

By: Representative Baker

To: Drug Policy; Judiciary B

HOUSE BILL NO. 183

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE A PENALTY FOR TRANSFER AND POSSESSION WITH INTENT TO  
3 TRANSFER; 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) **Transfer and possession with intent to**  
8 **transfer.** Except as authorized by this article, it is unlawful  
9 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) **Punishment for transfer and possession with intent to**  
17 **transfer.** Except as otherwise provided in Section 41-29-142, any



18 person who violates subsection (a) of this section shall be, if  
19 convicted, sentenced as follows:

20 (1) For controlled substances classified in Schedule I  
21 or II, as set out in Sections 41-29-113 and 41-29-115, other than  
22 marijuana \* \* \*~~or~~, synthetic cannabinoids, heroin or fentanyl:

23 (A) If less than two (2) grams or ten (10) dosage  
24 units, by imprisonment for not more than eight (8) years or a fine  
25 of not more than Fifty Thousand Dollars (\$50,000.00), or both.

26 (B) If two (2) or more grams or ten (10) or more  
27 dosage units, but less than ten (10) grams or twenty (20) dosage  
28 units, by imprisonment for not less than three (3) years nor more  
29 than twenty (20) years or a fine of not more than Two Hundred  
30 Fifty Thousand Dollars (\$250,000.00), or both.

31 (C) If ten (10) or more grams or twenty (20) or  
32 more dosage units, but less than thirty (30) grams or forty (40)  
33 dosage units, by imprisonment for not less than five (5) years nor  
34 more than thirty (30) years or a fine of not more than Five  
35 Hundred Thousand Dollars (\$500,000.00), or both.

36 (2) (A) For marijuana:

37 1. If thirty (30) grams or less, by  
38 imprisonment for not more than three (3) years or a fine of not  
39 more than Three Thousand Dollars (\$3,000.00), or both;

40 2. If more than thirty (30) grams but less  
41 than two hundred fifty (250) grams, by imprisonment for not more



42 than five (5) years or a fine of not more than Five Thousand  
43 Dollars (\$5,000.00), or both;

44           3. If two hundred fifty (250) or more grams  
45 but less than five hundred (500) grams, by imprisonment for not  
46 less than three (3) years nor more than ten (10) years or a fine  
47 of not more than Fifteen Thousand Dollars (\$15,000.00), or both;

48           4. If five hundred (500) or more grams but  
49 less than one (1) kilogram, by imprisonment for not less than five  
50 (5) years nor more than twenty (20) years or a fine of not more  
51 than Twenty Thousand Dollars (\$20,000.00), or both.

52           (B) For synthetic cannabinoids:

53           1. If ten (10) grams or less, by imprisonment  
54 for not more than three (3) years or a fine of not more than Three  
55 Thousand Dollars (\$3,000.00), or both;

56           2. If more than ten (10) grams but less than  
57 twenty (20) grams, by imprisonment for not more than five (5)  
58 years or a fine of not more than Five Thousand Dollars  
59 (\$5,000.00), or both;

60           3. If twenty (20) or more grams but less than  
61 forty (40) grams, by imprisonment for not less than three (3)  
62 years nor more than ten (10) years or a fine of not more than  
63 Fifteen Thousand Dollars (\$15,000.00), or both;

64           4. If forty (40) or more grams but less than  
65 two hundred (200) grams, by imprisonment for not less than five



66 (5) years nor more than twenty (20) years or a fine of not more  
67 than Twenty Thousand Dollars (\$20,000.00), or both.

68 (C) For heroin and fentanyl:

69 1. If less than two (2) grams or ten (10)  
70 dosage units, by imprisonment for not more than twelve (12) years  
71 or a fine of not more than One Hundred Thousand Dollars  
72 (\$100,000.00), or both;

73 2. If two (2) or more grams or ten (10) or  
74 more dosage units, but less than ten (10) grams or twenty (20)  
75 dosage units, by imprisonment for not less than ten (10) years nor  
76 more than thirty (30) years or a fine of not more than Five  
77 Hundred Thousand Dollars (\$500,000.00), or both;

78 3. If ten (10) or more grams or twenty (20)  
79 or more dosage units, but less than thirty (30) grams or forty  
80 (40) dosage units, by imprisonment for not less than fifteen (15)  
81 years nor more than forty (40) years or a fine of not more than  
82 One Million Dollars (\$1,000,000.00), or both.

