

By: Representative Bomgar

To: Drug Policy

HOUSE BILL NO. 1010

1 AN ACT TO AMEND SECTIONS 41-29-153, 41-29-176, 41-29-179 AND
 2 41-29-107.1, MISSISSIPPI CODE OF 1972, TO PROHIBIT ASSET
 3 FORFEITURE FOR ARRESTS OR CONVICTIONS FOR POSSESSION OF
 4 TWENTY-EIGHT GRAMS OR LESS OF MARIJUANA; TO BRING FORWARD SECTION
 5 41-29-139, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT;
 6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 41-29-153, Mississippi Code of 1972, is
 9 amended as follows:

10 41-29-153. (a) Except as otherwise provided in this section
 11 for possession of twenty-eight (28) grams or less of marijuana,
 12 the following are subject to forfeiture:

13 (1) All controlled substances which have been
 14 manufactured, distributed, dispensed or acquired in violation of
 15 this article or in violation of Article 5 of this chapter;

16 (2) All raw materials, products and equipment of any
 17 kind which are used, or intended for use, in manufacturing,
 18 compounding, processing, delivering, importing, or exporting any
 19 controlled substance in violation of this article or in violation
 20 of Article 5 of this chapter;



21 (3) All property which is used, or intended for use, as
22 a container for property described in paragraph (1) or (2) of this
23 subsection;

24 (4) All conveyances, including aircraft, vehicles or
25 vessels, which are used, or intended for use, to transport, or in
26 any manner to facilitate the transportation, sale, receipt,
27 possession or concealment of property described in paragraph (1)
28 or (2) of this subsection, however:

29 A. No conveyance used by any person as a common
30 carrier in the transaction of business as a common carrier is
31 subject to forfeiture under this section unless it appears that
32 the owner or other person in charge of the conveyance is a
33 consenting party or privy to a violation of this article;

34 B. No conveyance is subject to forfeiture under
35 this section by reason of any act or omission proved by the owner
36 thereof to have been committed or omitted without his knowledge or
37 consent; if the confiscating authority has reason to believe that
38 the conveyance is a leased or rented conveyance, then the
39 confiscating authority shall notify the owner of the conveyance
40 within five (5) days of the confiscation;

41 C. A forfeiture of a conveyance encumbered by a
42 bona fide security interest is subject to the interest of the
43 secured party if he neither had knowledge of nor consented to the
44 act or omission;



45 D. A conveyance is not subject to forfeiture for a
46 violation of Section 41-29-139(c) (2) (A) 1, 2 or (B)1 or (C)1, 2,
47 3;

48 (5) All money, deadly weapons, books, records, and
49 research products and materials, including formulas, microfilm,
50 tapes and data which are used, or intended for use, in violation
51 of this article or in violation of Article 5 of this chapter;

52 (6) All drug paraphernalia as defined in Section
53 41-29-105(v); and

54 (7) Everything of value, including real estate,
55 furnished, or intended to be furnished, in exchange for a
56 controlled substance in violation of this article, all proceeds
57 traceable to such an exchange, and all monies, negotiable
58 instruments, businesses or business investments, securities, and
59 other things of value used, or intended to be used, to facilitate
60 any violation of this article. All monies, coin and currency
61 found in close proximity to forfeitable controlled substances, to
62 forfeitable drug manufacturing or distributing paraphernalia, or
63 to forfeitable records of the importation, manufacture or
64 distribution of controlled substances are presumed to be
65 forfeitable under this paragraph; the burden of proof is upon
66 claimants of the property to rebut this presumption.

67 A. No property shall be forfeited under the
68 provisions of subsection (a) (7) of this section, to the extent of
69 the interest of an owner, by reason of any act or omission



70 established by him to have been committed or omitted without his
71 knowledge or consent.

72 B. Neither personal property encumbered by a bona
73 fide security interest nor real estate encumbered by a bona fide
74 mortgage, deed of trust, lien or encumbrance shall be forfeited
75 under the provisions of subsection (a)(7) of this section, to the
76 extent of the interest of the secured party or the interest of the
77 mortgagee, holder of a deed of trust, lien or encumbrance by
78 reason of any act or omission established by him to have been
79 committed or omitted without his knowledge or consent.

