

By: Representative Bentz

To: Ways and Means

HOUSE BILL NO. 1497

1 AN ACT TO CREATE THE "MISSISSIPPI UNAUTHORIZED SUBSTANCE
2 TAX," ALSO KNOWN AS THE "DRUG DEALER TAX ACT"; TO ENACT
3 DEFINITIONS; TO LEVY AN EXCISE TAX ON UNAUTHORIZED SUBSTANCES; TO
4 PROVIDE EXEMPTIONS; TO PROVIDE FOR ISSUANCE OF TAX STAMPS; TO
5 REQUIRE PAYMENT OF THE TAX; TO AUTHORIZE COLLECTION OF PENALTIES
6 AND INTEREST; TO PROVIDE FOR CONFIDENTIALITY AND IMMUNITY; TO
7 CREATE A SPECIAL FUND AND PROVIDE FOR REMITTANCE OF THE TAX; TO
8 PROHIBIT IMMUNITY FROM CRIMINAL PROSECUTION; TO AUTHORIZE
9 PROMULGATION OF RULES AND REGULATIONS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1. Purpose.** The purpose of this act is to levy an
12 excise tax to generate revenue for state and local law enforcement
13 agencies for use by those agencies to investigate, combat, prevent
14 and reduce drug crimes, and for the general funds of the state and
15 local governmental authorities. Nothing in this act shall provide
16 in any manner immunity from criminal prosecution for a person who
17 possesses an illegal substance.

18 **SECTION 2. Definitions.** The following words and phrases
19 shall have the following meanings, unless the context otherwise
20 requires:

21 (a) "Commissioner" means the Commissioner of the
22 Mississippi State Tax Commission.

23 (b) "Local law enforcement agency" means any municipal
24 police department, sheriff's office or regional drug task force.

25 (c) "State law enforcement agency" means the Department
26 of Public Safety, Department of Transportation enforcement
27 officers, Department of Wildlife, Fisheries and Parks, Attorney
28 General special investigators and Public Integrity Division
29 special investigators, Alcohol Beverage Control enforcement

30 officers, Department of Corrections officers and Department of
31 Marine Resources enforcement officers.

32 (d) "Dealer" means any person who actually or
33 constructively possesses more than thirty (30) grams of marijuana,
34 two (2) or more grams of any other unauthorized substance that is
35 sold by weight, or ten (10) or more dosage units of any other
36 unauthorized substance that is not sold by weight.

37 (e) "Unauthorized substance" means a controlled
38 substance as used in Chapter 29, Title 41, Article 3 (Uniform
39 Controlled Substances Law).

40 (f) "Controlled substance" as defined in Section
41 41-29-105(f);

42 (g) "Counterfeit substance" as defined in Section
43 41-29-105(g);

44 (h) "Hashish" as defined in Section 41-29-105(o);

45 (i) "Marijuana" as defined in Section 41-29-105(r);

46 (j) "Narcotic drug" as defined in Section
47 41-29-105(s)(1), (2), (3), (4);

48 (k) "Opiate" as defined in Section 41-29-105(t);

49 (l) "Opium poppy" as defined in Section 41-29-105(u);

50 (m) "Poppy straw" as defined in Section 41-29-105(x);

51 (n) "Person" as defined in Section 41-29-105(w).

52 **SECTION 3. Unauthorized substance tax rates.** An excise tax
53 is levied on unauthorized substances possessed, either actually or
54 constructively, by dealers at the following rates:

55 (a) On each gram of marijuana, or fraction of a gram,
56 Seven Dollars (\$7.00);

57 (b) On each gram of controlled substance, or fraction
58 of a gram, Two Hundred Dollars (\$200.00);

59 (c) On each fifty (50) dosage units of a controlled
60 substance that is not sold by weight, or fraction of fifty (50)
61 dosage units, Two Hundred Dollars (\$200.00).

62 **SECTION 4. Exemptions.** (1) The tax levied in this act does
63 not apply to any material, compound, mixture, or preparation that
64 contains any quantity of a controlled substance that is listed as
65 an exempt substance in 21 C.F.R., Section 1308.22.

66 (2) The tax levied in this act does not apply to any
67 governmental entity involved in research.

