

By: Representative Fleming

To: Judiciary A

HOUSE BILL NO. 421

1 AN ACT TO AUTHORIZE THE MEDICAL USE OF MARIJUANA BY SERIOUSLY
2 ILL PATIENTS UNDER A PHYSICIAN'S SUPERVISION; TO DEFINE CERTAIN
3 TERMS; TO PROVIDE AN EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES
4 FOR THE MEDICAL USE OF MARIJUANA; TO PROVIDE LIMITATIONS ON THE
5 MEDICAL USE OF MARIJUANA; TO PROVIDE A LEGAL DEFENSE FOR PATIENTS
6 AND PRIMARY CAREGIVERS; TO AMEND SECTIONS 41-29-113 AND 41-29-115,
7 MISSISSIPPI CODE OF 1972, TO TRANSFER MARIJUANA FROM SCHEDULE I TO
8 SCHEDULE II UNDER THE CONTROLLED SUBSTANCES LAW; TO AMEND SECTION
9 41-29-139, MISSISSIPPI CODE OF 1972, TO EXEMPT THE MEDICAL USE OF
10 MARIJUANA FROM CRIMINAL PENALTIES UNDER THE CONTROLLED SUBSTANCES
11 LAW; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** The Legislature finds and declares the following:

14 (a) Modern medical research has discovered a beneficial
15 use for marijuana in treating or alleviating the pain or other
16 symptoms associated with certain debilitating medical conditions,
17 as found by the National Academy of Sciences' Institute of
18 Medicine in March 1999.

19 (b) The Legislature would prefer for the federal
20 government to permit marijuana to be prescribed by physicians and
21 to be dispensed at pharmacies. However, the federal government
22 has shown no indication that it will change federal policy with
23 regard to medical marijuana, as evidenced by the federal
24 government's reluctance to allow even FDA-approved clinical trials
25 to move forward.

26 (c) According to the United States Sentencing
27 Commission and the Federal Bureau of Investigation, more than
28 ninety-nine (99) out of every one hundred (100) marijuana arrests
29 are made under state law, rather than under federal law.
30 Consequently, changing state law will have the practical effect of

31 protecting from arrest the vast majority of seriously ill people
32 who have a medical need to use marijuana.

33 (d) Although federal law expressly prohibits the use of
34 marijuana, the laws of Alaska, California, Colorado, Hawaii,
35 Maine, Nevada, Oregon and Washington permit the medical use and
36 cultivation of marijuana. The Legislature intends to join in this
37 effort for the health and welfare of the citizens of Mississippi.
38 However, the Legislature does not intend to make marijuana legally
39 available for other than medical purposes.

40 (e) The state is not required to enforce federal law or
41 prosecute people for engaging in activities prohibited by federal
42 law. Therefore, compliance with this act does not put the state
43 in violation of federal law.

44 (f) State law should make a distinction between the
45 medical and nonmedical use of marijuana. Therefore, the purpose
46 of this act is to ensure that physicians are not penalized for
47 discussing marijuana as a treatment option with their patients,
48 and that seriously ill people who engage in the medical use of
49 marijuana upon their physicians' advice are not arrested and
50 incarcerated for using marijuana for medical purposes.

51 **SECTION 2.** The following words and phrases shall have the
52 meanings ascribed in this section, unless the context clearly
53 indicates otherwise:

54 (a) "Adequate supply" means an amount of marijuana
55 collectively possessed between the qualifying patient and the
56 qualifying patient's primary caregivers that is not more than is
57 reasonably necessary to ensure the uninterrupted availability of
58 marijuana for the purpose of alleviating the symptoms or effects
59 of a qualifying patient's debilitating medical condition; however,
60 an "adequate supply" shall not exceed three (3) mature marijuana
61 plants, four (4) immature marijuana plants and thirty (30) grams
62 of usable marijuana per each mature plant. "Usable marijuana"
63 means the dried leaves and flowers of marijuana, and any mixture

64 or preparation thereof, that are appropriate for the medical use
65 of marijuana, and does not include the seeds, stalks and roots of
66 the plant.

