

By: Representative Holloway

To: Judiciary B

HOUSE BILL NO. 178

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A FIRST OFFENSE SIMPLE POSSESSION OF THIRTY GRAMS
3 OR LESS OF MARIJUANA OR TEN GRAMS OR LESS OF SYNTHETIC
4 CANNABINOIDS SHALL BE A CIVIL OFFENSE AND NOT A CRIMINAL OFFENSE;
5 AND FOR RELATED 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 civil
160 fine of not less than One Hundred Dollars (\$100.00) nor more than
161 Two Hundred Fifty Dollars (\$250.00). The offense shall be a civil
162 offense, and shall not be a criminal offense. The civil fine
163 shall be paid to the municipality or county in which the offense
164 occurred. The provisions of this paragraph (2) (A) may be
165 enforceable by summons if the offender provides proof of identity



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

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



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

204 (B) Marijuana:

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

212 2. If two hundred fifty (250) or more grams
213 but less than five hundred (500) grams, by imprisonment for not



214 less than two (2) years nor more than eight (8) years or by a fine
215 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

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

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

224 5. If five (5) kilograms or more, by
225 imprisonment for not less than ten (10) years nor more than thirty
226 (30) years or a fine of not more than One Million Dollars
227 (\$1,000,000.00), or both.

228 (C) Synthetic cannabinoids:

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

236 2. If twenty (20) or more grams but less than
237 forty (40) grams, by imprisonment for not less than two (2) years



238 nor more than eight (8) years or by a fine of not more than Fifty
239 Thousand Dollars (\$50,000.00), or both;

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

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

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

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

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

260 (C) If one hundred fifty (150) or more grams or
261 five hundred (500) or more dosage units, but less than three
262 hundred (300) grams or one thousand (1,000) dosage units, by



263 imprisonment for not less than two (2) years nor more than eight
264 (8) years or a fine of not more than Fifty Thousand Dollars
265 (\$50,000.00), or both.

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

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



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

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

308 (4) It is unlawful for any person to place in any
309 newspaper, magazine, handbill, or other publication any
310 advertisement, knowing, or under circumstances where one
311 reasonably should know, that the purpose of the advertisement, in
312 whole or in part, is to promote the sale of objects designed or



313 intended for use as paraphernalia. Any person who violates this
314 subsection is guilty of a misdemeanor and, upon conviction, may be
315 confined in the county jail for not more than six (6) months, or
316 fined not more than Five Hundred Dollars (\$500.00), or both.

317 (e) It shall be unlawful for any physician practicing
318 medicine in this state to prescribe, dispense or administer any
319 amphetamine or amphetamine-like anorectics and/or central nervous
320 system stimulants classified in Schedule II, pursuant to Section
321 41-29-115, for the exclusive treatment of obesity, weight control
322 or weight loss. Any person who violates this subsection, upon
323 conviction, is guilty of a misdemeanor and may be confined for a
324 period not to exceed six (6) months, or fined not more than One
325 Thousand Dollars (\$1,000.00), or both.

326 (f) **Trafficking.** (1) Any person trafficking in controlled
327 substances shall be guilty of a felony and, upon conviction, shall
328 be imprisoned for a term of not less than ten (10) years nor more
329 than forty (40) years and shall be fined not less than Five
330 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
331 (\$1,000,000.00). The ten-year mandatory sentence shall not be
332 reduced or suspended. The person shall not be eligible for
333 probation or parole, the provisions of Sections 41-29-149,
334 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

335 (2) "Trafficking in controlled substances" as used
336 herein means:



337 (A) A violation of subsection (a) of this section
338 involving thirty (30) or more grams or forty (40) or more dosage
339 units of a Schedule I or II controlled substance except marijuana
340 and synthetic cannabinoids;

341 (B) A violation of subsection (a) of this section
342 involving five hundred (500) or more grams or two thousand five
343 hundred (2,500) or more dosage units of a Schedule III, IV or V
344 controlled substance;

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

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

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

356 (g) **Aggravated trafficking.** Any person trafficking in
357 Schedule I or II controlled substances, except marijuana and
358 synthetic cannabinoids, of two hundred (200) grams or more shall
359 be guilty of aggravated trafficking and, upon conviction, shall be
360 sentenced to a term of not less than twenty-five (25) years nor
361 more than life in prison and shall be fined not less than Five



362 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
363 (\$1,000,000.00). The twenty-five-year sentence shall be a
364 mandatory sentence and shall not be reduced or suspended. The
365 person shall not be eligible for probation or parole, the
366 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to
367 the contrary notwithstanding.

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

377 (A) The offender was not a leader of the criminal
378 enterprise;

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

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

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



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

393 (2) If the court reduces the prescribed sentence
394 pursuant to this subsection, it must specify on the record the
395 circumstances warranting the departure.

396 **SECTION 2.** This act shall take effect and be in force from
397 and after July 1, 2022.