80 (b) Property subject to forfeiture may be seized by the
81 bureau, local law enforcement officers, enforcement officers of
82 the Mississippi Department of Transportation, highway patrolmen,
83 the board, or the State Board of Pharmacy upon process issued by
84 any appropriate court having jurisdiction over the property.

85 Seizure without process may be made if:

86 (1) The seizure is incident to an arrest or a search
87 under a search warrant or an inspection under an administrative
88 inspection warrant;

89 (2) The property subject to seizure has been the
90 subject of a prior judgment in favor of the state in a criminal
91 injunction or forfeiture proceeding based upon this article;

92 (3) The bureau, the board, local law enforcement
93 officers, enforcement officers of the Mississippi Department of
94 Transportation, or highway patrolmen, or the State Board of



95 Pharmacy have probable cause to believe that the property is
96 directly or indirectly dangerous to health or safety;

97 (4) The bureau, local law enforcement officers,
98 enforcement officers of the Mississippi Department of
99 Transportation, highway patrolmen, the board, or the State Board
100 of Pharmacy have probable cause to believe that the property was
101 used or is intended to be used in violation of this article; or

102 (5) The seizing law enforcement agency obtained a
103 seizure warrant as described in * * * subsection (f) of this
104 section.

105 (c) Controlled substances listed in Schedule I of Section
106 41-29-113 that are possessed, transferred, sold, or offered for
107 sale in violation of this article are contraband and shall be
108 seized and summarily forfeited to the state. Controlled
109 substances listed in the said Schedule I, which are seized or come
110 into the possession of the state, the owners of which are unknown,
111 are contraband and shall be summarily forfeited to the state.

112 (d) Species of plants from which controlled substances in
113 Schedules I and II of Sections 41-29-113 and 41-29-115 may be
114 derived which have been planted or cultivated in violation of this
115 article, or of which the owners or cultivators are unknown, or
116 which are wild growths, may be seized and summarily forfeited to
117 the state.

118 (e) The failure, upon demand by the bureau and/or local law
119 enforcement officers, or their authorized agents, or highway



120 patrolmen designated by the bureau, the board, or the State Board
121 of Pharmacy, of the person in occupancy or in control of land or
122 premises upon which the species of plants are growing or being
123 stored, to produce an appropriate registration, or proof that he
124 is the holder thereof, constitutes authority for the seizure and
125 forfeiture of the plants.

126 (f) (1) When any property is seized under the Uniform
127 Controlled Substances Law, except as otherwise provided in
128 paragraph (3) of this subsection, by a law enforcement agency with
129 the intent to be forfeited, the law enforcement agency that seized
130 the property shall obtain a seizure warrant from the county or
131 circuit court having jurisdiction of such property within
132 seventy-two (72) hours of any seizure, excluding weekends and
133 holidays. Any law enforcement agency that fails to obtain a
134 seizure warrant within seventy-two (72) hours as required by this
135 section shall notify the person from whom the property was seized
136 that it will not be forfeited and shall provide written
137 instructions advising the person how to retrieve the seized
138 property.

139 (2) A circuit or county judge having jurisdiction of
140 any property other than a controlled substance, raw material or
141 paraphernalia, may issue a seizure warrant upon proper oath or
142 affirmation from a law enforcement agency. The law enforcement
143 agency that is seeking a seizure warrant shall provide the
144 following information to the judge:



145 A. Probable cause to believe that the property was
146 used or intended to be used in violation of this article;

147 B. The name of the person from whom the property
148 was seized; and

149 C. A detailed description of the property which is
150 seized, including the value of the property.

151 (3) This subsection does not apply to seizures
152 performed pursuant to Section 41-29-157 when property is
153 specifically set forth in a search and seizure warrant.

154 (g) The provisions of this section shall not apply to any
155 arrest or conviction for possession of twenty-eight (28) grams or
156 less of marijuana.

