

By: Representatives Mims, Bomgar

To: Ways and Means

HOUSE BILL NO. 355

1 AN ACT TO CREATE NEW SECTIONS 41-2-1 THROUGH 41-2-29,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE STATE DEPARTMENT OF
3 HEALTH SHALL ADMINISTER THE MISSISSIPPI MEDICAL MARIJUANA PROGRAM
4 WITH ALL POWERS, DUTIES AND AUTHORITY SET FORTH IN SECTION _____,
5 MISSISSIPPI CONSTITUTION OF 1890; TO AUTHORIZE THE DEPARTMENT TO
6 DELEGATE SUCH POWERS, DUTIES AND AUTHORITIES AS IT SEES FIT TO ANY
7 MISSISSIPPI STATE AGENCY THAT AGREES TO ACCEPT SUCH DELEGATION; TO
8 PROVIDE THAT EACH MEDICAL MARIJUANA TREATMENT CENTER SHALL ADD A
9 FEE ON THE FINAL SALE OF MEDICAL MARIJUANA THAT IS EQUAL TO THE
10 SALES TAX RATE ON THE SALE OF TANGIBLE PERSONAL PROPERTY LEVIED BY
11 LAW; TO PROVIDE THAT TREATMENT CENTERS SHALL ADD THE AMOUNT OF
12 SUCH FEE TO THE SALES PRICE AND COLLECT THE AMOUNT OF THE FEE FROM
13 THE PURCHASER AT THE TIME OF SALE; TO PROVIDE ADMINISTRATIVE AND
14 JUDICIAL PROCEDURES TO THE DEPARTMENT TO ENABLE THE DEPARTMENT TO
15 COLLECT THE FEES FROM THE TREATMENT CENTERS; TO PROVIDE FOR CIVIL
16 AND CRIMINAL PENALTIES FOR TREATMENT CENTERS THAT FAIL TO PAY THE
17 FEES DUE TO THE DEPARTMENT UNDER THIS ACT; AND FOR RELATED
18 PURPOSES.

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

20 **SECTION 1.** The following shall be codified as Section
21 41-2-1, Mississippi Code of 1972:

22 41-2-1. The State Department of Health shall administer the
23 Mississippi Medical Marijuana Program with all powers, duties and
24 authority set forth in Section _____, Mississippi Constitution of
25 1890. All references to "the department" in this chapter shall
26 refer to the State Department of Health unless otherwise stated.



27 **SECTION 2.** The following shall be codified as Section
28 41-2-3, Mississippi Code of 1972:

29 41-2-3. The department may delegate such powers, duties and
30 authorities as it sees fit to any Mississippi state agency that
31 agrees to accept such delegation by means of a memorandum of
32 understanding. Any such state agency shall thereafter have such
33 authority as is designated to it to act on behalf of the
34 department. The department is authorized to make payment to the
35 state agency for the performance of services as delegated by the
36 department. Such payment shall be made from the revenue generated
37 by the fees paid to the department for the issuing of
38 identification cards, licensing of medical marijuana treatment
39 centers, and assessments on the final sale of marijuana. Any
40 reference to "the department" in this chapter shall include its
41 designee when such power, authorities or duties have been
42 delegated by the department.

43 **SECTION 3.** The following shall be codified as Section
44 41-2-5, Mississippi Code of 1972:

45 41-2-5. (1) Each medical marijuana treatment center shall
46 add a fee on the final sale of medical marijuana. The fee shall
47 equal the sales tax rate on the sale of tangible personal property
48 levied by Section 27-65-17. All treatment centers shall add the
49 amount of such fee to the sales price and, in addition thereto,
50 shall collect the amount of the fee from the purchaser at the time
51 of sale. For purposes of this section, there shall be a



presumption that the treatment center collected the fee from the customer or purchaser.