83 (3) For controlled substances classified in Schedules  
84 III and IV, as set out in Sections 41-29-117 and 41-29-119:

85 (A) If less than two (2) grams or ten (10) dosage  
86 units, by imprisonment for not more than five (5) years or a fine  
87 of not more than Five Thousand Dollars (\$5,000.00), or both;

88 (B) If two (2) or more grams or ten (10) or more  
89 dosage units, but less than ten (10) grams or twenty (20) dosage



90 units, by imprisonment for not more than eight (8) years or a fine  
91 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

92 (C) If ten (10) or more grams or twenty (20) or  
93 more dosage units, but less than thirty (30) grams or forty (40)  
94 dosage units, by imprisonment for not more than fifteen (15) years  
95 or a fine of not more than One Hundred Thousand Dollars  
96 (\$100,000.00), or both;

97 (D) If thirty (30) or more grams or forty (40) or  
98 more dosage units, but less than five hundred (500) grams or two  
99 thousand five hundred (2,500) dosage units, by imprisonment for  
100 not more than twenty (20) years or a fine of not more than Two  
101 Hundred Fifty Thousand Dollars (\$250,000.00), or both.

102 (4) For controlled substances classified in Schedule V,  
103 as set out in Section 41-29-121:

104 (A) If less than two (2) grams or ten (10) dosage  
105 units, by imprisonment for not more than one (1) year or a fine of  
106 not more than Five Thousand Dollars (\$5,000.00), or both;

107 (B) If two (2) or more grams or ten (10) or more  
108 dosage units, but less than ten (10) grams or twenty (20) dosage  
109 units, by imprisonment for not more than five (5) years or a fine  
110 of not more than Ten Thousand Dollars (\$10,000.00), or both;

111 (C) If ten (10) or more grams or twenty (20) or  
112 more dosage units, but less than thirty (30) grams or forty (40)  
113 dosage units, by imprisonment for not more than ten (10) years or



114 a fine of not more than Twenty Thousand Dollars (\$20,000.00), or  
115 both;

116 (D) For thirty (30) or more grams or forty (40) or  
117 more dosage units, but less than five hundred (500) grams or two  
118 thousand five hundred (2,500) dosage units, by imprisonment for  
119 not more than fifteen (15) years or a fine of not more than Fifty  
120 Thousand Dollars (\$50,000.00), or both.

121 (5) For the sale or transfer of all controlled  
122 substances, whether classified as Schedule I, II, III or IV, if  
123 death results from the use of such substances, the person  
124 responsible for the sale or transfer of such substance shall be  
125 sentenced to a term of imprisonment up to life, but not less than  
126 forty (40) years.

127 (c) **Simple possession.** It is unlawful for any person  
128 knowingly or intentionally to possess any controlled substance  
129 unless the substance was obtained directly from, or pursuant to, a  
130 valid prescription or order of a practitioner while acting in the  
131 course of his professional practice, or except as otherwise  
132 authorized by this article. The penalties for any violation of  
133 this subsection (c) with respect to a controlled substance  
134 classified in Schedules I, II, III, IV or V, as set out in Section  
135 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including  
136 marijuana or synthetic cannabinoids, shall be based on dosage unit  
137 as defined herein or the weight of the controlled substance as set  
138 forth herein as appropriate:



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

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

147 The weight set forth refers to the entire weight of any  
148 mixture or substance containing a detectable amount of the  
149 controlled substance.

150 If a mixture or substance contains more than one (1)  
151 controlled substance, the weight of the mixture or substance is  
152 assigned to the controlled substance that results in the greater  
153 punishment.

154 A person shall be charged and sentenced as follows for a  
155 violation of this subsection with respect to:

156 (1) A controlled substance classified in Schedule I or  
157 II, except marijuana and synthetic cannabinoids:

158 (A) If less than one-tenth (0.1) gram or two (2)  
159 dosage units, the violation is a misdemeanor and punishable by  
160 imprisonment for not more than one (1) year or a fine of not more  
161 than One Thousand Dollars (\$1,000.00), or both.

162 (B) If one-tenth (0.1) gram or more or two (2) or  
163 more dosage units, but less than two (2) grams or ten (10) dosage



164 units, by imprisonment for not more than three (3) years or a fine  
165 of not more than Fifty Thousand Dollars (\$50,000.00), or both.

