

By: Representative Dixon

To: Drug Policy; Judiciary B

HOUSE BILL NO. 1074

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE PENALTIES TO DELIVER, SELL, POSSESS WITH INTENT TO  
3 DELIVER OR SELL OR MANUFACTURE WITH INTENT TO DELIVER OR SELL  
4 ILLEGAL DRUG PARAPHERNALIA; AND FOR RELATED PURPOSES.

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

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

8 41-29-139. (a) **Transfer and possession with intent to**  
9 **transfer.** Except as authorized by this article, it is unlawful  
10 for any person knowingly or intentionally:

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

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

17 (b) **Punishment for transfer and possession with intent to**  
18 **transfer.** Except as otherwise provided in Section 41-29-142, any



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

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

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

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

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

37 (2) (A) For marijuana:

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

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



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

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

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

53           (B) For synthetic cannabinoids:

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

57           2. If more than ten (10) grams but less than  
58 twenty (20) grams, by imprisonment for not more than five (5)  
59 years or a fine of not more than Five Thousand Dollars  
60 (\$5,000.00), or both;

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

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



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

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

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

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

78 (C) If ten (10) or more grams or twenty (20) or  
79 more dosage units, but less than thirty (30) grams or forty (40)  
80 dosage units, by imprisonment for not more than fifteen (15) years  
81 or a fine of not more than One Hundred Thousand Dollars  
82 (\$100,000.00), or both;

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

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



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

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

97 (C) If ten (10) or more grams or twenty (20) or  
98 more dosage units, but less than thirty (30) grams or forty (40)  
99 dosage units, by imprisonment for not more than ten (10) years or  
100 a fine of not more than Twenty Thousand Dollars (\$20,000.00), or  
101 both;

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

107 (c) **Simple possession.** It is unlawful for any person  
108 knowingly or intentionally to possess any controlled substance  
109 unless the substance was obtained directly from, or pursuant to, a  
110 valid prescription or order of a practitioner while acting in the  
111 course of his professional practice, or except as otherwise  
112 authorized by this article. The penalties for any violation of  
113 this subsection (c) with respect to a controlled substance  
114 classified in Schedules I, II, III, IV or V, as set out in Section



115 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including  
116 marijuana or synthetic cannabinoids, shall be based on dosage unit  
117 as defined herein or the weight of the controlled substance as set  
118 forth herein as appropriate:

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

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

127 The weight set forth refers to the entire weight of any  
128 mixture or substance containing a detectable amount of the  
129 controlled substance.

130 If a mixture or substance contains more than one (1)  
131 controlled substance, the weight of the mixture or substance is  
132 assigned to the controlled substance that results in the greater  
133 punishment.

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

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

138 (A) If less than one-tenth (0.1) gram or two (2)  
139 dosage units, the violation is a misdemeanor and punishable by



140 imprisonment for not more than one (1) year or a fine of not more  
141 than One Thousand Dollars (\$1,000.00), or both.

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

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

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

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

157 1. If thirty (30) grams or less of marijuana  
158 or ten (10) grams or less of synthetic cannabinoids, by a fine of  
159 not less than One Hundred Dollars (\$100.00) nor more than Two  
160 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph  
161 (2) (A) may be enforceable by summons if the offender provides  
162 proof of identity satisfactory to the arresting officer and gives  
163 written promise to appear in court satisfactory to the arresting  
164 officer, as directed by the summons. A second conviction under



165 this section within two (2) years is a misdemeanor punishable by a  
166 fine of Two Hundred Fifty Dollars (\$250.00), not more than sixty  
167 (60) days in the county jail, and mandatory participation in a  
168 drug education program approved by the Division of Alcohol and  
169 Drug Abuse of the State Department of Mental Health, unless the  
170 court enters a written finding that a drug education program is  
171 inappropriate. A third or subsequent conviction under this  
172 paragraph (2)(A) within two (2) years is a misdemeanor punishable  
173 by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor  
174 more than One Thousand Dollars (\$1,000.00) and confinement for not  
175 more than six (6) months in the county jail.