157 **SECTION 2.** Section 41-29-176, Mississippi Code of 1972, is
158 amended as follows:

159 41-29-176. (1) Except as otherwise provided in Section
160 41-29-107.1, when any property other than a controlled substance,
161 raw material or paraphernalia, the value of which does not exceed
162 Twenty Thousand Dollars (\$20,000.00), is seized under the Uniform
163 Controlled Substances Law, the property may be forfeited by the
164 administrative forfeiture procedures provided for in this section.
165 However, no property shall be forfeited for an arrest or
166 conviction for possession of twenty-eight (28) grams or less of
167 marijuana.

168 (2) The attorney for or any representative of the seizing
169 law enforcement agency shall provide notice of intention to



170 forfeit the seized property administratively, either by certified
171 mail, return receipt requested, or by personal delivery, to all
172 persons who are required to be notified pursuant to Section
173 41-29-177(2).

174 (3) If notice of intention to forfeit the seized property
175 administratively cannot be given as provided in subsection (2) of
176 this section because of refusal, failure to claim, insufficient
177 address or any other reason, the attorney for or representative of
178 the seizing law enforcement agency shall provide notice by
179 publication in a newspaper of general circulation in the county in
180 which the seizure occurred for once a week for three (3)
181 consecutive weeks. However, if the value of the property seized
182 does not exceed Ten Thousand Dollars (\$10,000.00), substitute
183 notice under this subsection (3) of intention to administratively
184 forfeit the property may be made by posting a notice on an
185 official state government forfeiture site for at least thirty (30)
186 consecutive days. The site shall be created and maintained by the
187 Mississippi Bureau of Narcotics. Should other seizing law
188 enforcement agencies choose to utilize the site for Internet
189 publication, the bureau may charge a reasonable fee for such
190 usage.

191 (4) Notice pursuant to subsections (2) and (3) of this
192 section shall include the following information:

- 193 (a) A description of the property;
- 194 (b) The approximate value of the property;



195 (c) The date and place of the seizure;
196 (d) The connection between the property and the
197 violation of the Uniform Controlled Substances Law;
198 (e) The instructions for filing a request for judicial
199 review; and
200 (f) A statement that the property will be forfeited to
201 the seizing law enforcement agency if a request for judicial
202 review is not timely filed.

203 (5) Any person claiming an interest in property which is the
204 subject of a notice under this section may, within thirty (30)
205 days after receipt of the notice or of the date of the first
206 publication of the notice, file a petition to contest forfeiture
207 signed by the claimant in the county court, if a county court
208 exists, or otherwise in the circuit court of the county in which
209 the seizure is made or the county in which the criminal
210 prosecution is brought, in order to claim an interest in the
211 property. Upon the filing of the petition and the payment of the
212 filing fees, service of the petition shall be made on the attorney
213 for or representative of the seizing law enforcement agency, and
214 the proceedings shall thereafter be governed by the rules of civil
215 procedure.

216 (6) If no petition to contest forfeiture is timely filed and
217 a seizure warrant was properly obtained, the district attorney or
218 his or her designee or the attorney for the bureau, as applicable,
219 shall prepare a written declaration of forfeiture of the subject



220 property and the forfeited property shall be used, distributed or
221 disposed of in accordance with the provisions of Section
222 41-29-181.

223 **SECTION 3.** Section 41-29-179, Mississippi Code of 1972, is
224 amended as follows:

225 41-29-179. (1) Except as otherwise provided in Section
226 41-29-176 and Section 41-29-107.1, an owner of property, other
227 than a controlled substance, raw material or paraphernalia, that
228 has been seized shall file an answer within thirty (30) days after
229 the completion of service of process. If an answer is not filed,
230 the court shall hear evidence that the property is subject to
231 forfeiture and forfeit the property to the Mississippi Bureau of
232 Narcotics or the local law enforcement agency. However, no
233 property shall be forfeited for an arrest or conviction for
234 possession of twenty-eight (28) grams or less of marijuana. If an
235 answer is filed, a time for hearing on forfeiture shall be set
236 within thirty (30) days of filing the answer or at the succeeding
237 term of court if court would not be in progress within thirty (30)
238 days after filing the answer. Provided, however, that upon
239 request by the Bureau of Narcotics, the local law enforcement
240 agency or the owner of the property, the court may postpone said
241 forfeiture hearing to a date past the time any criminal action is
242 pending against said owner.

