

By: Representative Bomgar

To: Drug Policy

HOUSE BILL NO. 1094

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO EXEMPT PERSONS WITH A MEDICAL MARIJUANA CERTIFICATION FROM
3 ANOTHER STATE FOR AN EXISTING MEDICAL CONDITION FROM THE
4 PROVISIONS OF LAW REGULATING MARIJUANA POSSESSION; AND FOR RELATED
5 PURPOSES.

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

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

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

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

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

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



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

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

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

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

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

38 (2) (A) For marijuana:

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

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



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

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

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

54 (B) For synthetic cannabinoids:

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

58 2. If more than ten (10) grams but less than
59 twenty (20) grams, by imprisonment for not more than five (5)
60 years or a fine of not more than Five Thousand Dollars
61 (\$5,000.00), or both;

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

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



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

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

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

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

79 (C) If ten (10) or more grams or twenty (20) or
80 more dosage units, but less than thirty (30) grams or forty (40)
81 dosage units, by imprisonment for not more than fifteen (15) years
82 or a fine of not more than One Hundred Thousand Dollars
83 (\$100,000.00), or both;

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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



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

202 (B) Marijuana:

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

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

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



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

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

222 5. If five (5) kilograms or more, by
223 imprisonment for not less than ten (10) years nor more than thirty
224 (30) years or a fine of not more than One Million Dollars
225 (\$1,000,000.00), or both.

226 (C) The provisions of subparagraphs (A) and (B)
227 under this paragraph (2) regarding penalties for marijuana
228 possession shall not be applicable for any person who has been
229 issued medical marijuana certification from another state if the
230 amount in the person's possession is consistent with the legal
231 amount authorized in the state from which such medical marijuana
232 certification was issued. For purposes of this subparagraph,
233 marijuana has the meaning as defined in Section 41-29-105.

234 (* * *D) Synthetic cannabinoids:

235 1. If more than ten (10) grams but less than
236 twenty (20) grams, by a fine of not more than One Thousand Dollars
237 (\$1,000.00), or confinement in the county jail for not more than
238 one (1) year, or both; or by a fine of not more than Three
239 Thousand Dollars (\$3,000.00), or imprisonment in the custody of



240 the Department of Corrections for not more than three (3) years,
241 or both;

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

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

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

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

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

261 (B) If fifty (50) or more grams or one hundred
262 (100) or more dosage units, but less than one hundred fifty (150)
263 grams or five hundred (500) dosage units, by imprisonment for not



264 less than one (1) year nor more than four (4) years or a fine of
265 not more than Ten Thousand Dollars (\$10,000.00), or both.

266 (C) If one hundred fifty (150) or more grams or
267 five hundred (500) or more dosage units, but less than three
268 hundred (300) grams or one thousand (1,000) dosage units, by
269 imprisonment for not less than two (2) years nor more than eight
270 (8) years or a fine of not more than Fifty Thousand Dollars
271 (\$50,000.00), or both.

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

278 (d) **Paraphernalia.** (1) It is unlawful for a person who is
279 not authorized by the State Board of Medical Licensure, State
280 Board of Pharmacy, or other lawful authority to use, or to possess
281 with intent to use, paraphernalia to plant, propagate, cultivate,
282 grow, harvest, manufacture, compound, convert, produce, process,
283 prepare, test, analyze, pack, repack, store, contain, conceal,
284 inject, ingest, inhale or otherwise introduce into the human body
285 a controlled substance in violation of the Uniform Controlled
286 Substances Law. Any person who violates this subsection (d)(1) is
287 guilty of a misdemeanor and, upon conviction, may be confined in
288 the county jail for not more than six (6) months, or fined not



289 more than Five Hundred Dollars (\$500.00), or both; however, no
290 person shall be charged with a violation of this subsection when
291 such person is also charged with the possession of thirty (30)
292 grams or less of marijuana under subsection (c) (2) (A) of this
293 section.

294 (2) It is unlawful for any person to deliver, sell,
295 possess with intent to deliver or sell, or manufacture with intent
296 to deliver or sell, paraphernalia, knowing, or under circumstances
297 where one reasonably should know, that it will be used to plant,
298 propagate, cultivate, grow, harvest, manufacture, compound,
299 convert, produce, process, prepare, test, analyze, pack, repack,
300 store, contain, conceal, inject, ingest, inhale, or otherwise
301 introduce into the human body a controlled substance in violation
302 of the Uniform Controlled Substances Law. Except as provided in
303 subsection (d) (3), a person who violates this subsection (d) (2) is
304 guilty of a misdemeanor and, upon conviction, may be confined in
305 the county jail for not more than six (6) months, or fined not
306 more than Five Hundred Dollars (\$500.00), or both.

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



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

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

332 (f) **Trafficking.** (1) Any person trafficking in controlled
333 substances shall be guilty of a felony and, upon conviction, shall
334 be imprisoned for a term of not less than ten (10) years nor more
335 than forty (40) years and shall be fined not less than Five
336 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
337 (\$1,000,000.00). The ten-year mandatory sentence shall not be
338 reduced or suspended. The person shall not be eligible for



339 probation or parole, the provisions of Sections 41-29-149,
340 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

341 (2) "Trafficking in controlled substances" as used
342 herein means:

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

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

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

355 (D) A violation of subsection (c) of this section
356 involving five hundred (500) or more grams or two thousand five
357 hundred (2,500) or more dosage units of a Schedule III, IV or V
358 controlled substance; or

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

362 (g) **Aggravated trafficking.** Any person trafficking in
363 Schedule I or II controlled substances, except marijuana and



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

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

383 (A) The offender was not a leader of the criminal
384 enterprise;

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



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

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

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

399 (2) If the court reduces the prescribed sentence
400 pursuant to this subsection, it must specify on the record the
401 circumstances warranting the departure.

402 **SECTION 2.** This act shall take effect and be in force from
403 and after its passage.

