

By: Senator(s) Albritton, Dearing, Morgan

To: Judiciary, Division B

SENATE BILL NO. 2446
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 41-29-313, MISSISSIPPI CODE OF 1972,
2 TO MAKE A TECHNICAL CORRECTION TO THE AMOUNTS OF PSEUDOEPHEDRINE
3 WHICH ARE PRESUMED TO BE POSSESSED FOR THE PURPOSE OF ILLEGALLY
4 MANUFACTURING METHAMPHETAMINE; TO AMEND SECTION 97-1-1,
5 MISSISSIPPI CODE OF 1972, TO REVISE THE CRIME OF CONSPIRACY TO
6 INCLUDE ALL CONTROLLED SUBSTANCE VIOLATIONS TO DRAW THE ENHANCED
7 PENALTY; TO AMEND SECTION 99-15-26, MISSISSIPPI CODE OF 1972, TO
8 REVISE THE OFFENSES BY AMOUNT POSSESSED OR SOLD FOR WHICH AN
9 OFFENDER WILL NOT BE ELIGIBLE FOR NONADJUDICATION; AND FOR RELATED
10 PURPOSES.

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

12 **SECTION 1.** Section 41-29-313, Mississippi Code of 1972, is
13 amended as follows:

14 41-29-313. (1) (a) Except as authorized in this section
15 and in Section 41-29-315, it is unlawful for any person to
16 knowingly or intentionally:

17 (i) Purchase, possess, transfer, manufacture,
18 attempt to manufacture or distribute any two (2) or more of the
19 listed precursor chemicals or drugs in any amount with the intent
20 to unlawfully manufacture a controlled substance;

21 (ii) Purchase, possess, transfer, manufacture,
22 attempt to manufacture or distribute any two (2) or more of the
23 listed precursor chemicals or drugs in any amount, knowing, or
24 under circumstances where one reasonably should know, that the
25 listed precursor chemical or drug will be used to unlawfully
26 manufacture a controlled substance;

27 (b) The term "precursor drug or chemical" means a drug
28 or chemical that, in addition to legitimate uses, may be used in
29 manufacturing a controlled substance in violation of this chapter.
30 The term includes any salt, optical isomer or salt of an optical
31 isomer, whenever the existence of a salt, optical isomer or salt

32 of optical isomer is possible within the specific chemical
33 designation. The chemicals or drugs listed in this section are
34 included by whatever official, common, usual, chemical or trade
35 name designated. A "precursor drug or chemical" includes, but is
36 not limited to, the following:

- 37 (i) Ether;
- 38 (ii) Anhydrous ammonia;
- 39 (iii) Ammonium nitrate;
- 40 (iv) Pseudoephedrine;
- 41 (v) Ephedrine;
- 42 (vi) Denatured alcohol (Ethanol);
- 43 (vii) Lithium;
- 44 (viii) Freon;
- 45 (ix) Hydrochloric acid;
- 46 (x) Hydriodic acid;
- 47 (xi) Red phosphorous;
- 48 (xii) Iodine;
- 49 (xiii) Sodium metal;
- 50 (xiv) Sodium hydroxide;
- 51 (xv) Muriatic acid;
- 52 (xvi) Sulfuric acid;
- 53 (xvii) Hydrogen chloride gas;
- 54 (xviii) Potassium;
- 55 (xix) Methanol;
- 56 (xx) Isopropyl alcohol;
- 57 (xxi) Hydrogen peroxide;
- 58 (xxii) Hexanes;
- 59 (xxiii) Heptanes;
- 60 (xxiv) Acetone;
- 61 (xxv) Toluene;
- 62 (xxvi) Xylenes.

63 (c) Any person who violates this subsection (1), upon
64 conviction, is guilty of a felony and may be imprisoned for a

65 period not to exceed thirty (30) years and shall be fined not less
66 than Five Thousand Dollars (\$5,000.00) nor more than One Million
67 Dollars (\$1,000,000.00), or both fine and imprisonment.