166 (C) If two (2) or more grams or ten (10) or more  
167 dosage units, but less than ten (10) grams or twenty (20) dosage  
168 units, by imprisonment for not more than eight (8) years or a fine  
169 of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),  
170 or both.

171 (D) If ten (10) or more grams or twenty (20) or  
172 more dosage units, but less than thirty (30) grams or forty (40)  
173 dosage units, by imprisonment for not less than three (3) years  
174 nor more than twenty (20) years or a fine of not more than Five  
175 Hundred Thousand Dollars (\$500,000.00), or both.

176 (2) (A) Marijuana and synthetic cannabinoids:

177 1. If thirty (30) grams or less of marijuana  
178 or ten (10) grams or less of synthetic cannabinoids, by a fine of  
179 not less than One Hundred Dollars (\$100.00) nor more than Two  
180 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph  
181 (2) (A) may be enforceable by summons if the offender provides  
182 proof of identity satisfactory to the arresting officer and gives  
183 written promise to appear in court satisfactory to the arresting  
184 officer, as directed by the summons. A second conviction under  
185 this section within two (2) years is a misdemeanor punishable by a  
186 fine of Two Hundred Fifty Dollars (\$250.00), not more than sixty  
187 (60) days in the county jail, and mandatory participation in a  
188 drug education program approved by the Division of Alcohol and





189 Drug Abuse of the State Department of Mental Health, unless the  
190 court enters a written finding that a drug education program is  
191 inappropriate. A third or subsequent conviction under this  
192 paragraph (2) (A) within two (2) years is a misdemeanor punishable  
193 by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor  
194 more than One Thousand Dollars (\$1,000.00) and confinement for not  
195 more than six (6) months in the county jail.

196       Upon a first or second conviction under this paragraph  
197 (2) (A), the courts shall forward a report of the conviction to the  
198 Mississippi Bureau of Narcotics which shall make and maintain a  
199 private, nonpublic record for a period not to exceed two (2) years  
200 from the date of conviction. The private, nonpublic record shall  
201 be solely for the use of the courts in determining the penalties  
202 which attach upon conviction under this paragraph (2) (A) and shall  
203 not constitute a criminal record for the purpose of private or  
204 administrative inquiry and the record of each conviction shall be  
205 expunged at the end of the period of two (2) years following the  
206 date of such conviction;

207                   2. Additionally, a person who is the operator  
208 of a motor vehicle, who possesses on his person or knowingly keeps  
209 or allows to be kept in a motor vehicle within the area of the  
210 vehicle normally occupied by the driver or passengers, more than  
211 one (1) gram, but not more than thirty (30) grams of marijuana or  
212 not more than ten (10) grams of synthetic cannabinoids is guilty  
213 of a misdemeanor and, upon conviction, may be fined not more than



214 One Thousand Dollars (\$1,000.00) or confined for not more than  
215 ninety (90) days in the county jail, or both. For the purposes of  
216 this subsection, such area of the vehicle shall not include the  
217 trunk of the motor vehicle or the areas not normally occupied by  
218 the driver or passengers if the vehicle is not equipped with a  
219 trunk. A utility or glove compartment shall be deemed to be  
220 within the area occupied by the driver and passengers;

221 (B) Marijuana:

222 1. If more than thirty (30) grams but less  
223 than two hundred fifty (250) grams, by a fine of not more than One  
224 Thousand Dollars (\$1,000.00), or confinement in the county jail  
225 for not more than one (1) year, or both; or by a fine of not more  
226 than Three Thousand Dollars (\$3,000.00), or imprisonment in the  
227 custody of the Department of Corrections for not more than three  
228 (3) years, or both;

229 2. If two hundred fifty (250) or more grams  
230 but less than five hundred (500) grams, by imprisonment for not  
231 less than two (2) years nor more than eight (8) years or by a fine  
232 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

233 3. If five hundred (500) or more grams but  
234 less than one (1) kilogram, by imprisonment for not less than four  
235 (4) years nor more than sixteen (16) years or a fine of not more  
236 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

237 4. If one (1) kilogram or more but less than  
238 five (5) kilograms, by imprisonment for not less than six (6)



239 years nor more than twenty-four (24) years or a fine of not more  
240 than Five Hundred Thousand Dollars (\$500,000.00), or both;

241                   5. If five (5) kilograms or more, by  
242 imprisonment for not less than ten (10) years nor more than thirty  
243 (30) years or a fine of not more than One Million Dollars  
244 (\$1,000,000.00), or both.