67 (b) "Debilitating medical condition" means:

68 (i) Cancer, glaucoma, positive status for human
69 immunodeficiency virus (HIV), acquired immune deficiency syndrome
70 (AIDS) or the treatment of these conditions;

71 (ii) A chronic or debilitating disease or medical
72 condition or its treatment that produces one or more of the
73 following: cachexia or wasting syndrome; severe pain; severe
74 nausea; seizures, including those characteristic of epilepsy; or
75 severe and persistent muscle spasms including those characteristic
76 of multiple sclerosis or Crohn's disease; or

77 (iii) Any other medical condition or its treatment
78 approved by the department, as provided for as follows: not later
79 than October 1, 2007, the State Board of Health shall promulgate
80 regulations governing the manner in which the department will
81 consider petitions from the public to add debilitating medical
82 conditions to those specifically included in this paragraph (b).
83 In considering those petitions, the department shall include
84 public notice of, and an opportunity to comment in a public
85 hearing upon, the petitions. The department shall, after hearing,
86 approve or deny those petitions within one hundred eighty (180)
87 days of submission. The approval or denial of such a petition
88 shall be considered a final agency action, subject to judicial
89 review.

90 (c) "Department" means State Department of Health.

91 (d) "Marijuana" has the same meaning as "marihuana" as
92 defined in Section 41-29-105.

93 (e) "Medical use" means the acquisition, possession,
94 cultivation, use, transfer or transportation of marijuana or
95 paraphernalia relating to the administration of marijuana to
96 alleviate the symptoms or effects of a qualifying patient's

97 debilitating medical condition. For the purposes of "medical
98 use," the term "transfer" is limited to the transfer of marijuana
99 and paraphernalia between primary caregivers and qualifying
100 patients.

101 (f) "Physician" means a person who is licensed under
102 Section 73-25-1 et seq.

103 (g) "Primary caregiver" means a person who is at least
104 eighteen (18) years old and who has agreed to undertake
105 responsibility for managing the well-being of a person with
106 respect to the medical use of marijuana.

107 (h) "Qualifying patient" means a person who has been
108 diagnosed by a physician as having a debilitating medical
109 condition.

110 (i) "Written certification" means the qualifying
111 patient's medical records or a statement signed by a physician,
112 stating that in the physician's professional opinion, after having
113 completed a full assessment of the qualifying patient's medical
114 history and current medical condition made in the course of a bona
115 fide physician-patient relationship, the qualifying patient has a
116 debilitating medical condition and the potential benefits of the
117 medical use of marijuana would likely outweigh the health risks
118 for the qualifying patient.

119 **SECTION 3.** (1) A qualifying patient who has in his or her
120 possession written certification shall not be subject to arrest,
121 prosecution or penalty in any manner for the medical use of
122 marijuana, provided the quantity of marijuana does not exceed an
123 adequate supply.

124 (2) Subsection (1) of this section shall not apply to a
125 qualifying patient under the age of eighteen (18) years, unless:

126 (a) The qualifying patient's physician has explained
127 the potential risks and benefits of the medical use of marijuana
128 to the qualifying patient and to a parent, guardian or person
129 having legal custody of the qualifying patient; and

130 (b) A parent, guardian or person having legal custody
131 consents in writing to:

132 (i) Allow the qualifying patient's medical use of
133 marijuana;

134 (ii) Serve as the qualifying patient's primary
135 caregiver; and

136 (iii) Control the acquisition of the marijuana,
137 the dosage and the frequency of the medical use of marijuana by
138 the qualifying patient.

139 (3) When the acquisition, possession, cultivation,
140 transportation or administration of marijuana by a qualifying
141 patient is not practicable, the legal protections established by
142 this act for a qualifying patient shall extend to the qualifying
143 patient's primary caregivers, provided that the primary
144 caregivers' actions are necessary for the qualifying patient's
145 medical use of marijuana.

146 (4) A physician shall not be subject to arrest or
147 prosecution, penalized in any manner or denied any right or
148 privilege for providing written certification for the medical use
149 of marijuana to qualifying patients.

150 (5) Any property interest that is possessed, owned or used
151 in connection with the medical use of marijuana, or acts
152 incidental to that use, shall not be harmed, neglected, injured or
153 destroyed while in the possession of state or local law
154 enforcement officials, provided that law enforcement agencies
155 seizing live plants as evidence shall not be responsible for the
156 care and maintenance of marijuana plants. Any such property
157 interest shall not be forfeited under any provision of state or
158 local law providing for the forfeiture of property other than as a
159 sentence imposed after conviction of a criminal offense or entry
160 of a plea of guilty to a criminal offense. Marijuana,
161 paraphernalia or other property seized from a qualifying patient
162 or primary caregivers in connection with the claimed medical use

163 of marijuana shall be returned immediately upon the determination
164 by a court or prosecutor that the qualifying patient or primary
165 caregivers are entitled to the protections of this act, as may be
166 evidenced by a decision not to prosecute, the dismissal of charges
167 or an acquittal.