(2) It shall be unlawful for any treatment center to fail or refuse to add the fee to the sales price and collect the amount of fee due on each sale.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in a sum not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00) for each violation. Each incident of the person failing or refusing to add the fee to the sales price shall constitute a separate violation. A treatment center shall be considered responsible for the actions of its employees or agents, and shall be administratively fined One Hundred Dollars (\$100.00) for each violation of its employee or agent failing or refusing to add the fee to the final sale of medical marijuana.

SECTION 4. The following shall be codified as Section 41-2-7, Mississippi Code of 1972:

41-2-7. (1) Except as otherwise provided in this section, the fee levied by Section 41-2-5 shall be due and payable on or before the twentieth day of the month next succeeding the month in which the fee accrues, except as otherwise provided. Returns and payments placed in the mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due



77 date in order to be considered timely filed. The treatment center
78 shall make a return showing the gross proceeds of sales or the
79 gross income of the business.

80 (2) All returns shall be sworn to by the owner of the
81 treatment center, if made by an individual, or by the president,
82 vice president, secretary or treasurer of a corporation, or
83 authorized agent, if made on behalf of a corporation. If made on
84 behalf of a partnership, joint venture, association, trust,
85 estate, or in any other group or combination acting as a unit, any
86 individual delegated by such firm shall swear to the return on
87 behalf of the treatment center. The department may prescribe
88 methods by which the treatment center may swear to its return and
89 file the return and fee remittance.

90 (3) For persistent, willful or recurring failure to file a
91 timely return and pay the fee shown thereby to be due by the time
92 specified, the department may take disciplinary steps against the
93 treatment center, including, but not limited to, the suspension or
94 revocation of the treatment center's permit to sell medical
95 marijuana.

96 **SECTION 5.** The following shall be codified as Section
97 41-2-9, Mississippi Code of 1972:

98 41-2-9. If no return is made on or before the due date by
99 any treatment center required to make a return, the department, as
100 soon as practicable after the due date, shall make an assessment
101 of fees from any information available, which shall be prima facie



correct. The department shall give written notice by mail or by personal delivery to the treatment center of the fee thus assessed and demand payment within thirty (30) days from the date the department mailed or hand delivered the notice. In the case of an individual owner, the notice shall be sent by mail to the treatment center or delivered by an agent of the department to a manager or general agent at the treatment center or to someone above the age of sixteen (16) years at the individual owner's residence. In the case of a partnership, the notice shall be sent by mail to the partnership or delivered by an agent of the department to any partner, manager or general agent at the treatment center or to someone above the age of sixteen (16) years at the residence of any partner. In the case of a corporation, limited liability company, joint venture, association, estate, trust or other group or combination acting as a unit, including any government entity, the notice shall be sent by mail to the treatment center or delivered by an agent of the department to an officer of the entity, to someone above the age of sixteen (16) years at the residence of an officer of the entity or to a manager or general agent at the treatment center. However, if the treatment center files a return and pays the fee shown to be due within thirty (30) days from the date the department mailed or hand delivered the assessment, the return and payment shall be accepted in lieu of the assessment.



126 **SECTION 6.** The following shall be codified as Section
127 41-2-11, Mississippi Code of 1972:

128 41-2-11. (1) If adequate records of the gross income or
129 gross proceeds of sales are not maintained or invoices preserved
130 as provided in this chapter, or if an audit of the records of a
131 treatment center, or any return filed by it, or any other
132 information discloses that fees are due and unpaid, the department
133 shall make assessments of fees, which shall be prima facie
134 correct.

135 (2) The department shall give notice to the treatment center
136 of the assessment and demand payment of the fee within thirty (30)
137 days from the date the department mailed or hand delivered the
138 notice. The notice shall be sent by regular first class mail or
139 delivered by an agent of the department. In the case of an
140 individual owner, the notice shall be sent by mail to the
141 treatment center or delivered by an agent of the department to a
142 manager or general agent at the treatment center or to someone
143 above the age of sixteen (16) years at the individual owner's
144 residence. In the case of a partnership, the notice shall be sent
145 by mail to the partnership or delivered by an agent of the
146 department to any partner, manager or general agent at the
147 treatment center or to someone above the age of sixteen (16) years
148 at the residence of any partner. In the case of a corporation,
149 limited liability company, joint venture, association, estate,
150 trust or other group or combination acting as a unit, including



any government entity, the notice shall be sent by mail to the treatment center or delivered by an agent of the department to an officer of the entity, to someone above the age of sixteen (16) years at the residence of an officer of the entity or to a manager or general agent at the treatment center.