68 (2) (a) It is unlawful for any person to knowingly or
69 intentionally steal or unlawfully take or carry away any amount of
70 anhydrous ammonia or to break, cut, or in any manner damage the
71 valve or locking mechanism on an anhydrous ammonia tank with the
72 intent to steal or unlawfully take or carry away anhydrous
73 ammonia.

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

79 (ii) The possession of any amount of anhydrous
80 ammonia in a container unauthorized for containment of anhydrous
81 ammonia pursuant to Section 75-57-9 shall be prima facie evidence
82 of intent to use the anhydrous ammonia to unlawfully manufacture a
83 controlled substance.

84 (c) (i) It is unlawful for any person to purchase,
85 possess, transfer or distribute * * * pseudoephedrine or ephedrine
86 knowing, or under circumstances where one reasonably should know,
87 that the pseudoephedrine or ephedrine will be used to unlawfully
88 manufacture a controlled substance.

89 (ii) Except as provided in this subparagraph,
90 possession of one or more products containing more than
91 twenty-four (24) grams of ephedrine or pseudoephedrine shall
92 constitute a rebuttable presumption of intent to use the product
93 as a precursor to methamphetamine or another controlled substance.
94 The rebuttable presumption established by this subparagraph shall
95 not apply to the following persons who are lawfully possessing the
96 identified drug products in the course of legitimate business:

97 1. A retail distributor of the drug products
98 described in this subparagraph possessing a valid business license
99 or wholesaler;

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

102 3. A manufacturer of drug products described
103 in this subparagraph, or its agents, licensed by the Mississippi
104 State Board of Pharmacy;

105 4. A pharmacist licensed by the Mississippi
106 State Board of Pharmacy; or

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

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

115 (3) Nothing in this section shall preclude any farmer from
116 storing or using any of the listed precursor drugs or chemicals
117 listed in this section in the normal pursuit of farming
118 operations.

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

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

126 (6) Any person who violates the provisions of this section
127 when the offense occurs in any hotel or apartment building or
128 complex may be subject to a term of imprisonment or a fine, or
129 both, of twice that provided in this section. For the purposes of

130 this subsection (6), the following terms shall have the meanings
131 ascribed to them:

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

136 (b) "Apartment building" means any building having four
137 (4) or more dwelling units, including, without limitation, a
138 condominium building.

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

144 (8) Any person who violates the provisions of this section
145 upon any premises upon which any booby trap has been installed or
146 rigged may be subject to a term of imprisonment or a fine, or
147 both, of twice that provided in this section. For the purposes of
148 this subsection, the term "booby trap" means any concealed or
149 camouflaged device designed to cause bodily injury when triggered
150 by any action of a person making contact with the device. The
151 term includes guns, ammunition or explosive devices attached to
152 trip wires or other triggering mechanisms, sharpened stakes,
153 nails, spikes, electrical devices, lines or wires with hooks
154 attached, and devices designed for the production of toxic fumes
155 or gases.

156 **SECTION 2.** Section 97-1-1, Mississippi Code of 1972, is
157 amended as follows:

158 97-1-1. If two (2) or more persons conspire either:

159 (a) To commit a crime; or

160 (b) Falsely and maliciously to indict another for a
161 crime, or to procure to be complained of or arrested for a crime;

162 or

163 (c) Falsely to institute or maintain an action or suit
164 of any kind; or

165 (d) To cheat and defraud another out of property by any
166 means which are in themselves criminal, or which, if executed,
167 would amount to a cheat, or to obtain money or any other property
168 or thing by false pretense; or

169 (e) To prevent another from exercising a lawful trade
170 or calling, or doing any other lawful act, by force, threats,
171 intimidation, or by interfering or threatening to interfere with
172 tools, implements, or property belonging to or used by another, or
173 with the use of employment thereof; or

174 (f) To commit any act injurious to the public health,
175 to public morals, trade or commerce, or for the perversion or
176 obstruction of justice, or of the due administration of the laws;
177 or

178 (g) To overthrow or violate the laws of this state
179 through force, violence, threats, intimidation, or otherwise; or

180 (h) To accomplish any unlawful purpose, or a lawful
181 purpose by any unlawful means; such persons, and each of them,
182 shall be guilty of a felony and upon conviction may be punished by
183 a fine of not more than Five Thousand Dollars (\$5,000.00) or by
184 imprisonment for not more than five (5) years, or by both.