243 (2) If the owner of the property has filed an answer denying
244 that the property is subject to forfeiture, then the burden is on



245 the * * * Mississippi Bureau of Narcotics to prove that the
246 property is subject to forfeiture. However, if an answer has not
247 been filed by the owner of the property, the petition for
248 forfeiture may be introduced into evidence and is prima facie
249 evidence that the property is subject to forfeiture. The standard
250 of proof placed upon the petitioner in regard to property
251 forfeited under the provisions of this article shall be by * * *
252 clear and convincing evidence.

253 (3) At the hearing any claimant of any right, title or
254 interest in the property may prove his lien, encumbrance, security
255 interest, other interest in the nature of a security interest,
256 mortgage or deed of trust to be bona fide and created without
257 knowledge or consent that the property was to be used so as to
258 cause the property to be subject to forfeiture.

259 (4) If it is found that the property is subject to
260 forfeiture, then the judge shall forfeit the property to the
261 Mississippi Bureau of Narcotics or the local law enforcement
262 agency. However, if proof at the hearing discloses that the
263 interest of any bona fide lienholder, secured party, other person
264 holding an interest in the property in the nature of a security
265 interest, or any holder of a bona fide encumbrance, mortgage or
266 deed of trust is greater than or equal to the present value of the
267 property, the court shall order the property released to him. If
268 such interest is less than the present value of the property and
269 if the proof shows that the property is subject to forfeiture, the



270 court shall order the property forfeited to the Mississippi Bureau
271 of Narcotics or the local law enforcement agency.

272 (5) Upon a petition filed in the name of the State of
273 Mississippi, the county or the municipality with the clerk of the
274 circuit court of the county in which the seizure of any controlled
275 substance or raw material is made, the circuit court having
276 jurisdiction may order the controlled substance or raw material
277 summarily forfeited except when lawful possession and title can be
278 ascertained. If a person is found to have had lawful possession
279 and title prior to seizure, the court shall order the controlled
280 substance or raw material returned to the owner, if the owner so
281 desires. Upon a petition filed in the name of the State of
282 Mississippi, the county or the municipality with the clerk of the
283 circuit court of the county in which the seizure of any purported
284 paraphernalia is made, the circuit court having jurisdiction may
285 order such seized property summarily forfeited when the court has
286 determined the seized property to be paraphernalia as defined in
287 Section 41-29-105(v).

288 **SECTION 4.** Section 41-29-107.1, Mississippi Code of 1972, is
289 amended as follows:

290 41-29-107.1. (1) The Mississippi Bureau of Narcotics shall
291 establish and maintain a public website that is searchable by case
292 numbers created by the bureau which tracks seized property from
293 the time of seizure to final disposition of the property. The
294 website shall be designed in a manner that allows the information



295 required by this section to be uploaded to the website. The
296 website shall include the following information regarding property
297 that is seized by a law enforcement agency pursuant to Section
298 41-29-153:

299 (a) The name of the law enforcement agency that seized
300 the property;

301 (b) A description of each item seized, including the
302 approximate value of the property;

303 (c) A copy of the notice of intent to forfeit as
304 described in Section 41-29-176 or the petition for forfeiture as
305 described in Section 41-29-177, whichever is applicable;

306 (d) A copy of any petition to contest forfeiture filed
307 as described in Section 41-29-176;

308 (e) If a forfeiture was obtained because no petition to
309 contest forfeiture was timely filed as provided in Section
310 41-29-176, a copy of the written declaration of forfeiture as
311 required by Section 41-29-176;

312 (f) If a forfeiture is obtained under Section
313 41-29-177, a copy of any final judgment or dispositive order
314 regarding the merits of the petition for forfeiture; * * *

315 (g) If the forfeiture was initiated under Section
316 41-29-176 and a petition to contest is filed, a copy of any final
317 order or other dispositive order regarding the forfeiture * * *;

318 and



319 (h) If the forfeiture was improperly executed because
320 the forfeiture was initiated due to an arrest or conviction for
321 twenty-eight (28) grams or less of marijuana.

