

By: Representative Mims

To: Judiciary A

HOUSE BILL NO. 492

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE FOR INCARCERATION FOR A FIRST OFFENSE OF MISDEMEANOR  
3 MARIJUANA POSSESSION; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 41-29-139, Mississippi Code of 1972, is  
6 amended as follows:

7 41-29-139. (a) Except as authorized by this article, it is  
8 unlawful for any person knowingly or intentionally:

9 (1) To sell, barter, transfer, manufacture, distribute,  
10 dispense or possess with intent to sell, barter, transfer,  
11 manufacture, distribute or dispense, a controlled substance; or

12 (2) To create, sell, barter, transfer, distribute,  
13 dispense or possess with intent to create, sell, barter, transfer,  
14 distribute or dispense, a counterfeit substance.

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

18 (1) In the case of controlled substances classified in  
19 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,  
20 except thirty (30) grams or less of marijuana, and except a first  
21 offender as defined in Section 41-29-149(e) who violates  
22 subsection (a) of this section with respect to less than one (1)  
23 kilogram but more than thirty (30) grams of marijuana, such person  
24 may, upon conviction, be imprisoned for not more than thirty (30)  
25 years and shall be fined not less than Five Thousand Dollars  
26 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or  
27 both;

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

35           (3) In the case of thirty (30) grams or less of  
36 marijuana, such person may, upon conviction, be imprisoned for not  
37 more than three (3) years or fined not more than Three Thousand  
38 Dollars (\$3,000.00), or both;

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

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

50           (c) It is unlawful for any person knowingly or intentionally  
51 to possess any controlled substance unless the substance was  
52 obtained directly from, or pursuant to, a valid prescription or  
53 order of a practitioner while acting in the course of his  
54 professional practice, or except as otherwise authorized by this  
55 article. The penalties for any violation of this subsection (c)  
56 with respect to a controlled substance classified in Schedules I,  
57 II, III, IV or V, as set out in Section 41-29-113, 41-29-115,  
58 41-29-117, 41-29-119 or 41-29-121, including marijuana, shall be  
59 based on dosage unit as defined herein or the weight of the  
60 controlled substance as set forth herein as appropriate:

61 "Dosage unit (d.u.)" means a tablet or capsule, or in the  
62 case of a liquid solution, one (1) milliliter. In the case of  
63 lysergic acid diethylamide (LSD) the term, "dosage unit" means a  
64 stamp, square, dot, microdot, tablet or capsule of a controlled  
65 substance.

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

69 The weight set forth refers to the entire weight of any  
70 mixture or substance containing a detectable amount of the  
71 controlled substance.

72 If a mixture or substance contains more than one (1)  
73 controlled substance, the weight of the mixture or substance is  
74 assigned to the controlled substance that results in the greater  
75 punishment.

76 Any person who violates this subsection with respect to:

77 (1) A controlled substance classified in Schedule I or  
78 II, except marijuana, in the following amounts shall be charged  
79 and sentenced as follows:

80 (A) Less than one-tenth (0.1) gram or one (1)  
81 dosage unit or less may be charged as a misdemeanor or felony. If  
82 charged by indictment as a felony: by imprisonment not less than  
83 one (1) nor more than four (4) years and a fine not more than Ten  
84 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by  
85 imprisonment for up to one (1) year and a fine not more than One  
86 Thousand Dollars (\$1,000.00).

87 (B) One-tenth (0.1) gram but less than two (2)  
88 grams or two (2) dosage units but less than ten (10) dosage units,  
89 by imprisonment for not less than two (2) years nor more than  
90 eight (8) years and a fine of not more than Fifty Thousand Dollars  
91 (\$50,000.00).

92 (C) Two (2) grams but less than ten (10) grams or  
93 ten (10) dosage units but less than twenty (20) dosage units, by

94 imprisonment for not less than four (4) years nor more than  
95 sixteen (16) years and a fine of not more than Two Hundred Fifty  
96 Thousand Dollars (\$250,000.00).

97 (D) Ten (10) grams but less than thirty (30) grams  
98 or twenty (20) dosage units but not more than forty (40) dosage  
99 units, by imprisonment for not less than six (6) years nor more  
100 than twenty-four (24) years and a fine of not more than Five  
101 Hundred Thousand Dollars (\$500,000.00).