176       Upon a first or second conviction under this paragraph  
177 (2)(A), the courts shall forward a report of the conviction to the  
178 Mississippi Bureau of Narcotics which shall make and maintain a  
179 private, nonpublic record for a period not to exceed two (2) years  
180 from the date of conviction. The private, nonpublic record shall  
181 be solely for the use of the courts in determining the penalties  
182 which attach upon conviction under this paragraph (2)(A) and shall  
183 not constitute a criminal record for the purpose of private or  
184 administrative inquiry and the record of each conviction shall be  
185 expunged at the end of the period of two (2) years following the  
186 date of such conviction;

187                   2. Additionally, a person who is the operator  
188 of a motor vehicle, who possesses on his person or knowingly keeps  
189 or allows to be kept in a motor vehicle within the area of the





190 vehicle normally occupied by the driver or passengers, more than  
191 one (1) gram, but not more than thirty (30) grams of marijuana or  
192 not more than ten (10) grams of synthetic cannabinoids is guilty  
193 of a misdemeanor and, upon conviction, may be fined not more than  
194 One Thousand Dollars (\$1,000.00) or confined for not more than  
195 ninety (90) days in the county jail, or both. For the purposes of  
196 this subsection, such area of the vehicle shall not include the  
197 trunk of the motor vehicle or the areas not normally occupied by  
198 the driver or passengers if the vehicle is not equipped with a  
199 trunk. A utility or glove compartment shall be deemed to be  
200 within the area occupied by the driver and passengers;

201 (B) Marijuana:

202 1. If more than thirty (30) grams but less  
203 than two hundred fifty (250) grams, by a fine of not more than One  
204 Thousand Dollars (\$1,000.00), or confinement in the county jail  
205 for not more than one (1) year, or both; or by a fine of not more  
206 than Three Thousand Dollars (\$3,000.00), or imprisonment in the  
207 custody of the Department of Corrections for not more than three  
208 (3) years, or both;

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

213 3. If five hundred (500) or more grams but  
214 less than one (1) kilogram, by imprisonment for not less than four



215 (4) years nor more than sixteen (16) years or a fine of not more  
216 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

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

221 5. If five (5) kilograms or more, by  
222 imprisonment for not less than ten (10) years nor more than thirty  
223 (30) years or a fine of not more than One Million Dollars  
224 (\$1,000,000.00), or both.

225 (C) Synthetic cannabinoids:

226 1. If more than ten (10) grams but less than  
227 twenty (20) grams, by a fine of not more than One Thousand Dollars  
228 (\$1,000.00), or confinement in the county jail for not more than  
229 one (1) year, or both; or by a fine of not more than Three  
230 Thousand Dollars (\$3,000.00), or imprisonment in the custody of  
231 the Department of Corrections for not more than three (3) years,  
232 or both;

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

237 3. If forty (40) or more grams but less than  
238 two hundred (200) grams, by imprisonment for not less than four



239 (4) years nor more than sixteen (16) years or a fine of not more  
240 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

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

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

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

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

257 (C) If one hundred fifty (150) or more grams or  
258 five hundred (500) or more dosage units, but less than three  
259 hundred (300) grams or one thousand (1,000) dosage units, by  
260 imprisonment for not less than two (2) years nor more than eight  
261 (8) years or a fine of not more than Fifty Thousand Dollars  
262 (\$50,000.00), or both.



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

269 (d) **Paraphernalia.** (1) It is unlawful for a person who is  
270 not authorized by the State Board of Medical Licensure, State  
271 Board of Pharmacy, or other lawful authority to use, or to possess  
272 with intent to use, paraphernalia to plant, propagate, cultivate,  
273 grow, harvest, manufacture, compound, convert, produce, process,  
274 prepare, test, analyze, pack, repack, store, contain, conceal,  
275 inject, ingest, inhale or otherwise introduce into the human body  
276 a controlled substance in violation of the Uniform Controlled  
277 Substances Law. Any person who violates this subsection (d)(1) is  
278 guilty of a misdemeanor and, upon conviction, may be confined in  
279 the county jail for not more than six (6) months, or fined not  
280 more than Five Hundred Dollars (\$500.00), or both; however, no  
281 person shall be charged with a violation of this subsection when  
282 such person is also charged with the possession of thirty (30)  
283 grams or less of marijuana under subsection (c)(2)(A) of this  
284 section.

285 (2) It is unlawful for any person to deliver, sell,  
286 possess with intent to deliver or sell, or manufacture with intent  
287 to deliver or sell, paraphernalia, knowing, or under circumstances