185 Provided, that where the crime conspired to be committed is
186 capital murder or murder as defined by law or is a violation of
187 Section 41-29-139(a)(1) when the violation is subject to
188 punishment under the following: Section 41-29-139(c)(1)(D) or (E)
189 or (c)(2)(F) or (G) or Section 41-29-313(1)(a), * * * being
190 provisions of the Uniform Controlled Substances Law, the offense
191 shall be punishable by a fine of not more than Five Hundred
192 Thousand Dollars (\$500,000.00) or by imprisonment for not more
193 than twenty (20) years, or by both.

194 Provided, that where the crime conspired to be committed is a
195 misdemeanor, then upon conviction said crime shall be punished as
196 a misdemeanor as provided by law.

197 **SECTION 3.** Section 99-15-26, Mississippi Code of 1972, is
198 amended as follows:

199 99-15-26. (1) In all criminal cases, felony and
200 misdemeanor, other than crimes against the person, the circuit or
201 county court shall be empowered, upon the entry of a plea of
202 guilty by a criminal defendant, to withhold acceptance of the plea
203 and sentence thereon pending successful completion of such
204 conditions as may be imposed by the court pursuant to subsection
205 (2) of this section. In all misdemeanor criminal cases, other
206 than crimes against the person, the justice or municipal court
207 shall be empowered, upon the entry of a plea of guilty by a
208 criminal defendant, to withhold acceptance of the plea and
209 sentence thereon pending successful completion of such conditions
210 as may be imposed by the court pursuant to subsection (2) of this
211 section. No person having previously qualified under the
212 provisions of this section or having ever been convicted of a
213 felony shall be eligible to qualify for release in accordance with
214 this section. A person shall not be eligible to qualify for
215 release in accordance with this section if such person has been
216 charged (a) with an offense pertaining to the sale, barter,
217 transfer, manufacture, distribution or dispensing of a controlled
218 substance, or the possession with intent to sell, barter,
219 transfer, manufacture, distribute or dispense a controlled
220 substance, as provided in Section 41-29-139(a)(1), * * * except
221 for a charge under said provision when the controlled substance
222 involved is one (1) ounce or less of marihuana; (b) with an
223 offense pertaining to the possession of one (1) kilogram or more
224 of marihuana as provided in Section 41-29-139(c)(2)(F) or
225 (G), * * *; or (c) with an offense under the Mississippi Implied
226 Consent Law.

227 (2) (a) Conditions which the circuit, county, justice or
228 municipal court may impose under subsection (1) of this section
229 shall consist of:

230 (i) Reasonable restitution to the victim of the
231 crime.

232 (ii) Performance of not more than nine hundred
233 sixty (960) hours of public service work approved by the court.

234 (iii) Payment of a fine not to exceed the
235 statutory limit.

236 (iv) Successful completion of drug, alcohol,
237 psychological or psychiatric treatment or any combination thereof
238 if the court deems such treatment necessary.

239 (v) The circuit or county court, in its
240 discretion, may require the defendant to remain in the program
241 subject to good behavior for a period of time not to exceed five
242 (5) years. The justice or municipal court, in its discretion, may
243 require the defendant to remain in the program subject to good
244 behavior for a period of time not to exceed two (2) years.

245 (b) Conditions which the circuit or county court may
246 impose under subsection (1) of this section also include
247 successful completion of a regimented inmate discipline program.

248 (3) When the court has imposed upon the defendant the
249 conditions set out in this section, the court shall release the
250 bail bond, if any.

251 (4) Upon successful completion of the court-imposed
252 conditions permitted by subsection (2) of this section, the court
253 shall direct that the cause be dismissed and the case be closed.

254 (5) Upon petition therefor, the court shall expunge the
255 record of any case in which an arrest was made, the person
256 arrested was released and the case was dismissed or the charges
257 were dropped or there was no disposition of such case.

258 (6) This section shall take effect and be in force from and
259 after March 31, 1983.

260 **SECTION 4.** This act shall take effect and be in force from
261 and after July 1, 2006.