168 (6) No person shall be subject to arrest or prosecution for
169 "constructive possession," "conspiracy" or any other offense for
170 simply being in the presence or vicinity of the medical use of
171 marijuana as permitted under this act.

172 **SECTION 4.** (1) The authorization for the medical use of
173 marijuana in this act shall not apply to:

174 (a) The medical use of marijuana that endangers the
175 health or well-being of another person, such as driving or
176 operating heavy machinery while under the influence of marijuana;

177 (b) The smoking of marijuana:

178 (i) In a school bus, public bus or other public
179 vehicle;

180 (ii) In the workplace of one's employment;

181 (iii) On any school grounds;

182 (iv) In any correctional facility; or

183 (v) At any public park, public beach, public
184 recreation center or youth center; and

185 (c) The use of marijuana by a qualifying patient,
186 primary caregiver or any other person for purposes other than
187 medical use permitted by this act.

188 (2) Insurance companies shall not be required to cover the
189 medical use of marijuana.

190 (3) Notwithstanding any law to the contrary, fraudulent
191 representation to a law enforcement official of any fact or
192 circumstance relating to the medical use of marijuana to avoid
193 arrest or prosecution shall be a misdemeanor and subject to a fine
194 of Five Hundred Dollars (\$500.00). This penalty shall be in

195 addition to any other penalties that may apply for the nonmedical
196 use of marijuana.

197 **SECTION 5.** A person and a person's primary caregivers may
198 assert the medical use of marijuana as a defense to any
199 prosecution involving marijuana, and that defense shall be
200 presumed valid where the evidence shows that:

201 (a) The person's medical records indicate, or a
202 physician has stated that, in the physician's professional
203 opinion, after having completed a full assessment of the person's
204 medical history and current medical condition made in the course
205 of a bona fide physician-patient relationship, the potential
206 benefits of the medical use of marijuana would likely outweigh the
207 health risks for the person; and

208 (b) The person and the person's primary caregivers were
209 collectively in possession of a quantity of marijuana that was not
210 more than was reasonably necessary to ensure the uninterrupted
211 availability of marijuana for the purpose of alleviating the
212 symptoms or effects of the person's medical condition.

213 **SECTION 6.** Section 41-29-113, Mississippi Code of 1972, is
214 amended as follows:

215 41-29-113. The controlled substances listed in this section
216 are included in Schedule I.

217 **SCHEDULE I**

218 (a) Any of the following opiates, including their isomers,
219 esters, ethers, salts and salts of isomers, esters and ethers,
220 unless specifically excepted, whenever the existence of these
221 isomers, esters, ethers and salts is possible within the specific
222 chemical designation:

223 (1) Acetyl-alpha-methylfentanyl;

224 (2) Acetylmethadol;

225 (3) Allylprodine;

226 (4) Alphacetylmethadol, except levo-alphacetylmethadol
227 (levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

- 228 (5) Alphameprodine;
- 229 (6) Alphamethadol;
- 230 (7) Alpha-methylfentanyl;
- 231 (8) Alpha-methylthiofentanyl;
- 232 (9) Benzethidine;
- 233 (10) Betacetylmethadol;
- 234 (11) Beta-hydroxyfentanyl;
- 235 (12) Beta-hydroxy-3-methylfentanyl;
- 236 (13) Betameprodine;
- 237 (14) Betamethadol;
- 238 (15) Betaprodine;
- 239 (16) Clonitazene;
- 240 (17) Dextromoramide;
- 241 (18) Diampromide;
- 242 (19) Diethylthiambutene;
- 243 (20) Difenoxyin;
- 244 (21) Dimenoxadol;
- 245 (22) Dimepheptanol;
- 246 (23) Dimethylthiambutene;
- 247 (24) Dioxaphetyl butyrate;
- 248 (25) Dipipanone;
- 249 (26) Ethylmethylthiambutene;
- 250 (27) Etonitazene;
- 251 (28) Etoxeridine;
- 252 (29) Furethidine;
- 253 (30) Hydroxypethidine;
- 254 (31) Ketobemidone;
- 255 (32) Levomoramide;
- 256 (33) Levophenacymorphan;
- 257 (34) 3-methylfentanyl;
- 258 (35) 3-methylthiofentanyl;
- 259 (36) Morpheridine;
- 260 (37) Noracymethadol;