288 where one reasonably should know, that it will be used to plant,  
289 propagate, cultivate, grow, harvest, manufacture, compound,  
290 convert, produce, process, prepare, test, analyze, pack, repack,  
291 store, contain, conceal, inject, ingest, inhale, or otherwise  
292 introduce into the human body a controlled substance in violation  
293 of the Uniform Controlled Substances Law. Except as provided in  
294 subsection (d) (3), a person who violates this subsection (d) (2) is  
295 guilty of a misdemeanor and, upon conviction, may be confined in  
296 the county jail for not more than six (6) months, or fined not  
297 more than \* \* \* One Thousand Dollars (\$1,000.00), or both. For a  
298 second offense, a person who violates this subsection (d) (2) is  
299 guilty of a misdemeanor and, upon conviction, shall be confined in  
300 the county jail for not less than six (6) months, or fined not  
301 less than One Thousand Dollars (\$1,000.00), nor more than Ten  
302 Thousand Dollars (\$10,000.00), or both. For a third or subsequent  
303 offense, a person who violates this subsection (d) (2) is guilty of  
304 a felony and, upon conviction, shall be confined in the custody of  
305 the Department of Corrections for not less than five (5) years,  
306 nor more than ten (10) years, or fined not less than Ten Thousand  
307 Dollars (\$10,000.00), nor more than One Hundred Thousand Dollars  
308 (\$100,000.00).

309 (3) Any person eighteen (18) years of age or over who  
310 violates subsection (d) (2) of this section by delivering or  
311 selling paraphernalia to a person under eighteen (18) years of age  
312 who is at least three (3) years his junior is guilty of a



313 misdemeanor and, upon conviction, may be confined in the county  
314 jail for not more than one (1) year, or fined not more than One  
315 Thousand Dollars (\$1,000.00), or both.

316 (4) It is unlawful for any person to place in any  
317 newspaper, magazine, handbill, or other publication any  
318 advertisement, knowing, or under circumstances where one  
319 reasonably should know, that the purpose of the advertisement, in  
320 whole or in part, is to promote the sale of objects designed or  
321 intended for use as paraphernalia. Any person who violates this  
322 subsection is guilty of a misdemeanor and, upon conviction, may be  
323 confined in the county jail for not more than six (6) months, or  
324 fined not more than \* \* \* One Thousand Dollars (\$1,000.00), or  
325 both.

326 (e) It shall be unlawful for any physician practicing  
327 medicine in this state to prescribe, dispense or administer any  
328 amphetamine or amphetamine-like anorectics and/or central nervous  
329 system stimulants classified in Schedule II, pursuant to Section  
330 41-29-115, for the exclusive treatment of obesity, weight control  
331 or weight loss. Any person who violates this subsection, upon  
332 conviction, is guilty of a misdemeanor and may be confined for a  
333 period not to exceed six (6) months, or fined not more than One  
334 Thousand Dollars (\$1,000.00), or both.

335 (f) **Trafficking.** (1) Any person trafficking in controlled  
336 substances shall be guilty of a felony and, upon conviction, shall  
337 be imprisoned for a term of not less than ten (10) years nor more



338 than forty (40) years and shall be fined not less than Five  
339 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
340 (\$1,000,000.00). The ten-year mandatory sentence shall not be  
341 reduced or suspended. The person shall not be eligible for  
342 probation or parole, the provisions of Sections 41-29-149,  
343 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

344 (2) "Trafficking in controlled substances" as used  
345 herein means:

346 (A) A violation of subsection (a) of this section  
347 involving thirty (30) or more grams or forty (40) or more dosage  
348 units of a Schedule I or II controlled substance except marijuana  
349 and synthetic cannabinoids;

350 (B) A violation of subsection (a) of this section  
351 involving five hundred (500) or more grams or two thousand five  
352 hundred (2,500) or more dosage units of a Schedule III, IV or V  
353 controlled substance;

354 (C) A violation of subsection (c) 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 (D) A violation of subsection (c) 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; or



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

365 (g) **Aggravated trafficking.** Any person trafficking in  
366 Schedule I or II controlled substances, except marijuana and  
367 synthetic cannabinoids, of two hundred (200) grams or more shall  
368 be guilty of aggravated trafficking and, upon conviction, shall be  
369 sentenced to a term of not less than twenty-five (25) years nor  
370 more than life in prison and shall be fined not less than Five  
371 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
372 (\$1,000,000.00). The twenty-five-year sentence shall be a  
373 mandatory sentence and shall not be reduced or suspended. The  
374 person shall not be eligible for probation or parole, the  
375 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to  
376 the contrary notwithstanding.

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





386 (A) The offender was not a leader of the criminal  
387 enterprise;

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

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

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

395 The court may also consider whether information and  
396 assistance were furnished to a law enforcement agency, or its  
397 designee, which, in the opinion of the trial judge, objectively  
398 should or would have aided in the arrest or prosecution of others  
399 who violate this subsection. The accused shall have adequate  
400 opportunity to develop and make a record of all information and  
401 assistance so furnished.

402 (2) If the court reduces the prescribed sentence  
403 pursuant to this subsection, it must specify on the record the  
404 circumstances warranting the departure.

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

