereunder; or

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

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

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

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

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

758 (3) Any person who violates this section, upon conviction,
759 is guilty of a felony and may be imprisoned for a period not to
760 exceed thirty (30) years and shall be fined not less than Five
761 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
762 (\$1,000,000.00), or may be both fined and imprisoned.

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

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

771 (6) Except as may be otherwise provided, a property owner or
772 occupant of land shall not be criminally or civilly liable for the
773 generation of waste caused by the criminal acts of persons other
774 than the property owner or occupant of such land if the property
775 owner or occupant did not have prior knowledge of the criminal
776 activity.

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

779 41-29-501. As used in this article, the following terms
780 shall have the meaning ascribed to them herein unless the context
781 requires otherwise:

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

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

788 (c) "Contents," when used with respect to a wire, oral
789 or other communication, includes any information concerning the
790 identity of the parties to the communication or the existence,
791 substance, purport or meaning of that communication.

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

795 (e) "Director" means the Director of the Bureau of
796 Narcotics or, if the director is absent or unable to serve, the
797 Assistant Director of the Bureau of Narcotics.

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

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

804 (h) "Investigative or law enforcement officer" means an
805 officer of this state or of a political subdivision of this state
806 who is empowered by law to conduct investigations of, or to make
807 arrests for, offenses enumerated in Section 41-29-505, * * * an
808 attorney authorized by law to prosecute or participate in the
809 prosecution of such offenses, or a federal law enforcement officer
810 designated by the director.

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

813 (j) "Oral communication" means an oral communication
814 uttered by a person exhibiting an expectation that the
815 communication is not subject to interception under circumstances
816 justifying that expectation.

817 (k) "Other communication" means any transfer of an
818 electronic or other signal, including fax signals, computer
819 generated signals, other similar signals, or any scrambled or
820 encrypted signal transferred via wire, radio, electromagnetic,
821 photoelectric or photooptical system from one party to another in
822 which the involved parties may reasonably expect the communication
823 to be private.

824 (l) "Prosecutor" means a district attorney with
825 jurisdiction in the county in which the facility or place where
826 the communication to be intercepted is located or a legal
827 assistant to the district attorney if designated in writing by the
828 district attorney on a case-by-case basis.

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

833 (n) "Wire communication" means a communication made in
834 whole or in part through the use of facilities for the
835 transmission of communications by the aid of wire, cable or other
836 like connection between the point of origin and the point of
837 reception furnished or operated by a person engaged as a common
838 carrier in providing or operating the facilities for the
839 transmission of communications and includes cordless telephones,
840 voice pagers, cellular telephones, any mobile telephone, or any
841 communication conducted through the facilities of a provider of
842 communication services.

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

847 (2) A person who asserts an entrapment defense has the
848 burden of proving each of the following by clear and convincing
849 evidence:

850 (a) The idea of committing the offense was initiated by
851 law enforcement officers or their agents rather than by the
852 person.

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

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

858 (3) A person does not establish entrapment if the person was
859 predisposed to commit the offense and the law enforcement officers
860 or their agents merely provided the person with an opportunity to
861 commit the offense. It is not entrapment for law enforcement
862 officers or their agents merely to use a ruse or to conceal their
863 identity, nor is it entrapment for law enforcement officers or
864 their agents to supply, furnish or sell contraband to an
865 individual where:

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

870 (b) The opportunity for illegal activity has been
871 structured so that there is reason for believing that persons
872 drawn to the opportunity, or brought to it, are predisposed to
873 engage in the contemplated illegal activity.

874 (4) The issue of entrapment shall be tried by the trier of
875 fact. The conduct of law enforcement officers and their agents
876 may be considered in determining if a person has proven
877 entrapment.

878 **SECTION 8.** This act shall take effect and be in force from
879 and after July 1, 2005.