- 261 (38) Norlevorphanol;
- 262 (39) Normethadone;
- 263 (40) Norpipanone;
- 264 (41) Para-fluorofentanyl;
- 265 (42) Phenadoxone;
- 266 (43) Phenampromide;
- 267 (44) Phenomorphan;
- 268 (45) Phenoperidine;
- 269 (46) Piritramide;
- 270 (47) Proheptazine;
- 271 (48) Properidine;
- 272 (49) Propiram;
- 273 (50) Racemoramide;
- 274 (51) Tilidine;
- 275 (52) Trimeperidine;
- 276 (53) Thiofentanyl;
- 277 (54) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
- 278 (55) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine
- 279 (PEPAP).

280 (b) Any of the following opium derivatives, their salts,
281 isomers and salts of isomers, unless specifically excepted,
282 whenever the existence of these salts, isomers and salts of
283 isomers is possible within the specific chemical designation:

- 284 (1) Acetorphine;
- 285 (2) Acetyldihydrocodeine;
- 286 (3) Benzylmorphine;
- 287 (4) Codeine methylbromide;
- 288 (5) Codeine-N-Oxide;
- 289 (6) Cyprenorphine;
- 290 (7) Desomorphine;
- 291 (8) Dihydromorphine;
- 292 (9) Drotebanol;
- 293 (10) Etorphine; (except hydrochloride salt);

- 294 (11) Heroin;
- 295 (12) Hydromorphenol;
- 296 (13) Methyldesorphine;
- 297 (14) Methyldihydromorphine;
- 298 (15) Monoacetylmorphine;
- 299 (16) Morphine methylbromide;
- 300 (17) Morphine methylsulfonate;
- 301 (18) Morphine-N-Oxide;
- 302 (19) Myrophine;
- 303 (20) Nicocodeine;
- 304 (21) Nicomorphine;
- 305 (22) Normorphine;
- 306 (23) Pholcodine;
- 307 (24) Thebacon.

308 (c) Any material, compound, mixture or preparation which
309 contains any quantity of the following hallucinogenic substances,
310 their salts, isomers and salts of isomers, unless specifically
311 excepted, whenever the existence of these salts, isomers and salts
312 of isomers is possible within the specific chemical designation:

- 313 (1) 3, 4-methylenedioxy amphetamine;
- 314 (2) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 315 (3) 2, 5-dimethoxy-4-ethylamphetamine (DOET);
- 316 (4) 3, 4-methylenedioxymethamphetamine (MDMA);
- 317 (5) 3, 4, 5-trimethoxy amphetamine;
- 318 (6) Bufotenine;
- 319 (7) Diethyltryptamine;
- 320 (8) Dimethyltryptamine;
- 321 (9) Alpha-ethyltryptamine;
- 322 (10) 4-methyl-2, 5-dimethoxyamphetamine;
- 323 (11) Hashish;
- 324 (12) Ibogaine;
- 325 (13) Lysergic acid diethylamide (LSD); * * *