322 (2) (a) Except as otherwise provided in this section for
323 the bureau, upon seizure of any property by a law enforcement
324 agency pursuant to Section 41-29-153, the seizing law enforcement
325 agency shall provide the applicable information required by
326 subsection (1) of this section to the district attorney of the
327 county in which the property was seized within thirty (30) days of
328 such seizure. However, if the bureau is conducting the seizure of
329 property on behalf of a law enforcement agency, the provisions of
330 paragraph (b) of this subsection shall apply. Within thirty (30)
331 days of receipt of notice of intent to forfeit as described in
332 Section 41-29-176 or the filing of a petition for forfeiture as
333 described in Section 41-29-177 in a court of competent
334 jurisdiction, the district attorney shall upload the information
335 required by this section to the bureau's website. Within thirty
336 (30) days of service of a petition to contest forfeiture as
337 described by Section 41-29-176, the district attorney shall upload
338 the information required by the section to the bureau's website.
339 Within thirty (30) days of dispositive actions regarding any
340 seized property, the district attorney shall upload the applicable
341 information required by subsection (1) of this section to the
342 bureau's website. The commander of a multijurisdictional
343 taskforce may appoint one (1) agency to report its seizures to the



344 district attorney of the county in which the property was seized.
345 Any law enforcement agency that fails to provide the information
346 required by this section shall be disqualified from applying for
347 or receiving state grants.

348 (b) Upon seizure of any property by the bureau pursuant
349 to Section 41-29-153 or pursuant to a request by a law enforcement
350 agency for the bureau to seize property on behalf of the law
351 enforcement agency, the bureau shall upload the information
352 required by this subsection on its website within thirty (30) days
353 of the seizure, or from the time of the receipt of the request
354 from the law enforcement agency.

355 (3) Failure to upload the information required by this
356 section shall not invalidate the seizure or otherwise preclude the
357 same.

358 (4) The Mississippi Bureau of Narcotics shall adopt rules
359 and regulations that are necessary to implement this section.

360 (5) For purposes of this section, the term "law enforcement
361 agency" includes any person or entity having seizure authority
362 under Section 41-29-159.

363 (6) Failure to substantially comply with the provisions of
364 this section shall disqualify the seizing law enforcement agency
365 from applying for or receiving federal or state grants until such
366 time as in compliance with this section.

367 (7) The provisions of this section shall be required only at
368 such time as the Legislature has appropriated funds for the bureau



369 to create and maintain the required website. The website shall be
370 created and functionally operational, not more than twelve (12)
371 months from the date that sufficient funds have been appropriated
372 for that purpose. The bureau shall provide at least thirty (30)
373 days notice in advance of the date when the website will be
374 operational to each district attorney in the state.

375 **SECTION 5.** Section 41-29-139, Mississippi Code of 1972, is
376 brought forward as follows:

377 41-29-139. (a) **Transfer and possession with intent to**
378 **transfer.** Except as authorized by this article, it is unlawful
379 for any person knowingly or intentionally:

380 (1) To sell, barter, transfer, manufacture, distribute,
381 dispense or possess with intent to sell, barter, transfer,
382 manufacture, distribute or dispense, a controlled substance; or

383 (2) To create, sell, barter, transfer, distribute,
384 dispense or possess with intent to create, sell, barter, transfer,
385 distribute or dispense, a counterfeit substance.

386 (b) **Punishment for transfer and possession with intent to**
387 **transfer.** Except as otherwise provided in Section 41-29-142, any
388 person who violates subsection (a) of this section shall be, if
389 convicted, sentenced as follows:

390 (1) For controlled substances classified in Schedule I
391 or II, as set out in Sections 41-29-113 and 41-29-115, other than
392 marijuana or synthetic cannabinoids:



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

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

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

406 (2) (A) For marijuana:

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

410 2. If more than thirty (30) grams but less
411 than two hundred fifty (250) grams, by imprisonment for not more
412 than five (5) years or a fine of not more than Five Thousand
413 Dollars (\$5,000.00), or both;

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



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

422 (B) For synthetic cannabinoids:

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

426 2. If more than ten (10) grams but less than
427 twenty (20) grams, by imprisonment for not more than five (5)
428 years or a fine of not more than Five Thousand Dollars
429 (\$5,000.00), or both;

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

434 4. If forty (40) or more grams but less than
435 two hundred (200) grams, by imprisonment for not less than five
436 (5) years nor more than twenty (20) years or a fine of not more
437 than Twenty Thousand Dollars (\$20,000.00), or both.