SECTION 7. The following shall be codified as Section 41-2-13, Mississippi Code of 1972:

41-2-13. (1) If a treatment center does not pay the fee levied by this chapter when it is due and payable, the department may add interest at the rate of one percent (1%) per month of the total amount of the deficient or delinquent fee from the date the fee was due until it is paid.

(2) If any part of the deficient or delinquent fee is due to negligence or failure of the treatment center to comply with the provisions of this chapter without intent to defraud, the department may add damages of ten percent (10%) of the total amount of the deficient or delinquent fee. If any part of the deficient or delinquent fee is due to intentional disregard of the provisions of this chapter, or is due to fraud with intent to evade the law, then the department may add damages of fifty percent (50%) of the total amount of the deficient or delinquent tax. However, no such damages shall be added if the treatment center establishes reasonable cause for its negligence or failure to comply. A treatment center's purported disregard of



instructions given through an audit shall not be a basis for the imposition of the damages authorized in this subsection.

SECTION 8. The following shall be codified as Section 41-2-15, Mississippi Code of 1972:

41-2-15. The fee imposed by this chapter shall constitute a debt due the State of Mississippi from the time the fee is due until it is paid and shall be a lien upon the property or rights to property of any person subject to the provisions of this chapter.

SECTION 9. The following shall be codified as Section 41-2-17, Mississippi Code of 1972:

41-2-17. (1) It shall be the duty of every treatment center under this chapter to keep and preserve for a period of three (3) years adequate records of the gross income, gross receipts or gross proceeds of sales of medical marijuana, including all invoices of marijuana purchased, all bank statements and cancelled checks if funds from the sale of marijuana are maintained in a bank, and all other books or accounts as may be necessary to determine the amount of fee for which it is liable. Those records shall be adequate in substance to conform with the provisions of this chapter and the regulations promulgated by the department, and all of such records shall be written in the English language. All records shall be open for examination, at any time, by the department or its duly authorized agent.



(2) The department may require any information or records from computer information systems on media common to those systems. Treatment center records may be sampled for audit purposes at the discretion of the department and any assessment rendered as a result of same shall be considered prima facie correct.

(3) The records provided for in this section shall be kept at the treatment center's principal place of business within this state, and failure to keep and allow examination of such records shall subject the treatment center to revocation of its medical marijuana permit.

SECTION 10. The following shall be codified as Section 41-2-19, Mississippi Code of 1972:

41-2-19. The Mississippi Department of Revenue is authorized to disclose otherwise protected confidential tax information to the department upon request for the purpose of the department performing its obligations and responsibilities relating to the Medical Marijuana Program. The department is authorized to provide information to the Mississippi Department of Revenue as is needed for or to assist the Mississippi Department of Revenue in performing its obligations and responsibilities.

SECTION 11. The following shall be codified as Section 41-2-21, Mississippi Code of 1972:

41-2-21. (1) Any treatment center aggrieved by an assessment of fee, administrative penalty or revocation or



suspension of a permit by the department, and who wishes to contest the action of the department shall, within thirty (30) days from the date the department mailed or delivered written notice of the assessment or action, file a petition in the chancery court appealing the assessment. The petition shall be filed against the department as respondent. The petition shall contain a concise statement of the facts as contended by the petitioner, identify the assessment or permit action which is being appealed and set out the type of relief sought. The department has thirty (30) days from the date of service of the petition to file a cross-appeal.