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- 327 (14) Mescaline;
- 328 (15) Peyote;
- 329 (16) N-ethyl-3-piperidyl benzilate;
- 330 (17) N-methyl-3-piperidyl benzilate;
- 331 (18) Phencyclidine;
- 332 (19) Psilocybin;
- 333 (20) Psilocyn;
- 334 (21) Tetrahydrocannabinols (excluding dronabinol and
335 nabilone);
- 336 (22) 2, 5-dimethoxyamphetamine;
- 337 (23) 4-bromo-2, 5-dimethoxyamphetamine;
- 338 (24) 4-bromo-2, 5-dimethoxyphenylethylamine;
- 339 (25) 4-methoxyamphetamine;
- 340 (26) Ethylamine analog of phencyclidine (PCE);
- 341 (27) Pyrrolidine analog of phencyclidine (PHP, PCPy);
- 342 (28) Thiophene analog of Phencyclidine;
- 343 (29) Parahexyl;
- 344 (30) 1-[1-(2-Thienyl)cyclohexyl] pyrrolidine (TCPy);
- 345 (31) 3, 4-methylenedioxy-N-ethylamphetamine (also known
346 as N-ethyl-alpha-methyl-3, 4 (methylenedioxy) phenylethylamine,
347 N-ethyl MDA, MDE and MDEA);
- 348 (32) N-hydroxy-3, 4-methylenedioxyamphetamine (also
349 known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3,
350 4-(methylenedioxy) phenylethylamine).
- 351 (d) Mecloqualone, its salts, isomers and salts of isomers,
352 unless specifically excepted, whenever the existence of the salts,
353 isomers and salts of isomers is possible within this specific
354 chemical designation.
- 355 (e) Gamma-hydroxybutyric acid (other names include: GHB,
356 gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid;
357 sodium oxybate; sodium oxybutyrate), including its salts, isomers,
358 and salts of isomers.

359 (f) Any material, compound, mixture or preparation which
360 contains any quantity of the following central nervous system
361 stimulants including salts, isomers and salts of isomers unless
362 specifically excepted or unless listed in another schedule:

- 363 (1) Aminorex;
- 364 (2) Cathinone;
- 365 (3) Fenethylamine;
- 366 (4) N-ethyl-amphetamine;
- 367 (5) 4-methylaminorex (also known as
368 2-amino-4-methyl-5-phenyl-2-oxazoline);
- 369 (6) Methacathinone.

370 (g) Any material, compound, mixture or preparation which
371 contains any quantity of methaqualone, including its salts,
372 isomers, optical isomers, salts of their isomers and salts of
373 their optical isomers unless specifically excepted or unless
374 listed in another schedule.

375 (h) Any material, compound, mixture or preparation which
376 contains any quantity of N,N-dimethylamphetamine, including its
377 salts, isomers and salts of isomers, unless specifically excepted
378 or unless listed in another schedule. (Other names include: N,N,
379 alpha-trimethylbenzene-ethaneamine, and N,N,
380 alpha-trimethylphenylethylamine).

381 **SECTION 7.** Section 41-29-115, Mississippi Code of 1972, is
382 amended as follows:

383 41-29-115. (A) The controlled substances listed in this
384 section are included in Schedule II.

385 **SCHEDULE II**

386 (a) Any of the following substances, except those
387 narcotic drugs listed in other schedules, whether produced
388 directly or indirectly by extraction from substances of vegetable
389 origin, or independently by means of chemical synthesis, or by
390 combination of extraction and chemical synthesis:

391 (1) Opium and opiate, and any salt, compound,
392 derivative, or preparation of opium or opiate, excluding naloxone
393 hydrochloride, apomorphine, dextrorphan, nalbuphine, nalmefene and
394 naltrexone, but including the following:

- 395 (i) Raw opium;
- 396 (ii) Opium extracts;
- 397 (iii) Opium fluid extracts;
- 398 (iv) Powdered opium;
- 399 (v) Granulated opium;
- 400 (vi) Tincture of opium;
- 401 (vii) Codeine;
- 402 (viii) Ethylmorphine;
- 403 (ix) Etorphine hydrochloride;
- 404 (x) Hydrocodone;
- 405 (xi) Hydromorphone;
- 406 (xii) Metopon;
- 407 (xiii) Morphine;
- 408 (xiv) Oxycodone;
- 409 (xv) Oxymorphone;
- 410 (xvi) Thebaine.

411 (2) Any salt, compound, isomer, derivative, or
412 preparation thereof which is chemically equivalent or identical
413 with any of the substances referred to in paragraph (1), but not
414 including the isoquinoline alkaloids of opium.

415 (3) Opium poppy and poppy straw.

416 (4) Cocaine, coca leaves and any salt, compound,
417 derivative, or preparation of cocaine or coca leaves, and any
418 salt, compound, derivative, isomer, or preparation thereof which
419 is chemically equivalent or identical with any of these
420 substances, but not including decocainized coca leaves or
421 extractions which do not contain cocaine or ecgonine.

422 (5) Marihuana.