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

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



443 (B) If two (2) or more grams or ten (10) or more
444 dosage units, but less than ten (10) grams or twenty (20) dosage
445 units, by imprisonment for not more than eight (8) years or a fine
446 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

447 (C) If ten (10) or more grams or twenty (20) or
448 more dosage units, but less than thirty (30) grams or forty (40)
449 dosage units, by imprisonment for not more than fifteen (15) years
450 or a fine of not more than One Hundred Thousand Dollars
451 (\$100,000.00), or both;

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

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

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

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

466 (C) If ten (10) or more grams or twenty (20) or
467 more dosage units, but less than thirty (30) grams or forty (40)



468 dosage units, by imprisonment for not more than ten (10) years or
469 a fine of not more than Twenty Thousand Dollars (\$20,000.00), or
470 both;

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

476 (c) **Simple possession.** It is unlawful for any person
477 knowingly or intentionally to possess any controlled substance
478 unless the substance was obtained directly from, or pursuant to, a
479 valid prescription or order of a practitioner while acting in the
480 course of his professional practice, or except as otherwise
481 authorized by this article. The penalties for any violation of
482 this subsection (c) with respect to a controlled substance
483 classified in Schedules I, II, III, IV or V, as set out in Section
484 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including
485 marijuana or synthetic cannabinoids, shall be based on dosage unit
486 as defined herein or the weight of the controlled substance as set
487 forth herein as appropriate:

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



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

496 The weight set forth refers to the entire weight of any
497 mixture or substance containing a detectable amount of the
498 controlled substance.

499 If a mixture or substance contains more than one (1)
500 controlled substance, the weight of the mixture or substance is
501 assigned to the controlled substance that results in the greater
502 punishment.

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

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

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

511 (B) If one-tenth (0.1) gram or more or two (2) or
512 more dosage units, but less than two (2) grams or ten (10) dosage
513 units, by imprisonment for not more than three (3) years or a fine
514 of not more than Fifty Thousand Dollars (\$50,000.00), or both.

515 (C) If two (2) or more grams or ten (10) or more
516 dosage units, but less than ten (10) grams or twenty (20) dosage
517 units, by imprisonment for not more than eight (8) years or a fine



518 of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),
519 or both.

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

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

526 1. If thirty (30) grams or less of marijuana
527 or ten (10) grams or less of synthetic cannabinoids, by a fine of
528 not less than One Hundred Dollars (\$100.00) nor more than Two
529 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph
530 (2) (A) may be enforceable by summons if the offender provides
531 proof of identity satisfactory to the arresting officer and gives
532 written promise to appear in court satisfactory to the arresting
533 officer, as directed by the summons. A second conviction under
534 this section within two (2) years is a misdemeanor punishable by a
535 fine of Two Hundred Fifty Dollars (\$250.00), not more than sixty
536 (60) days in the county jail, and mandatory participation in a
537 drug education program approved by the Division of Alcohol and
538 Drug Abuse of the State Department of Mental Health, unless the
539 court enters a written finding that a drug education program is
540 inappropriate. A third or subsequent conviction under this
541 paragraph (2) (A) within two (2) years is a misdemeanor punishable
542 by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor



543 more than One Thousand Dollars (\$1,000.00) and confinement for not
544 more than six (6) months in the county jail.

