

By: Representatives Bain, Williamson

To: Judiciary B

HOUSE BILL NO. 816

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE PENALTY FOR POSSESSION OF FENTANYL AND ANY
3 FENTANYL RELATED SUBSTANCES; AND FOR RELATED PURPOSES.

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

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

7 41-29-139. (a) **Transfer and possession with intent to**
8 **transfer.** Except as authorized by this article, it is unlawful
9 for any person knowingly or intentionally:

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

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

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



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

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

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

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

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

36 (2) (A) For marijuana:

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

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



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

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

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

52 (B) For synthetic cannabinoids:

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

106 (c) **Simple possession.** Except as otherwise provided under
107 subsection (i) of this section for actions that are lawful under
108 the Mississippi Medical Cannabis Act and in compliance with rules
109 and regulations adopted thereunder, it is unlawful for any person
110 knowingly or intentionally to possess any controlled substance
111 unless the substance was obtained directly from, or pursuant to, a
112 valid prescription or order of a practitioner while acting in the
113 course of his professional practice, or except as otherwise



114 authorized by this article. The penalties for any violation of
115 this subsection (c) with respect to a controlled substance
116 classified in Schedules I, II, III, IV or V, as set out in Section
117 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including
118 marijuana or synthetic cannabinoids, shall be based on dosage unit
119 as defined herein or the weight of the controlled substance as set
120 forth herein as appropriate:

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

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

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

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

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



138 (1) A controlled substance classified in Schedule I or
139 II, except marijuana and synthetic cannabinoids, and fentanyl and
140 any fentanyl-related substances, to include fentanyl analogs, as
141 set forth in Article 3, Chapter 29 of Title 41 of the Mississippi
142 Code of 1972:

143 (A) If less than one-tenth (0.1) gram or two (2)
144 dosage units, the violation is a misdemeanor and punishable by
145 imprisonment for not more than one (1) year or a fine of not more
146 than One Thousand Dollars (\$1,000.00), or both.

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

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

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

161 For fentanyl and any fentanyl-related substances, to include
162 fentanyl analogs, as set forth in Article 3, Chapter 29 of Title



163 41 of the Mississippi Code of 1972: if less than one-tenth (0.1)
164 gram or two (2) dosage units, the violation is a misdemeanor and
165 punishable by imprisonment for not more than two (2) years or a
166 fine of not more than Two Thousand Dollars (\$2,000.00), or both;
167 if one-tenth (0.1) gram or more or two (2) or more dosage units,
168 but less than two (2) grams or ten (10) dosage units, by
169 imprisonment for not more than six (6) years or a fine of not more
170 than One Hundred Thousand Dollars (\$100,000.00), or both; if two
171 (2) or more grams or ten (10) or more dosage units, but less than
172 ten (10) grams or twenty (20) dosage units, by imprisonment for
173 not more than sixteen (16) years or a fine of not more than Five
174 Hundred Thousand Dollars (\$500,000.00), or both; and, if ten (10)
175 or more grams or twenty (20) or more dosage units, but less than
176 thirty (30) grams or forty (40) dosage units, by imprisonment for
177 not less than six (6) years nor more than forty (40) years or a
178 fine of not more than One Million Dollars (\$1,000,000.00), or
179 both.

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

181 1. If thirty (30) grams or less of marijuana
182 or ten (10) grams or less of synthetic cannabinoids, by a fine of
183 not less than One Hundred Dollars (\$100.00) nor more than Two
184 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph
185 (2) (A) may be enforceable by summons if the offender provides
186 proof of identity satisfactory to the arresting officer and gives
187 written promise to appear in court satisfactory to the arresting



188 officer, as directed by the summons. A second conviction under
189 this section within two (2) years is a misdemeanor punishable by a
190 fine of Two Hundred Fifty Dollars (\$250.00), not more than sixty
191 (60) days in the county jail, and mandatory participation in a
192 drug education program approved by the Division of Alcohol and
193 Drug Abuse of the State Department of Mental Health, unless the
194 court enters a written finding that a drug education program is
195 inappropriate. A third or subsequent conviction under this
196 paragraph (2)(A) within two (2) years is a misdemeanor punishable
197 by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor
198 more than One Thousand Dollars (\$1,000.00) and confinement for not
199 more than six (6) months in the county jail.

200 Upon a first or second conviction under this paragraph
201 (2)(A), the courts shall forward a report of the conviction to the
202 Mississippi Bureau of Narcotics which shall make and maintain a
203 private, nonpublic record for a period not to exceed two (2) years
204 from the date of conviction. The private, nonpublic record shall
205 be solely for the use of the courts in determining the penalties
206 which attach upon conviction under this paragraph (2)(A) and shall
207 not constitute a criminal record for the purpose of private or
208 administrative inquiry and the record of each conviction shall be
209 expunged at the end of the period of two (2) years following the
210 date of such conviction;

211 2. Additionally, a person who is the operator
212 of a motor vehicle, who possesses on his person or knowingly keeps



213 or allows to be kept in a motor vehicle within the area of the
214 vehicle normally occupied by the driver or passengers, more than
215 one (1) gram, but not more than thirty (30) grams of marijuana or
216 not more than ten (10) grams of synthetic cannabinoids is guilty
217 of a misdemeanor and, upon conviction, may be fined not more than
218 One Thousand Dollars (\$1,000.00) or confined for not more than
219 ninety (90) days in the county jail, or both. For the purposes of
220 this subsection, such area of the vehicle shall not include the
221 trunk of the motor vehicle or the areas not normally occupied by
222 the driver or passengers if the vehicle is not equipped with a
223 trunk. A utility or glove compartment shall be deemed to be
224 within the area occupied by the driver and passengers.