423 (b) Any of the following opiates, including their
424 isomers, esters, ethers, salts, and salts of isomers, whenever the
425 existence of these isomers, esters, ethers and salts is possible
426 within the specified chemical designation, dextorphan excepted:

- 427 (1) Alfentanil;
- 428 (2) Alphaprodine;
- 429 (3) Anileridine;
- 430 (4) Bezitramide;
- 431 (5) Bulk dextropropoxyphene (nondosage forms);
- 432 (6) Carfentanil;
- 433 (7) Dihydrocodeine;
- 434 (8) Diphenoxylate;
- 435 (9) Fentanyl;
- 436 (10) Isomethadone;
- 437 (11) Levo-alpha-acetylmethadol
438 (levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
- 439 (12) Levomethorphan;
- 440 (13) Levorphanol;
- 441 (14) Metazocine;
- 442 (15) Methadone;
- 443 (16) Methadone-intermediate,
444 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 445 (17) Moramide-intermediate,
446 2-methyl-3-morpholino-1, 1-diphenyl propane-carboxylic acid;
- 447 (18) Pethidine (meperidine);
- 448 (19) Pethidine-intermediate-A,
449 4-cyano-1-methyl-4-phenylpiperidine;
- 450 (20) Pethidine-intermediate-B,
451 ethyl-4-phenylpiperidine-4-carboxylate;
- 452 (21) Pethidine-intermediate-C,
453 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 454 (22) Phenazocine;
- 455 (23) Piminodine;

456 (24) Racemethorphan;

457 (25) Racemorphan;

458 (26) Remifentanil;

459 (27) Sufentanil.

460 (c) Any material, compound, mixture, or preparation
461 which contains any quantity of the following substances:

462 (1) Amphetamine, its salts, optical isomers, and
463 salts of its optical isomers;

464 (2) Phenmetrazine and its salts;

465 (3) Any substance which contains any quantity of
466 methamphetamine, including its salts, isomers, and salts of
467 isomers;

468 (4) Methylphenidate and its salts.

469 (d) Unless listed in another schedule, any material,
470 compound, mixture, or preparation which contains any quantity of
471 the following substances:

472 (1) Amobarbital;

473 (2) Secobarbital;

474 (3) Pentobarbital;

475 (4) Amphetamine and methamphetamine immediate
476 precursor: Phenylacetone (phenyl-2-propanone; P2P; benzyl methyl
477 ketone; and methyl benzyl ketone);

478 (5) Phencyclidine immediate precursors:

479 (i) 1-phenylcyclohexylamine;

480 (ii) 1-piperidinocyclohexanecarbonitrile
481 (PCC);

482 (6) Pentazocine and its salts in injectable dosage
483 form;

484 (7) Nabilone, other names include:

485 (+/-)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a -
486 hexahydro-1-1-hydroxy-6-6-dimethyl-9H-dibenzo (b,d) pyran-9-one;

487 (8) Glutethimide.

488 (B) Any material, compound, mixture or preparation which
489 contains any quantity of a Schedule II controlled substance and is
490 listed as an exempt substance in 21 C.F.R., Section 1308.24 or
491 1308.32, shall be exempted from the provisions of the Uniform
492 Controlled Substances Law.

493 **SECTION 8.** Section 41-29-139, Mississippi Code of 1972, is
494 amended as follows:

495 41-29-139. (a) Except as authorized by this article, it is
496 unlawful for any person knowingly or intentionally:

497 (1) To sell, barter, transfer, manufacture, distribute,
498 dispense or possess with intent to sell, barter, transfer,
499 manufacture, distribute or dispense, a controlled substance; or

500 (2) To create, sell, barter, transfer, distribute,
501 dispense or possess with intent to create, sell, barter, transfer,
502 distribute or dispense, a counterfeit substance.

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

506 (1) In the case of controlled substances classified in
507 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
508 except thirty (30) grams or less of marihuana, and except a first
509 offender as defined in Section 41-29-149(e) who violates
510 subsection (a) of this section with respect to less than one (1)
511 kilogram but more than thirty (30) grams of marihuana, such person
512 may, upon conviction, be imprisoned for not more than thirty (30)
513 years and shall be fined not less than Five Thousand Dollars
514 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
515 both;

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

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

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

527 (4) In the case of controlled substances classified in
528 Schedules III and IV, as set out in Sections 41-29-117 and
529 41-29-119, such person may, upon conviction, be imprisoned for not
530 more than twenty (20) years and shall be fined not less than One
531 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
532 Thousand Dollars (\$250,000.00), or both; and

