

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

385 (h) **Sentence mitigation.** (1) Notwithstanding any provision
386 of this section, a person who has been convicted of an offense



387 under this section that requires the judge to impose a prison
388 sentence which cannot be suspended or reduced and is ineligible
389 for probation or parole may, at the discretion of the court,
390 receive a sentence of imprisonment that is no less than
391 twenty-five percent (25%) of the sentence prescribed by the
392 applicable statute. In considering whether to apply the departure
393 from the sentence prescribed, the court shall conclude that:

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

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

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

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

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



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

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