(2) A petition under subsection (1) of this section shall be filed in the chancery court of the county or judicial district in which the treatment center has a place of business or in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SECTION 12. The following shall be codified as Section 41-2-23, Mississippi Code of 1972:

41-2-23. (1) The department shall have the power, authority and duty to direct that proceedings, actions and prosecutions be instituted to enforce the laws relating to the liabilities and punishment of all persons, officers or agents or corporations, or others required by law to make returns of marijuana sales and for failure or neglect to comply with such provisions of the law.



(2) The department shall have the power, authority and duty to proceed by suit in the chancery court of the residence of the treatment center or, in the case of a nonresident, in the Chancery Court of the First Judicial District of Hinds County, against all persons, corporations, companies and associations of persons for all past-due and unpaid fees, together with any penalties, damages and interest due thereon, and for all past-due obligations and indebtedness of any character due and owing to them or any of them.

(3) All warrants issued by the department for the collection of any fees imposed by this chapter and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent treatment center, its officers or its owners. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies to the delinquent treatment center, its officers or its owners. Once served, the employer or other person owing compensation due the delinquent treatment center, its officers or its owners shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the



monies owed and the levy and collection process may be issued against the party in the same manner as other taxes. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

SECTION 13. The following shall be codified as Section 41-2-25, Mississippi Code of 1972:

41-2-25. For treatment centers, persons owning stock of ten percent (10%) or more of the total of corporations or ten percent (10%) interest in limited liability companies with thirty-five (35) or fewer owners and exercising responsibility for fiscal management, also shall be liable for the fee levied by this chapter upon such treatment centers when such fees become due and unpaid to the extent that such fees accrued while such person was exercising responsibility for fiscal management. The department shall make assessments against those persons of such fees, damages and interest, and effect collection by the same procedures provided for assessment and collection of all fees assessed under this chapter.

SECTION 14. The following shall be codified as Section 41-2-27, Mississippi Code of 1972:

41-2-27. The department may issue a warrant under official seal directed to the sheriff of any county of the state, or to a special agent of the department, commanding him to immediately



seize and sell the real and personal property of the person owning the same found within the county, as set forth in the warrant, and the cost of executing the warrant.

SECTION 15. The following shall be codified as Section 41-2-29, Mississippi Code of 1972:

41-2-29. (1) The sheriff or employee or agent of the department, upon receipt of a warrant, shall immediately seize any property of the individual or entity named in the warrant, in all respects, with like effect, and in the manner prescribed by law with respect to executions of judgments, and he shall execute such warrant and return it to the department, and pay to it the money collected by virtue thereof by the date specified therein, but not to exceed sixty (60) days.

(2) The sheriff or employee or agent shall be entitled to the fees for his services in the same amount, and to be collected in like manner, as provided by Section 25-7-19 for like services under a writ of execution. However, the minimum total of all such fees shall be Ten Dollars (\$10.00). All such fees collected by an employee or agent of the department shall be paid to the department and deposited in a fund to be expended by the department to help defray the costs of carrying out the provisions of this chapter. In addition, when a warrant issued to a sheriff is withdrawn by the department before its expiration date, the department is authorized to pay to the sheriff the fees allowed by



law for services actually performed and costs actually incurred,
out of money collected as fees.

(3) Real property shall be disposed of according to Section 13-3-163 and, except as otherwise provided in this subsection, personal property shall be disposed of according to Section 13-3-165. Perishable personal property may be disposed of as provided by Section 13-3-167. In addition to the advertising requirements provided in Section 13-3-165 for the sale of personal property, the department may, when it determines the need to do so, advertise sales of personal property in any additional manner determined appropriate by the department. The costs of any such additional advertising shall be considered a cost of the sale and shall be collected from the proceeds of the sale. The failure to advertise the sale of personal property in any form other than that required by Section 13-3-165 shall not invalidate a sale. For any sale of property by the department, the department may determine acceptable methods of payments to be received from the highest bidder for any sale.

SECTION 16. This act shall take effect and be in force from and after July 1, 2021.