68 **SECTION 5. Issuance of stamps to indicate payment of tax;**
69 **report of seizure of unauthorized substances.** (1) The
70 commissioner shall issue stamps to affix to unauthorized
71 substances to indicate payment of the tax required by this act.
72 Dealers shall report the taxes payable under this act at the time
73 and on the form prescribed by the commissioner. Dealers are not
74 required to give their name, address, social security number, or
75 other identifying information on the form. Upon payment of the
76 tax, the commissioner shall issue stamps in an amount equal to the
77 amount of the tax paid. Taxes may be paid and stamps may be
78 issued either by mail or in person.

79 (2) Every local law enforcement agency and every state law
80 enforcement agency must report to the State Tax Commission within
81 forty-eight (48) hours after seizing an unauthorized substance, or
82 making an arrest of an individual in possession of an unauthorized
83 substance, listed in paragraph (b) of this subsection upon which a
84 stamp has not been affixed unless the seizure is a part of an
85 ongoing undercover operation. The report must be in the manner
86 prescribed by the commissioner and must include the time and place
87 of the arrest or seizure, the amount, location and kind of
88 substance, the identification of any individual in possession of
89 the substance and such individual's social security number, and
90 any other information prescribed by the commissioner. The report
91 must be made when the arrest or seizure involves any of the
92 following unauthorized substances upon which a stamp has not been
93 affixed as required by this part:

94 (a) More than total weight of thirty (30) grams of
95 marijuana;

96 (b) Two (2) or more grams of any other unauthorized
97 substance that is sold by weight; or

98 (c) Ten (10) or more dosage units of any other
99 unauthorized substance that is not sold by weight.

100 **SECTION 6. Payment of tax.** The tax imposed by this act is
101 payable by any dealer who actually or constructively possesses an
102 unauthorized substance in this state upon which the tax has not
103 been paid as evidenced by a stamp issued by the commissioner. The
104 tax is payable within twenty-four (24) hours after the dealer
105 acquires actual or constructive possession of a nontax-paid
106 unauthorized substance, exclusive of Saturdays, Sundays, and legal
107 holidays of this state, in which case the tax is payable on the
108 next working day. If the tax is not paid within twenty-four (24)
109 hours, the tax will become delinquent and shall accrue penalty and
110 interest pursuant to the provisions and regulations of the Tax
111 Commission. Upon payment of the tax, the dealer shall permanently
112 affix the appropriate stamps to the unauthorized substance. Once
113 the tax due on an unauthorized substance has been paid, no
114 additional tax is due under this act. If a dealer is found in
115 possession of a substance taxable under this act that does not
116 have the appropriate tax stamp affixed, it shall be presumed the
117 dealer has been in possession of such substance for longer than
118 twenty-four (24) hours, exclusive of Saturdays, Sundays, and legal
119 holidays of this state.

120 **SECTION 7. Assessment of tax, penalties and interests and**
121 **notice of collection.** Notwithstanding any other provision of law,
122 an assessment against a dealer who possesses an unauthorized
123 substance to which a stamp has not been affixed as required by
124 this act shall be made as provided in this section. The
125 commissioner shall immediately assess tax, applicable penalty, and
126 interest based on any information brought to the attention of the

127 commissioner, or the commissioner's duly authorized assistants,
128 that a person is liable for unpaid tax pursuant to this act. The
129 tax shall be assessed in the same manner as any other tax
130 assessment, except when the provisions of this act specify
131 otherwise. The commissioner shall notify the dealer in writing of
132 the amount of the tax, penalty, and interest due, and demand its
133 immediate payment. The notice of assessment and demand for
134 payment shall be either mailed to the dealer at the dealer's last
135 known address or served on the dealer in person. If the dealer
136 does not pay the tax, penalty, and interest immediately upon
137 receipt of the notice and demand, the commissioner shall collect
138 the assessment, including penalty and interest, pursuant to the
139 procedure set forth in Sections 27-3-69 and 27-3-81, unless the
140 dealer files with the commissioner sufficient security in the
141 amount of the assessment, including penalty and interest. Unless
142 security is provided, the assessment shall be deemed a delinquent
143 assessment, and the commissioner shall use all means available to
144 collect the assessment from any property in which the dealer has a
145 legal, equitable or beneficial interest. The dealer may seek
146 review of the assessment as provided in Section 27-3-29 except to
147 the extent those provisions are modified by this act. The
148 commissioner is further authorized under this act to pursue
149 criminal tax evasion proceedings against a dealer under Sections
150 27-3-79 and 27-3-80.

