

By: Representatives Bell (65th), Anthony

To: Drug Policy

HOUSE BILL NO. 722

1 AN ACT TO AMEND SECTION 41-29-105, MISSISSIPPI CODE OF 1972,
2 TO EXCLUDE FROM THE DEFINITION OF "PARAPHERNALIA" UNDER THE
3 UNIFORM CONTROLLED SUBSTANCES LAW ANY MATERIALS USED OR INTENDED
4 FOR USE IN TESTING FOR THE PRESENCE OF FENTANYL OR A FENTANYL
5 ANALOG IN A SUBSTANCE; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 41-29-105, Mississippi Code of 1972, is
8 amended as follows:

9 41-29-105. The following words and phrases, as used in this
10 article, shall have the following meanings, unless the context
11 otherwise requires:

12 (a) "Administer" means the direct application of a
13 controlled substance, whether by injection, inhalation, ingestion
14 or any other means, to the body of a patient or research subject
15 by:

16 (i) A practitioner (or, in his presence, by his
17 authorized agent); or

18 (ii) The patient or research subject at the
19 direction and in the presence of the practitioner.



20 (b) "Agent" means an authorized person who acts on
21 behalf of or at the direction of a manufacturer, distributor or
22 dispenser. Such word does not include a common or contract
23 carrier, public warehouseman or employee of the carrier or
24 warehouseman. This definition shall not be applied to the term
25 "agent" when such term clearly designates a member or officer of
26 the Bureau of Narcotics or other law enforcement organization.

27 (c) "Board" means the Mississippi State Board of
28 Medical Licensure.

29 (d) "Bureau" means the Mississippi Bureau of Narcotics.
30 However, where the title "Bureau of Drug Enforcement" occurs, that
31 term shall also refer to the Mississippi Bureau of Narcotics.

32 (e) "Commissioner" means the Commissioner of the
33 Department of Public Safety.

34 (f) "Controlled substance" means a drug, substance or
35 immediate precursor in Schedules I through V of Sections 41-29-113
36 through 41-29-121.

37 (g) "Counterfeit substance" means a controlled
38 substance which, or the container or labeling of which, without
39 authorization, bears the trademark, trade name, or other
40 identifying mark, imprint, number or device, or any likeness
41 thereof, of a manufacturer, distributor or dispenser other than
42 the person who in fact manufactured, distributed or dispensed the
43 substance.



44 (h) "Deliver" or "delivery" means the actual,
45 constructive, or attempted transfer from one person to another of
46 a controlled substance, whether or not there is an agency
47 relationship.

48 (i) "Director" means the Director of the Bureau of
49 Narcotics.

50 (j) "Dispense" means to deliver a controlled substance
51 to an ultimate user or research subject by or pursuant to the
52 lawful order of a practitioner, including the prescribing,
53 administering, packaging, labeling or compounding necessary to
54 prepare the substance for that delivery.

55 (k) "Dispenser" means a practitioner who dispenses.

56 (l) "Distribute" means to deliver other than by
57 administering or dispensing a controlled substance.

58 (m) "Distributor" means a person who distributes.

59 (n) "Drug" means (i) a substance recognized as a drug
60 in the official United States Pharmacopoeia, official Homeopathic
61 Pharmacopoeia of the United States, or official National
62 Formulary, or any supplement to any of them; (ii) a substance
63 intended for use in the diagnosis, cure, mitigation, treatment, or
64 prevention of disease in man or animals; (iii) a substance (other
65 than food) intended to affect the structure or any function of the
66 body of man or animals; and (iv) a substance intended for use as a
67 component of any article specified in this paragraph. Such word



68 does not include devices or their components, parts, or
69 accessories.

70 (o) "Hashish" means the resin extracted from any part
71 of the plants of the genus Cannabis and all species thereof or any
72 preparation, mixture or derivative made from or with that resin.

73 (p) "Immediate precursor" means a substance which the
74 board has found to be and by rule designates as being the
75 principal compound commonly used or produced primarily for use,
76 and which is an immediate chemical intermediary used or likely to
77 be used in the manufacture of a controlled substance, the control
78 of which is necessary to prevent, curtail, or limit manufacture.