545 Upon a first or second conviction under this paragraph
546 (2) (A), the courts shall forward a report of the conviction to the
547 Mississippi Bureau of Narcotics which shall make and maintain a
548 private, nonpublic record for a period not to exceed two (2) years
549 from the date of conviction. The private, nonpublic record shall
550 be solely for the use of the courts in determining the penalties
551 which attach upon conviction under this paragraph (2) (A) and shall
552 not constitute a criminal record for the purpose of private or
553 administrative inquiry and the record of each conviction shall be
554 expunged at the end of the period of two (2) years following the
555 date of such conviction;

556 2. Additionally, a person who is the operator
557 of a motor vehicle, who possesses on his person or knowingly keeps
558 or allows to be kept in a motor vehicle within the area of the
559 vehicle normally occupied by the driver or passengers, more than
560 one (1) gram, but not more than thirty (30) grams of marijuana or
561 not more than ten (10) grams of synthetic cannabinoids is guilty
562 of a misdemeanor and, upon conviction, may be fined not more than
563 One Thousand Dollars (\$1,000.00) or confined for not more than
564 ninety (90) days in the county jail, or both. For the purposes of
565 this subsection, such area of the vehicle shall not include the
566 trunk of the motor vehicle or the areas not normally occupied by
567 the driver or passengers if the vehicle is not equipped with a



568 trunk. A utility or glove compartment shall be deemed to be
569 within the area occupied by the driver and passengers;

570 (B) Marijuana:

571 1. If more than thirty (30) grams but less
572 than two hundred fifty (250) grams, by a fine of not more than One
573 Thousand Dollars (\$1,000.00), or confinement in the county jail
574 for not more than one (1) year, or both; or by a fine of not more
575 than Three Thousand Dollars (\$3,000.00), or imprisonment in the
576 custody of the Department of Corrections for not more than three
577 (3) years, or both;

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

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

586 4. If one (1) kilogram or more but less than
587 five (5) kilograms, by imprisonment for not less than six (6)
588 years nor more than twenty-four (24) years or a fine of not more
589 than Five Hundred Thousand Dollars (\$500,000.00), or both;

590 5. If five (5) kilograms or more, by
591 imprisonment for not less than ten (10) years nor more than thirty



592 (30) years or a fine of not more than One Million Dollars
593 (\$1,000,000.00), or both.

594 (C) Synthetic cannabinoids:

595 1. If more than ten (10) grams but less than
596 twenty (20) grams, by a fine of not more than One Thousand Dollars
597 (\$1,000.00), or confinement in the county jail for not more than
598 one (1) year, or both; or by a fine of not more than Three
599 Thousand Dollars (\$3,000.00), or imprisonment in the custody of
600 the Department of Corrections for not more than three (3) years,
601 or both;

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

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

610 4. If two hundred (200) or more grams, by
611 imprisonment for not less than six (6) years nor more than
612 twenty-four (24) years or a fine of not more than Five Hundred
613 Thousand Dollars (\$500,000.00), or both.

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



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

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

626 (C) If one hundred fifty (150) or more grams or
627 five hundred (500) or more dosage units, but less than three
628 hundred (300) grams or one thousand (1,000) dosage units, by
629 imprisonment for not less than two (2) years nor more than eight
630 (8) years or a fine of not more than Fifty Thousand Dollars
631 (\$50,000.00), or both.

632 (D) If three hundred (300) or more grams or one
633 thousand (1,000) or more dosage units, but less than five hundred
634 (500) grams or two thousand five hundred (2,500) dosage units, by
635 imprisonment for not less than four (4) years nor more than
636 sixteen (16) years or a fine of not more than Two Hundred Fifty
637 Thousand Dollars (\$250,000.00), or both.

638 (d) **Paraphernalia.** (1) It is unlawful for a person who is
639 not authorized by the State Board of Medical Licensure, State
640 Board of Pharmacy, or other lawful authority to use, or to possess
641 with intent to use, paraphernalia to plant, propagate, cultivate,



642 grow, harvest, manufacture, compound, convert, produce, process,
643 prepare, test, analyze, pack, repack, store, contain, conceal,
644 inject, ingest, inhale or otherwise introduce into the human body
645 a controlled substance in violation of the Uniform Controlled
646 Substances Law. Any person who violates this subsection (d)(1) is
647 guilty of a misdemeanor and, upon conviction, may be confined in
648 the county jail for not more than six (6) months, or fined not
649 more than Five Hundred Dollars (\$500.00), or both; however, no
650 person shall be charged with a violation of this subsection when
651 such person is also charged with the possession of thirty (30)
652 grams or less of marijuana under subsection (c)(2)(A) of this
653 section.