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

106 (2) Marijuana in the following amounts shall be charged  
107 and sentenced as follows:

108 (A) Thirty (30) grams or less by a fine of not  
109 less than One Hundred Dollars (\$100.00) nor more than Two Hundred  
110 Fifty Dollars (\$250.00) and five (5) days imprisonment in the  
111 county jail. The provisions of this paragraph shall be  
112 enforceable by summons, provided the offender provides proof of  
113 identity satisfactory to the arresting officer and gives written  
114 promise to appear in court satisfactory to the arresting officer,  
115 as directed by the summons. A second conviction under this  
116 section within two (2) years shall be punished by a fine of Two  
117 Hundred Fifty Dollars (\$250.00) and not less than five (5) days  
118 nor more than sixty (60) days in the county jail and mandatory  
119 participation in a drug education program, approved by the  
120 Division of Alcohol and Drug Abuse of the State Department of  
121 Mental Health, unless the court enters a written finding that such  
122 drug education program is inappropriate. A third or subsequent  
123 conviction under this section within two (2) years is a  
124 misdemeanor punishable by a fine of not less than Two Hundred  
125 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars  
126 (\$500.00) and confinement for not less than five (5) days nor more

127 than six (6) months in the county jail. Upon a first or second  
128 conviction under this section, the courts shall forward a report  
129 of such conviction to the Mississippi Bureau of Narcotics which  
130 shall make and maintain a private, nonpublic record for a period  
131 not to exceed two (2) years from the date of conviction. The  
132 private, nonpublic record shall be solely for the use of the  
133 courts in determining the penalties which attach upon conviction  
134 under this section and shall not constitute a criminal record for  
135 the purpose of private or administrative inquiry and the record of  
136 each conviction shall be expunged at the end of the period of two  
137 (2) years following the date of such conviction;

138 (B) Additionally, a person who is the operator of  
139 a motor vehicle, who possesses on his person or knowingly keeps or  
140 allows to be kept in a motor vehicle within the area of the  
141 vehicle normally occupied by the driver or passengers, more than  
142 one (1) gram, but not more than thirty (30) grams, of marijuana is  
143 guilty of a misdemeanor and upon conviction may be fined not more  
144 than One Thousand Dollars (\$1,000.00) and confined for not more  
145 than ninety (90) days in the county jail. For the purposes of  
146 this subsection, such area of the vehicle shall not include the  
147 trunk of the motor vehicle or the areas not normally occupied by  
148 the driver or passengers if the vehicle is not equipped with a  
149 trunk. A utility or glove compartment shall be deemed to be  
150 within the area occupied by the driver and passengers;

151 (C) More than thirty (30) grams but less than two  
152 hundred fifty (250) grams may be fined not more than One Thousand  
153 Dollars (\$1,000.00), or confined in the county jail for not more  
154 than one (1) year, or both; or fined not more than Three Thousand  
155 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for  
156 not more than three (3) years, or both;

157 (D) Two hundred fifty (250) grams but less than  
158 five hundred (500) grams, by imprisonment for not less than two

159 (2) years nor more than eight (8) years and by a fine of not more  
160 than Fifty Thousand Dollars (\$50,000.00);

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

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

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

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

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

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

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

189 (D) Three hundred (300) grams but less than five  
190 hundred (500) grams or one thousand (1,000) dosage units but less  
191 than two thousand five hundred (2,500) dosage units, by

192 imprisonment for not less than four (4) years nor more than  
193 sixteen (16) years and a fine of not more than Two Hundred Fifty  
194 Thousand Dollars (\$250,000.00).

195           (E) Five hundred (500) grams or more or two  
196 thousand five hundred (2,500) dosage units or more, by  
197 imprisonment for not less than six (6) years nor more than  
198 twenty-four (24) years and a fine of not more than Five Hundred  
199 Thousand Dollars (\$500,000.00).

200           (d) (1) It is unlawful for a person who is not authorized  
201 by the State Board of Medical Licensure, State Board of Pharmacy,  
202 or other lawful authority to use, or to possess with intent to  
203 use, paraphernalia to plant, propagate, cultivate, grow, harvest,  
204 manufacture, compound, convert, produce, process, prepare, test,  
205 analyze, pack, repack, store, contain, conceal, inject, ingest,  
206 inhale or otherwise introduce into the human body a controlled  
207 substance in violation of the Uniform Controlled Substances Law.  
208 Any person who violates this subsection is guilty of a misdemeanor  
209 and upon conviction may be confined in the county jail for not  
210 more than six (6) months, or fined not more than Five Hundred  
211 Dollars (\$500.00), or both; however, no person shall be charged  
212 with a violation of this subsection when such person is also  
213 charged with the possession of one (1) ounce or less of marijuana  
214 under subsection (c)(2)(A) of this section.