245                   (C) Synthetic cannabinoids:

246                   1. If more than ten (10) grams but less than  
247 twenty (20) grams, by a fine of not more than One Thousand Dollars  
248 (\$1,000.00), or confinement in the county jail for not more than  
249 one (1) year, or both; or by a fine of not more than Three  
250 Thousand Dollars (\$3,000.00), or imprisonment in the custody of  
251 the Department of Corrections for not more than three (3) years,  
252 or both;

253                   2. If twenty (20) or more grams but less than  
254 forty (40) grams, by imprisonment for not less than two (2) years  
255 nor more than eight (8) years or by a fine of not more than Fifty  
256 Thousand Dollars (\$50,000.00), or both;

257                   3. If forty (40) or more grams but less than  
258 two hundred (200) grams, by imprisonment for not less than four  
259 (4) years nor more than sixteen (16) years or a fine of not more  
260 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

261                   4. If two hundred (200) or more grams, by  
262 imprisonment for not less than six (6) years nor more than



263 twenty-four (24) years or a fine of not more than Five Hundred  
264 Thousand Dollars (\$500,000.00), or both.

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

268 (A) If less than fifty (50) grams or less than one  
269 hundred (100) dosage units, the offense is a misdemeanor and  
270 punishable by not more than one (1) year or a fine of not more  
271 than One Thousand Dollars (\$1,000.00), or both.

272 (B) If fifty (50) or more grams or one hundred  
273 (100) or more dosage units, but less than one hundred fifty (150)  
274 grams or five hundred (500) dosage units, by imprisonment for not  
275 less than one (1) year nor more than four (4) years or a fine of  
276 not more than Ten Thousand Dollars (\$10,000.00), or both.

277 (C) If one hundred fifty (150) or more grams or  
278 five hundred (500) or more dosage units, but less than three  
279 hundred (300) grams or one thousand (1,000) dosage units, by  
280 imprisonment for not less than two (2) years nor more than eight  
281 (8) years or a fine of not more than Fifty Thousand Dollars  
282 (\$50,000.00), or both.

283 (D) If three hundred (300) or more grams or one  
284 thousand (1,000) or more dosage units, but less than five hundred  
285 (500) grams or two thousand five hundred (2,500) dosage units, by  
286 imprisonment for not less than four (4) years nor more than



287 sixteen (16) years or a fine of not more than Two Hundred Fifty  
288 Thousand Dollars (\$250,000.00), or both.

289 (d) **Paraphernalia.** (1) It is unlawful for a person who is  
290 not authorized by the State Board of Medical Licensure, State  
291 Board of Pharmacy, or other lawful authority to use, or to possess  
292 with intent to use, paraphernalia to plant, propagate, cultivate,  
293 grow, harvest, manufacture, compound, convert, produce, process,  
294 prepare, test, analyze, pack, repack, store, contain, conceal,  
295 inject, ingest, inhale or otherwise introduce into the human body  
296 a controlled substance in violation of the Uniform Controlled  
297 Substances Law. Any person who violates this subsection (d)(1) is  
298 guilty of a misdemeanor and, upon conviction, may be confined in  
299 the county jail for not more than six (6) months, or fined not  
300 more than Five Hundred Dollars (\$500.00), or both; however, no  
301 person shall be charged with a violation of this subsection when  
302 such person is also charged with the possession of thirty (30)  
303 grams or less of marijuana under subsection (c)(2)(A) of this  
304 section.

305 (2) It is unlawful for any person to deliver, sell,  
306 possess with intent to deliver or sell, or manufacture with intent  
307 to deliver or sell, paraphernalia, knowing, or under circumstances  
308 where one reasonably should know, that it will be used to plant,  
309 propagate, cultivate, grow, harvest, manufacture, compound,  
310 convert, produce, process, prepare, test, analyze, pack, repack,  
311 store, contain, conceal, inject, ingest, inhale, or otherwise



312 introduce into the human body a controlled substance in violation  
313 of the Uniform Controlled Substances Law. Except as provided in  
314 subsection (d) (3), a person who violates this subsection (d) (2) is  
315 guilty of a misdemeanor and, upon conviction, may be confined in  
316 the county jail for not more than six (6) months, or fined not  
317 more than Five Hundred Dollars (\$500.00), or both.