654 (2) It is unlawful for any person to deliver, sell,
655 possess with intent to deliver or sell, or manufacture with intent
656 to deliver or sell, paraphernalia, knowing, or under circumstances
657 where one reasonably should know, that it will be used to plant,
658 propagate, cultivate, grow, harvest, manufacture, compound,
659 convert, produce, process, prepare, test, analyze, pack, repack,
660 store, contain, conceal, inject, ingest, inhale, or otherwise
661 introduce into the human body a controlled substance in violation
662 of the Uniform Controlled Substances Law. Except as provided in
663 subsection (d)(3), a person who violates this subsection (d)(2) is
664 guilty of a misdemeanor and, upon conviction, may be confined in
665 the county jail for not more than six (6) months, or fined not
666 more than Five Hundred Dollars (\$500.00), or both.



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

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

683 (e) It shall be unlawful for any physician practicing
684 medicine in this state to prescribe, dispense or administer any
685 amphetamine or amphetamine-like anorectics and/or central nervous
686 system stimulants classified in Schedule II, pursuant to Section
687 41-29-115, for the exclusive treatment of obesity, weight control
688 or weight loss. Any person who violates this subsection, upon
689 conviction, is guilty of a misdemeanor and may be confined for a
690 period not to exceed six (6) months, or fined not more than One
691 Thousand Dollars (\$1,000.00), or both.



692 (f) **Trafficking.** (1) Any person trafficking in controlled
693 substances shall be guilty of a felony and, upon conviction, shall
694 be imprisoned for a term of not less than ten (10) years nor more
695 than forty (40) years and shall be fined not less than Five
696 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
697 (\$1,000,000.00). The ten-year mandatory sentence shall not be
698 reduced or suspended. The person shall not be eligible for
699 probation or parole, the provisions of Sections 41-29-149,
700 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

701 (2) "Trafficking in controlled substances" as used
702 herein means:

703 (A) A violation of subsection (a) of this section
704 involving thirty (30) or more grams or forty (40) or more dosage
705 units of a Schedule I or II controlled substance except marijuana
706 and synthetic cannabinoids;

707 (B) A violation of subsection (a) of this section
708 involving five hundred (500) or more grams or two thousand five
709 hundred (2,500) or more dosage units of a Schedule III, IV or V
710 controlled substance;

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

715 (D) A violation of subsection (c) of this section
716 involving five hundred (500) or more grams or two thousand five



717 hundred (2,500) or more dosage units of a Schedule III, IV or V
718 controlled substance; or

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

722 (g) **Aggravated trafficking.** Any person trafficking in
723 Schedule I or II controlled substances, except marijuana and
724 synthetic cannabinoids, of two hundred (200) grams or more shall
725 be guilty of aggravated trafficking and, upon conviction, shall be
726 sentenced to a term of not less than twenty-five (25) years nor
727 more than life in prison and shall be fined not less than Five
728 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
729 (\$1,000,000.00). The twenty-five-year sentence shall be a
730 mandatory sentence and shall not be reduced or suspended. The
731 person shall not be eligible for probation or parole, the
732 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to
733 the contrary notwithstanding.

734 (h) **Sentence mitigation.** (1) Notwithstanding any provision
735 of this section, a person who has been convicted of an offense
736 under this section that requires the judge to impose a prison
737 sentence which cannot be suspended or reduced and is ineligible
738 for probation or parole may, at the discretion of the court,
739 receive a sentence of imprisonment that is no less than
740 twenty-five percent (25%) of the sentence prescribed by the



741 applicable statute. In considering whether to apply the departure
742 from the sentence prescribed, the court shall conclude that:

743 (A) The offender was not a leader of the criminal
744 enterprise;

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

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

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

752 The court may also consider whether information and
753 assistance were furnished to a law enforcement agency, or its
754 designee, which, in the opinion of the trial judge, objectively
755 should or would have aided in the arrest or prosecution of others
756 who violate this subsection. The accused shall have adequate
757 opportunity to develop and make a record of all information and
758 assistance so furnished.

759 (2) If the court reduces the prescribed sentence
760 pursuant to this subsection, it must specify on the record the
761 circumstances warranting the departure.

762 **SECTION 6.** This act shall take effect and be in force from
763 and after its passage.

