

By: Representative Martinson

To: Judiciary B

HOUSE BILL NO. 1089

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO CONFORM THE PENALTIES FOR POSSESSION OF MARIJUANA, POSSESSION
3 OF MARIJUANA IN A MOTOR VEHICLE AND POSSESSION OF PARAPHERNALIA;
4 AND FOR RELATED PURPOSES.

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

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

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

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

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

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



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

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

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

40 (4) In the case of controlled substances classified in
41 Schedules III and IV, as set out in Sections 41-29-117 and
42 41-29-119, such person may, upon conviction, be imprisoned for not
43 more than twenty (20) years and shall be fined not less than One



Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
Thousand Dollars (\$250,000.00), or both; and

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

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

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



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

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

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

78 Any person who violates this subsection with respect to:

79 (1) A controlled substance classified in Schedule I or
80 II, except marihuana or synthetic cannabinoids, in the following
81 amounts shall be charged and sentenced as follows:

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

89 (B) One-tenth (0.1) gram but less than two (2)
90 grams or two (2) dosage units but less than ten (10) dosage units,
91 by imprisonment for not less than two (2) years nor more than



eight (8) years and a fine of not more than Fifty Thousand Dollars (\$50,000.00).

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

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

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

(2) Marihuana or synthetic cannabinoids in the following amounts shall be charged and sentenced as follows:

(A) Thirty (30) grams or less by a fine of * * * Five Hundred Dollars (\$500.00) or six (6) months in the county jail, or both. The provisions of this paragraph shall be enforceable by summons, provided the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this



117 section within two (2) years shall be punished by a fine of * * *
118 Five Hundred Dollars (\$500.00) and not less than five (5) days nor
119 more than * * * six (6) months in the county jail and mandatory
120 participation in a drug education program, approved by the
121 Division of Alcohol and Drug Abuse of the State Department of
122 Mental Health, unless the court enters a written finding that such
123 drug education program is inappropriate. A third or subsequent
124 conviction under this section within two (2) years is a
125 misdemeanor punishable by a fine of not less than * * * Five
126 Hundred Dollars (\$500.00) nor more than One Thousand Dollars
127 (\$1,000.00) and confinement for not less than five (5) days nor
128 more than six (6) months in the county jail. Upon a first or
129 second conviction under this section, the courts shall forward a
130 report of such conviction to the Mississippi Bureau of Narcotics
131 which shall make and maintain a private, nonpublic record for a
132 period not to exceed two (2) years from the date of conviction.
133 The private, nonpublic record shall be solely for the use of the
134 courts in determining the penalties which attach upon conviction
135 under this section and shall not constitute a criminal record for
136 the purpose of private or administrative inquiry and the record of
137 each conviction shall be expunged at the end of the period of two
138 (2) years following the date of such conviction;

139 (B) Additionally, a person who is the operator of
140 a motor vehicle, who possesses on his person or knowingly keeps or
141 allows to be kept in a motor vehicle within the area of the



vehicle normally occupied by the driver or passengers, more than one (1) gram, but not more than thirty (30) grams, of marihuana or synthetic cannabinoids is guilty of a misdemeanor and, upon conviction, may be fined not more than * * * Five Hundred Dollars (\$500.00) * * * or confined for not more than * * * six (6) months in the county jail, or both. For the purposes of this subsection, such area of the vehicle shall not include the trunk of the motor vehicle or the areas not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers;

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

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

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



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

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

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

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

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

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



191 (D) Three hundred (300) grams but less than five
192 hundred (500) grams or one thousand (1,000) dosage units but less
193 than two thousand five hundred (2,500) dosage units, by
194 imprisonment for not less than four (4) years nor more than
195 sixteen (16) years and a fine of not more than Two Hundred Fifty
196 Thousand Dollars (\$250,000.00) .

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

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



or synthetic cannabinoids under subsection (c)(2)(A) of this section.

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

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

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one



241 reasonably should know, that the purpose of the advertisement, in
242 whole or in part, is to promote the sale of objects designed or
243 intended for use as paraphernalia. Any person who violates this
244 subsection is guilty of a misdemeanor and, upon conviction, may be
245 confined in the county jail for not more than six (6) months, or
246 fined not more than Five Hundred Dollars (\$500.00), or both.

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

256 (f) Except as otherwise authorized in this article, any
257 person twenty-one (21) years of age or older who knowingly sells,
258 barter, transfers, manufactures, distributes or dispenses during
259 any twelve (12) consecutive month period: (i) ten (10) pounds or
260 more of marihuana or synthetic cannabinoids; (ii) two (2) ounces
261 or more of heroin; (iii) two (2) or more ounces of cocaine or of
262 any mixture containing cocaine as described in Section
263 41-29-105(s), Mississippi Code of 1972; (iv) two (2) or more
264 ounces of methamphetamine; or (v) one hundred (100) or more dosage
265 units of morphine, Demerol, Dilaudid, oxycodone hydrochloride or a



derivative thereof, or 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a felony and, upon conviction thereof, shall be sentenced to life imprisonment and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding. The provisions of this subsection shall not apply to any person who furnishes information and assistance to the bureau or its designee which, in the opinion of the trial judge objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

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

(2) "Trafficking in controlled substances" as used herein means to engage in three (3) or more component offenses within any twelve (12) consecutive month period where at least two



291 (2) of the component offenses occurred in different counties. A
292 component offense is any act which would constitute a violation of
293 subsection (a) of this section. Prior convictions shall not be
294 used as component offenses to establish the charge of trafficking
295 in controlled substances.

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

304 **SECTION 2.** This act shall take effect and be in force from
305 and after July 1, 2013.