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

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

334 (e) It shall be unlawful for any physician practicing  
335 medicine in this state to prescribe, dispense or administer any  
336 amphetamine or amphetamine-like anorectics and/or central nervous



337 system stimulants classified in Schedule II, pursuant to Section  
338 41-29-115, for the exclusive treatment of obesity, weight control  
339 or weight loss. Any person who violates this subsection, upon  
340 conviction, is guilty of a misdemeanor and may be confined for a  
341 period not to exceed six (6) months, or fined not more than One  
342 Thousand Dollars (\$1,000.00), or both.

343 (f) **Trafficking.** (1) Any person trafficking in controlled  
344 substances shall be guilty of a felony and, upon conviction, shall  
345 be imprisoned for a term of not less than ten (10) years nor more  
346 than forty (40) years and shall be fined not less than Five  
347 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
348 (\$1,000,000.00). The ten-year mandatory sentence shall not be  
349 reduced or suspended. The person shall not be eligible for  
350 probation or parole, the provisions of Sections 41-29-149,  
351 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

352 (2) "Trafficking in controlled substances" as used  
353 herein means:

354 (A) A violation of subsection (a) of this section  
355 involving thirty (30) or more grams or forty (40) or more dosage  
356 units of a Schedule I or II controlled substance except marijuana  
357 and synthetic cannabinoids;

358 (B) A violation of subsection (a) of this section  
359 involving five hundred (500) or more grams or two thousand five  
360 hundred (2,500) or more dosage units of a Schedule III, IV or V  
361 controlled substance;



362 (C) A violation of subsection (c) of this section  
363 involving thirty (30) or more grams or forty (40) or more dosage  
364 units of a Schedule I or II controlled substance except marijuana  
365 and synthetic cannabinoids;

366 (D) A violation of subsection (c) of this section  
367 involving five hundred (500) or more grams or two thousand five  
368 hundred (2,500) or more dosage units of a Schedule III, IV or V  
369 controlled substance; or

370 (E) A violation of subsection (a) of this section  
371 involving one (1) kilogram or more of marijuana or two hundred  
372 (200) grams or more of synthetic cannabinoids.

373 (g) **Aggravated trafficking.** Any person trafficking in  
374 Schedule I or II controlled substances, except marijuana and  
375 synthetic cannabinoids, of two hundred (200) grams or \* \* \*~~more~~  
376 two hundred (200) or more dosage units shall be guilty of  
377 aggravated trafficking and, upon conviction, shall be sentenced to  
378 a term of not less than twenty-five (25) years nor more than life  
379 in prison and shall be fined not less than Five Thousand Dollars  
380 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00).  
381 The twenty-five-year sentence shall be a mandatory sentence and  
382 shall not be reduced or suspended. The person shall not be  
383 eligible for probation or parole, the provisions of Sections  
384 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to the contrary  
385 notwithstanding.





386           (h) **Sentence mitigation.** (1) Notwithstanding any provision  
387 of this section, a person who has been convicted of an offense  
388 under this section that requires the judge to impose a prison  
389 sentence which cannot be suspended or reduced and is ineligible  
390 for probation or parole may, at the discretion of the court,  
391 receive a sentence of imprisonment that is no less than  
392 twenty-five percent (25%) of the sentence prescribed by the  
393 applicable statute. In considering whether to apply the departure  
394 from the sentence prescribed, the court shall conclude that:

395                       (A) The offender was not a leader of the criminal  
396 enterprise;

397                       (B) The offender did not use violence or a weapon  
398 during the crime;

399                       (C) The offense did not result in a death or  
400 serious bodily injury of a person not a party to the criminal  
401 enterprise; and

402                       (D) The interests of justice are not served by the  
403 imposition of the prescribed mandatory sentence.

404           The court may also consider whether information and  
405 assistance were furnished to a law enforcement agency, or its  
406 designee, which, in the opinion of the trial judge, objectively  
407 should or would have aided in the arrest or prosecution of others  
408 who violate this subsection. The accused shall have adequate  
409 opportunity to develop and make a record of all information and  
410 assistance so furnished.



411                   (2) If the court reduces the prescribed sentence  
412 pursuant to this subsection, it must specify on the record the  
413 circumstances warranting the departure.

414                   **SECTION 2.** This act shall take effect and be in force from  
415 and after July 1, 2018.