151 **SECTION 8. Confidentiality, immunity and statistics.**

152 Notwithstanding any other provision of law, information obtained
153 pursuant to this part is confidential and, unless independently
154 obtained, may not be used in a criminal prosecution other than a
155 prosecution for violation of this act. Stamps issued pursuant to
156 this act may not be used in a criminal prosecution other than a
157 prosecution for a violation of this part. The provisions of this
158 act including the criminal penalties specified therein, shall
159 apply to the tax levied under this act. This section does not

160 prohibit the commissioner from publishing statistics that do not
161 disclose the identity of dealers or the contents of particular
162 returns or reports.

163 **SECTION 9. Unauthorized Substances Tax Fund; remittance of**
164 **tax once unencumbered; application of proceeds of tax.** (1) There
165 is created in the State Treasury a special fund to be known as the
166 Unauthorized Substances Tax Fund. The purpose of the fund shall
167 be to provide funding for the purposes set forth in Section 1 of
168 this act. The fund shall be a continuing fund, not subject to
169 fiscal-year limitations, and shall consist of:

170 (a) Monies deposited pursuant to this act; and

171 (b) The interest accruing to the fund;

172 When the tax proceeds become unencumbered the commissioner
173 shall remit the unencumbered tax proceeds as provided in this
174 section on a quarterly or more frequent basis.

175 (2) (a) Tax proceeds are unencumbered when:

176 (i) The tax has been paid and the collection
177 process completed; and

178 (ii) 1. The taxpayer has no current right to file
179 a refund claim, and the paid tax is not the subject of any pending
180 lawsuit for the recovery of that tax; or

181 2. The time for the taxpayer to file suit
182 pursuant to rules and regulations of the Tax Commission has
183 expired.

184 (b) Legally purchased tax stamps shall be deposited
185 into the State General Fund.

186 (c) The commissioner shall first apply the unencumbered
187 tax proceeds to the costs of storing and disposing of the assets
188 seized in payment of the assessment under this part, which costs
189 shall be added to and become part of the assessment. From the
190 remaining proceeds, the commissioner shall remit fifty percent
191 (50%) of the unencumbered tax proceeds that were collected by
192 assessment to the local or state law enforcement agency that

193 conducted the investigation of a dealer that led to the
194 assessment. Twenty-five percent (25%) of any such amount remitted
195 to a local law enforcement agency shall be deposited to the
196 general fund of the county or municipality of the local law
197 enforcement jurisdiction. Proceeds retained by a law enforcement
198 agency are to be used by the agency solely for the purpose of
199 investigating, combating, preventing and reducing drug crimes. If
200 more than one (1) local or state law enforcement agency conducted
201 the investigation, the commissioner shall determine the equitable
202 share for each agency based on the contribution each agency made
203 to the investigation. The commissioner's determination of the
204 equitable share for each agency shall be final, and shall not be
205 subject to review in an administrative or judicial proceeding.
206 Ten percent (10%) shall be remitted to the Department of Public
207 Safety for the purposes of creating, operating and maintaining a
208 Statewide Automated Victim Information and Notification (SAVIN)
209 system. The commissioner shall credit the remaining forty percent
210 (40%) of the unencumbered tax proceeds to the State General Fund.

211 **SECTION 10. Construction.** The provisions of this act shall
212 not be construed to confer any immunity from criminal prosecution
213 or conviction for a violation or possession of an unauthorized
214 substance as defined in Section 41-29-139 upon any person who
215 voluntarily pays the tax imposed by this act or who otherwise
216 complies with the provisions of this act.

217 **SECTION 11. Rules and regulations.** The commissioner shall
218 have the authority to promulgate and adopt rules and regulations
219 and policy in accordance with the Mississippi Administrative
220 Procedures Law to implement, administer and enforce the provisions
221 of this act.

222 **SECTION 12.** This act shall take effect and be in force from
223 and after July 1, 2006.