215           (2) It is unlawful for any person to deliver, sell,  
216 possess with intent to deliver or sell, or manufacture with intent  
217 to deliver or sell, paraphernalia, knowing, or under circumstances  
218 where one reasonably should know, that it will be used to plant,  
219 propagate, cultivate, grow, harvest, manufacture, compound,  
220 convert, produce, process, prepare, test, analyze, pack, repack,  
221 store, contain, conceal, inject, ingest, inhale, or otherwise  
222 introduce into the human body a controlled substance in violation  
223 of the Uniform Controlled Substances Law. Any person who violates  
224 this subsection is guilty of a misdemeanor and upon conviction may

225 be confined in the county jail for not more than six (6) months,  
226 or fined not more than Five Hundred Dollars (\$500.00), or both.

227 (3) Any person eighteen (18) years of age or over who  
228 violates subsection (d)(2) of this section by delivering or  
229 selling paraphernalia to a person under eighteen (18) years of age  
230 who is at least three (3) years his junior is guilty of a  
231 misdemeanor and upon conviction may be confined in the county jail  
232 for not more than one (1) year, or fined not more than One  
233 Thousand Dollars (\$1,000.00), or both.

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

243 (e) It shall be unlawful for any physician practicing  
244 medicine in this state to prescribe, dispense or administer any  
245 amphetamine or amphetamine-like anorectics and/or central nervous  
246 system stimulants classified in Schedule II, pursuant to Section  
247 41-29-115, for the exclusive treatment of obesity, weight control  
248 or weight loss. Any person who violates this subsection, upon  
249 conviction, is guilty of a misdemeanor and may be confined for a  
250 period not to exceed six (6) months, or fined not more than One  
251 Thousand Dollars (\$1,000.00), or both.

252 (f) Except as otherwise authorized in this article, any  
253 person twenty-one (21) years of age or older who knowingly sells,  
254 barter, transfers, manufactures, distributes or dispenses during  
255 any twelve (12) consecutive month period: (i) ten (10) pounds or  
256 more of marijuana; (ii) two (2) ounces or more of heroin; (iii)  
257 two (2) or more ounces of cocaine or of any mixture containing



258 cocaine as described in Section 41-29-105(s), Mississippi Code of  
259 1972; (iv) two (2) or more ounces of methamphetamine; or (v) one  
260 hundred (100) or more dosage units of morphine, Demerol, Dilaudid,  
261 oxycodone hydrochloride or a derivative thereof, or  
262 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a  
263 felony and, upon conviction thereof, shall be sentenced to life  
264 imprisonment and such sentence shall not be reduced or suspended  
265 nor shall such person be eligible for probation or parole, the  
266 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,  
267 Mississippi Code of 1972, to the contrary notwithstanding. The  
268 provisions of this subsection shall not apply to any person who  
269 furnishes information and assistance to the bureau or its designee  
270 which, in the opinion of the trial judge objectively should or  
271 would have aided in the arrest or prosecution of others who  
272 violate this subsection. The accused shall have adequate  
273 opportunity to develop and make a record of all information and  
274 assistance so furnished.

275 (g) (1) Any person trafficking in controlled substances  
276 shall be guilty of a felony and upon conviction shall be  
277 imprisoned for a term of thirty (30) years and such sentence shall  
278 not be reduced or suspended nor shall such person be eligible for  
279 probation or parole, the provisions of Sections 41-29-149,  
280 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the  
281 contrary notwithstanding and shall be fined not less than Five  
282 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
283 (\$1,000,000.00).

284 (2) "Trafficking in controlled substances" as used  
285 herein means to engage in three (3) or more component offenses  
286 within any twelve (12) consecutive month period where at least two  
287 (2) of the component offenses occurred in different counties. A  
288 component offense is any act which would constitute a violation of  
289 subsection (a) of this section. Prior convictions shall not be

290 used as component offenses to establish the charge of trafficking  
291 in controlled substances.

292           (3) The charge of trafficking in controlled substances  
293 shall be set forth in one (1) count of an indictment with each of  
294 the component offenses alleged therein and it may be charged and  
295 tried in any county where a component offense occurred. An  
296 indictment for trafficking in controlled substances may also be  
297 returned by the State Grand Jury of Mississippi provided at least  
298 two (2) of the component offenses occurred in different circuit  
299 court districts.

300           **SECTION 2.** This act shall take effect and be in force from  
301 and after July 1, 2007.