

By: Senator(s) Albritton

To: Finance

## SENATE BILL NO. 3065

1 AN ACT TO CREATE THE MISSISSIPPI UNAUTHORIZED SUBSTANCE TAX,  
2 ALSO KNOWN AS THE DRUG DEALER TAX ACT; TO ENACT DEFINITIONS; TO  
3 LEVY AN EXCISE TAX ON UNAUTHORIZED SUBSTANCES; TO PROVIDE  
4 EXEMPTIONS; TO PROVIDE FOR ISSUANCE OF TAX STAMPS; TO REQUIRE  
5 PAYMENT OF THE TAX; TO AUTHORIZE COLLECTION OF PENALTIES AND  
6 INTEREST; TO PROVIDE FOR CONFIDENTIALITY AND IMMUNITY; TO CREATE A  
7 SPECIAL FUND AND PROVIDE FOR REMITTANCE OF THE TAX; TO PROHIBIT  
8 IMMUNITY FROM CRIMINAL PROSECUTION; TO AUTHORIZE PROMULGATION OF  
9 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 fund. Nothing in this  
15 act shall in any manner provide immunity from criminal prosecution  
16 for a person who possesses an illegal substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61 **SECTION 4. Exemptions.** (1) The tax levied in this act does  
62 not apply to any material, compound, mixture, or preparation which

63 contains any quantity of a controlled substance that is listed as  
64 an exempt substance in 21 CFR, Section 1308.22.

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

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

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

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

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

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

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

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

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

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

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

160 disclose the identity of dealers or the contents of particular  
161 returns or reports.

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

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

170               (b) The interest accruing to the fund;

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

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

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

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

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

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

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

193 assessment. Twenty-five percent (25%) of any such amount remitted  
194 to a local law enforcement agency shall be deposited to the  
195 general fund of the county or municipality of the local law  
196 enforcement jurisdiction. Proceeds retained by a law enforcement  
197 agency are to be used by the agency solely for the purpose of  
198 investigating, combating, preventing, and reducing drug crimes.  
199 If more than one (1) local or state law enforcement agency  
200 conducted the investigation, the commissioner shall determine the  
201 equitable share for each agency based on the contribution each  
202 agency made to the investigation. The commissioner's  
203 determination of the equitable share for each agency shall be  
204 final, and shall not be subject to review in an administrative or  
205 judicial proceeding. Ten percent (10%) shall be remitted to the  
206 Department of Public Safety for the purposes of creating,  
207 operating and maintaining a Statewide Automated Victim Information  
208 and Notification (SAVIN) system. The commissioner shall credit  
209 the remaining forty percent (40%) of the unencumbered tax proceeds  
210 to the 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 on  
223 July 1, 2007.