79 (q) "Manufacture" means the production, preparation,
80 propagation, compounding, conversion or processing of a controlled
81 substance, either directly or indirectly, by extraction from
82 substances of natural origin, or independently by means of
83 chemical synthesis, or by a combination of extraction and chemical
84 synthesis, and includes any packaging or repackaging of the
85 substance or labeling or relabeling of its container. The term
86 "manufacture" does not include the preparation, compounding,
87 packaging or labeling of a controlled substance in conformity with
88 applicable state and local law:

89 (i) By a practitioner as an incident to his
90 administering or dispensing of a controlled substance in the
91 course of his professional practice; or



92 (ii) By a practitioner, or by his authorized agent
93 under his supervision, for the purpose of, or as an incident to,
94 research, teaching or chemical analysis and not for sale.

95 (r) "Marijuana" means all parts of the plant of the
96 genus Cannabis and all species thereof, whether growing or not,
97 the seeds thereof, and every compound, manufacture, salt,
98 derivative, mixture or preparation of the plant or its seeds,
99 excluding hashish.

100 The term "marijuana" does not include "hemp" as defined in
101 and regulated by Sections 69-25-201 through 69-25-221.

102 (s) "Narcotic drug" means any of the following, whether
103 produced directly or indirectly by extraction from substances of
104 vegetable origin, or independently by means of chemical synthesis,
105 or by a combination of extraction and chemical synthesis:

106 (i) Opium and opiate, and any salt, compound,
107 derivative or preparation of opium or opiate;

108 (ii) Any salt, compound, isomer, derivative or
109 preparation thereof which is chemically equivalent or identical
110 with any of the substances referred to in subparagraph (i), but
111 not including the isoquinoline alkaloids of opium;

112 (iii) Opium poppy and poppy straw; and

113 (iv) Cocaine, coca leaves and any salt, compound,
114 derivative or preparation of cocaine, coca leaves, and any salt,
115 compound, isomer, derivative or preparation thereof which is
116 chemically equivalent or identical with any of these substances,



117 but not including decocainized coca leaves or extractions of coca
118 leaves which do not contain cocaine or ecgonine.

119 (t) "Opiate" means any substance having an
120 addiction-forming or addiction-sustaining liability similar to
121 morphine or being capable of conversion into a drug having
122 addiction-forming or addiction-sustaining liability. It does not
123 include, unless specifically designated as controlled under
124 Section 41-29-111, the dextrorotatory isomer of
125 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
126 Such word does include its racemic and levorotatory forms.

127 (u) "Opium poppy" means the plant of the species
128 *Papaver somniferum* L., except its seeds.

129 (v) (i) "Paraphernalia" means all equipment, products
130 and materials of any kind which are used, intended for use, or
131 designed for use, in planting, propagating, cultivating, growing,
132 harvesting, manufacturing, compounding, converting, producing,
133 processing, preparing, testing, analyzing, packaging, repackaging,
134 storing, containing, concealing, injecting, ingesting, inhaling or
135 otherwise introducing into the human body a controlled substance
136 in violation of the Uniform Controlled Substances Law. It
137 includes, but is not limited to:

138 1. Kits used, intended for use, or designed
139 for use in planting, propagating, cultivating, growing or
140 harvesting of any species of plant which is a controlled substance
141 or from which a controlled substance can be derived;



142 2. Kits used, intended for use, or designed
143 for use in manufacturing, compounding, converting, producing,
144 processing or preparing controlled substances;

145 3. Isomerization devices used, intended for
146 use or designed for use in increasing the potency of any species
147 of plant which is a controlled substance;

148 4. Testing equipment used, intended for use,
149 or designed for use in identifying or in analyzing the strength,
150 effectiveness or purity of controlled substances;

151 5. Scales and balances used, intended for use
152 or designed for use in weighing or measuring controlled
153 substances;

154 6. Diluents and adulterants, such as quinine
155 hydrochloride, mannitol, mannite, dextrose and lactose, used,
156 intended for use or designed for use in cutting controlled
157 substances;

158 7. Separation gins and sifters used, intended
159 for use or designed for use in removing twigs and seeds from, or
160 in otherwise cleaning or refining, marijuana;

161 8. Blenders, bowls, containers, spoons and
162 mixing devices used, intended for use or designed for use in
163 compounding controlled substances;

164 9. Capsules, balloons, envelopes and other
165 containers used, intended for use or designed for use in packaging
166 small quantities of controlled substances;



167 10. Containers and other objects used,
168 intended for use or designed for use in storing or concealing
169 controlled substances;

170 11. Hypodermic syringes, needles and other
171 objects used, intended for use or designed for use in parenterally
172 injecting controlled substances into the human body;