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

538 (c) It is unlawful for any person knowingly or intentionally
539 to possess any controlled substance unless the substance was
540 obtained directly from, or pursuant to, a valid prescription or
541 order of a practitioner while acting in the course of his
542 professional practice, or except as otherwise authorized by this
543 article. The penalties for any violation of this subsection (c)
544 with respect to a controlled substance classified in Schedules I,
545 II, III, IV or V, as set out in Section 41-29-113, 41-29-115,
546 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be
547 based on dosage unit as defined herein or the weight of the
548 controlled substance as set forth herein as appropriate:

549 "Dosage unit (d.u.);" means a tablet or capsule, or in the
550 case of a liquid solution, one (1) milliliter. In the case of
551 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
552 stamp, square, dot, microdot, tablet or capsule of a controlled
553 substance.

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

557 The weight set forth refers to the entire weight of any
558 mixture or substance containing a detectable amount of the
559 controlled substance.

560 If a mixture or substance contains more than one (1)
561 controlled substance, the weight of the mixture or substance is
562 assigned to the controlled substance that results in the greater
563 punishment.

564 Any person who violates this subsection with respect to:

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

568 (A) Less than one-tenth (0.1) gram or one (1)
569 dosage unit or less may be charged as a misdemeanor or felony. If
570 charged by indictment as a felony: by imprisonment not less than
571 one (1) nor more than four (4) years and a fine not more than Ten
572 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by
573 imprisonment for up to one (1) year and a fine not more than One
574 Thousand Dollars (\$1,000.00).

575 (B) One-tenth (0.1) gram but less than two (2)
576 grams or two (2) dosage units but less than ten (10) dosage units,
577 by imprisonment for not less than two (2) years nor more than
578 eight (8) years and a fine of not more than Fifty Thousand Dollars
579 (\$50,000.00).

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

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

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

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

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

596 (A) Thirty (30) grams or less by a fine of not
597 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
598 Fifty Dollars (\$250.00). The provisions of this paragraph shall
599 be enforceable by summons, provided the offender provides proof of
600 identity satisfactory to the arresting officer and gives written
601 promise to appear in court satisfactory to the arresting officer,
602 as directed by the summons. A second conviction under this
603 section within two (2) years shall be punished by a fine of Two
604 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
605 nor more than sixty (60) days in the county jail and mandatory
606 participation in a drug education program, approved by the
607 Division of Alcohol and Drug Abuse of the State Department of
608 Mental Health, unless the court enters a written finding that such
609 drug education program is inappropriate. A third or subsequent
610 conviction under this section within two (2) years is a
611 misdemeanor punishable by a fine of not less than Two Hundred
612 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
613 (\$500.00) and confinement for not less than five (5) days nor more
614 than six (6) months in the county jail. Upon a first or second
615 conviction under this section, the courts shall forward a report
616 of such conviction to the Mississippi Bureau of Narcotics which
617 shall make and maintain a private, nonpublic record for a period
618 not to exceed two (2) years from the date of conviction. The
619 private, nonpublic record shall be solely for the use of the

620 courts in determining the penalties which attach upon conviction
621 under this section and shall not constitute a criminal record for
622 the purpose of private or administrative inquiry and the record of
623 each conviction shall be expunged at the end of the period of two
624 (2) years following the date of such conviction;

625 (B) Additionally, a person who is the operator of
626 a motor vehicle, who possesses on his person or knowingly keeps or
627 allows to be kept in a motor vehicle within the area of the
628 vehicle normally occupied by the driver or passengers, more than
629 one (1) gram, but not more than thirty (30) grams, of marihuana is
630 guilty of a misdemeanor and upon conviction may be fined not more
631 than One Thousand Dollars (\$1,000.00) and confined for not more
632 than ninety (90) days in the county jail. For the purposes of
633 this subsection, such area of the vehicle shall not include the
634 trunk of the motor vehicle or the areas not normally occupied by
635 the driver or passengers if the vehicle is not equipped with a
636 trunk. A utility or glove compartment shall be deemed to be
637 within the area occupied by the driver and passengers;

638 (C) More than thirty (30) grams but less than two
639 hundred fifty (250) grams may be fined not more than One Thousand
640 Dollars (\$1,000.00), or confined in the county jail for not more
641 than one (1) year, or both; or fined not more than Three Thousand
642 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
643 not more than three (3) years, or both;

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

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

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

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

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

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

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

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

676 (D) Three hundred (300) grams but less than five
677 hundred (500) grams or one thousand (1,000) dosage units but less
678 than two thousand five hundred (2,500) dosage units, by
679 imprisonment for not less than four (4) years nor more than
680 sixteen (16) years and a fine of not more than Two Hundred Fifty
681 Thousand Dollars (\$250,000.00).

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

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

687 (d) (1) It is unlawful for a person who is not authorized
688 by the State Board of Medical Licensure, State Board of Pharmacy,
689 or other lawful authority to use, or to possess with intent to
690 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
691 manufacture, compound, convert, produce, process, prepare, test,
692 analyze, pack, repack, store, contain, conceal, inject, ingest,
693 inhale or otherwise introduce into the human body a controlled
694 substance in violation of the Uniform Controlled Substances Law.
695 Any person who violates this subsection is guilty of a misdemeanor
696 and upon conviction may be confined in the county jail for not
697 more than six (6) months, or fined not more than Five Hundred
698 Dollars (\$500.00), or both; however, no person shall be charged
699 with a violation of this subsection when such person is also
700 charged with the possession of one (1) ounce or less of marihuana
701 under subsection (c)(2)(A) of this section.

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

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

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

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

730 (e) It shall be unlawful for any physician practicing
731 medicine in this state to prescribe, dispense or administer any
732 amphetamine or amphetamine-like anorectics and/or central nervous
733 system stimulants classified in Schedule II, pursuant to Section
734 41-29-115, for the exclusive treatment of obesity, weight control
735 or weight loss. Any person who violates this subsection, upon
736 conviction, is guilty of a misdemeanor and may be confined for a
737 period not to exceed six (6) months, or fined not more than One
738 Thousand Dollars (\$1,000.00), or both.

739 (f) Except as otherwise authorized in this article, any
740 person twenty-one (21) years of age or older who knowingly sells,
741 barter, transfers, manufactures, distributes or dispenses during
742 any twelve (12) consecutive month period: (i) ten (10) pounds or
743 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
744 two (2) or more ounces of cocaine or of any mixture containing
745 cocaine as described in Section 41-29-105(s), Mississippi Code of
746 1972; (iv) two (2) or more ounces of methamphetamine; or (v) one
747 hundred (100) or more dosage units of morphine, Demerol, Dilaudid,
748 oxycodone hydrochloride or a derivative thereof, or
749 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a
750 felony and, upon conviction thereof, shall be sentenced to life

751 imprisonment and such sentence shall not be reduced or suspended
752 nor shall such person be eligible for probation or parole, the
753 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,
754 Mississippi Code of 1972, to the contrary notwithstanding. The
755 provisions of this subsection shall not apply to any person who
756 furnishes information and assistance to the bureau or its designee
757 which, in the opinion of the trial judge objectively should or
758 would have aided in the arrest or prosecution of others who
759 violate this subsection. The accused shall have adequate
760 opportunity to develop and make a record of all information and
761 assistance so furnished.

762 (g) (1) Any person trafficking in controlled substances
763 shall be guilty of a felony and upon conviction shall be
764 imprisoned for a term of thirty (30) years and such sentence shall
765 not be reduced or suspended nor shall such person be eligible for
766 probation or parole, the provisions of Sections 41-29-149,
767 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
768 contrary notwithstanding and shall be fined not less than Five
769 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
770 (\$1,000,000.00).

771 (2) "Trafficking in controlled substances" as used
772 herein means to engage in three (3) or more component offenses
773 within any twelve (12) consecutive month period where at least two
774 (2) of the component offenses occurred in different counties. A
775 component offense is any act which would constitute a violation of
776 subsection (a) of this section. Prior convictions shall not be
777 used as component offenses to establish the charge of trafficking
778 in controlled substances.

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

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

787 (h) The medical use of marihuana as authorized by Sections 1
788 through 5 of this act shall not be a violation of this section.

789 **SECTION 9.** If any provision of this act or the application
790 thereof to any person or circumstance is held invalid, the
791 invalidity does not affect other provisions or applications of the
792 act which can be given effect without the invalid provision or
793 application, and to this end the provisions of this act are
794 severable.

795 **SECTION 10.** This act shall take effect and be in force from
796 and after July 1, 2007.