173 12. Objects used, intended for use or
174 designed for use in ingesting, inhaling or otherwise introducing
175 marijuana, cocaine, hashish or hashish oil into the human body,
176 such as:

177 a. Metal, wooden, acrylic, glass, stone,
178 plastic or ceramic pipes with or without screens, permanent
179 screens, hashish heads or punctured metal bowls;

180 b. Water pipes;

181 c. Carburetion tubes and devices;

182 d. Smoking and carburetion masks;

183 e. Roach clips, meaning objects used to
184 hold burning material, such as a marijuana cigarette, that has
185 become too small or too short to be held in the hand;

186 f. Miniature cocaine spoons and cocaine
187 vials;

188 g. Chamber pipes;

189 h. Carburetor pipes;

190 i. Electric pipes;

191 j. Air-driven pipes;



- 192 k. Chillums;
193 l. Bongs; and
194 m. Ice pipes or chillers.

195 (ii) In determining whether an object is
196 paraphernalia, a court or other authority should consider, in
197 addition to all other logically relevant factors, the following:

- 198 1. Statements by an owner or by anyone in
199 control of the object concerning its use;
- 200 2. Prior convictions, if any, of an owner, or
201 of anyone in control of the object, under any state or federal law
202 relating to any controlled substance;
- 203 3. The proximity of the object, in time and
204 space, to a direct violation of the Uniform Controlled Substances
205 Law;
- 206 4. The proximity of the object to controlled
207 substances;
- 208 5. The existence of any residue of controlled
209 substances on the object;
- 210 6. Direct or circumstantial evidence of the
211 intent of an owner, or of anyone in control of the object, to
212 deliver it to persons whom he knows, or should reasonably know,
213 intend to use the object to facilitate a violation of the Uniform
214 Controlled Substances Law; the innocence of an owner, or of anyone
215 in control of the object, as to a direct violation of the Uniform



216 Controlled Substances Law shall not prevent a finding that the
217 object is intended for use, or designed for use as paraphernalia;

218 7. Instructions, oral or written, provided
219 with the object concerning its use;

220 8. Descriptive materials accompanying the
221 object which explain or depict its use;

222 9. National and local advertising concerning
223 its use;

224 10. The manner in which the object is
225 displayed for sale;

226 11. Whether the owner or anyone in control of
227 the object is a legitimate supplier of like or related items to
228 the community, such as a licensed distributor or dealer of tobacco
229 products;

230 12. Direct or circumstantial evidence of the
231 ratio of sales of the object(s) to the total sales of the business
232 enterprise;

233 13. The existence and scope of legitimate
234 uses for the object in the community;

235 14. Expert testimony concerning its use.

236 (iii) "Paraphernalia" does not include any
237 materials used or intended for use in testing for the presence of
238 fentanyl or a fentanyl analog in a substance.



239 (w) "Person" means individual, corporation, government
240 or governmental subdivision or agency, business trust, estate,
241 trust, partnership or association, or any other legal entity.

242 (x) "Poppy straw" means all parts, except the seeds, of
243 the opium poppy, after mowing.

244 (y) "Practitioner" means:

245 (i) A physician, dentist, veterinarian, scientific
246 investigator, optometrist certified to prescribe and use
247 therapeutic pharmaceutical agents under Sections 73-19-153 through
248 73-19-165, or other person licensed, registered or otherwise
249 permitted to distribute, dispense, conduct research with respect
250 to or to administer a controlled substance in the course of
251 professional practice or research in this state; and

252 (ii) A pharmacy, hospital or other institution
253 licensed, registered, or otherwise permitted to distribute,
254 dispense, conduct research with respect to or to administer a
255 controlled substance in the course of professional practice or
256 research in this state.

257 (z) "Production" includes the manufacture, planting,
258 cultivation, growing or harvesting of a controlled substance.

259 (aa) "Sale," "sell" or "selling" means the actual,
260 constructive or attempted transfer or delivery of a controlled
261 substance for remuneration, whether in money or other
262 consideration.



263 (bb) "State," when applied to a part of the United
264 States, includes any state, district, commonwealth, territory,
265 insular possession thereof, and any area subject to the legal
266 authority of the United States of America.

267 (cc) "Ultimate user" means a person who lawfully
268 possesses a controlled substance for his own use or for the use of
269 a member of his household or for administering to an animal owned
270 by him or by a member of his household.

271 **SECTION 2.** This act shall take effect and be in force from
272 and after July 1, 2023.