225 (B) Marijuana:

226 1. If more than thirty (30) grams but less
227 than two hundred fifty (250) grams, by a fine of not more than One
228 Thousand Dollars (\$1,000.00), or confinement in the county jail
229 for not more than one (1) year, or both; or by a fine of not more
230 than Three Thousand Dollars (\$3,000.00), or imprisonment in the
231 custody of the Department of Corrections for not more than three
232 (3) years, or both;

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



237 3. If five hundred (500) or more grams but
238 less than one (1) kilogram, 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 one (1) kilogram or more but less than
242 five (5) kilograms, by imprisonment for not less than six (6)
243 years nor more than twenty-four (24) years or a fine of not more
244 than Five Hundred Thousand Dollars (\$500,000.00), or both;

245 5. If five (5) kilograms or more, by
246 imprisonment for not less than ten (10) years nor more than thirty
247 (30) years or a fine of not more than One Million Dollars
248 (\$1,000,000.00), or both.

249 (C) Synthetic cannabinoids:

250 1. If more than ten (10) grams but less than
251 twenty (20) grams, by a fine of not more than One Thousand Dollars
252 (\$1,000.00), or confinement in the county jail for not more than
253 one (1) year, or both; or by a fine of not more than Three
254 Thousand Dollars (\$3,000.00), or imprisonment in the custody of
255 the Department of Corrections for not more than three (3) years,
256 or both;

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



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

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

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

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

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

281 (C) If one hundred fifty (150) or more grams or
282 five hundred (500) or more dosage units, but less than three
283 hundred (300) grams or one thousand (1,000) dosage units, by
284 imprisonment for not less than two (2) years nor more than eight



285 (8) years or a fine of not more than Fifty Thousand Dollars
286 (\$50,000.00), or both.

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

293 (d) **Paraphernalia.** (1) Except as otherwise provided under
294 subsection (i) of this section for actions that are lawful under
295 the Mississippi Medical Cannabis Act and in compliance with rules
296 and regulations adopted thereunder, it is unlawful for a person
297 who is not authorized by the State Board of Medical Licensure,
298 State Board of Pharmacy, or other lawful authority to use, or to
299 possess with intent to use, paraphernalia to plant, propagate,
300 cultivate, grow, harvest, manufacture, compound, convert, produce,
301 process, prepare, test, analyze, pack, repack, store, contain,
302 conceal, inject, ingest, inhale or otherwise introduce into the
303 human body a controlled substance in violation of the Uniform
304 Controlled Substances Law. Any person who violates this
305 subsection (d)(1) is guilty of a misdemeanor and, upon conviction,
306 may be confined in the county jail for not more than six (6)
307 months, or fined not more than Five Hundred Dollars (\$500.00), or
308 both; however, no person shall be charged with a violation of this
309 subsection when such person is also charged with the possession of



310 thirty (30) grams or less of marijuana under subsection (c) (2) (A)
311 of this section.

312 (2) It is unlawful for any person to deliver, sell,
313 possess with intent to deliver or sell, or manufacture with intent
314 to deliver or sell, paraphernalia, knowing, or under circumstances
315 where one reasonably should know, that it will be used to plant,
316 propagate, cultivate, grow, harvest, manufacture, compound,
317 convert, produce, process, prepare, test, analyze, pack, repack,
318 store, contain, conceal, inject, ingest, inhale, or otherwise
319 introduce into the human body a controlled substance in violation
320 of the Uniform Controlled Substances Law. Except as provided in
321 subsection (d) (3), a person who violates this subsection (d) (2) is
322 guilty of a misdemeanor and, upon conviction, may be confined in
323 the county jail for not more than six (6) months, or fined not
324 more than Five Hundred Dollars (\$500.00), or both.

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

332 (4) It is unlawful for any person to place in any
333 newspaper, magazine, handbill, or other publication any
334 advertisement, knowing, or under circumstances where one



335 reasonably should know, that the purpose of the advertisement, in
336 whole or in part, is to promote the sale of objects designed or
337 intended for use as paraphernalia. Any person who violates this
338 subsection is guilty of a misdemeanor and, upon conviction, may be
339 confined in the county jail for not more than six (6) months, or
340 fined not more than Five Hundred Dollars (\$500.00), or both.

341 (e) It shall be unlawful for any physician practicing
342 medicine in this state to prescribe, dispense or administer any
343 amphetamine or amphetamine-like anorectics and/or central nervous
344 system stimulants classified in Schedule II, pursuant to Section
345 41-29-115, for the exclusive treatment of obesity, weight control
346 or weight loss. Any person who violates this subsection, upon
347 conviction, is guilty of a misdemeanor and may be confined for a
348 period not to exceed six (6) months, or fined not more than One
349 Thousand Dollars (\$1,000.00), or both.

350 (f) **Trafficking.** (1) Any person trafficking in controlled
351 substances shall be guilty of a felony and, upon conviction, shall
352 be imprisoned for a term of not less than ten (10) years nor more
353 than forty (40) years and shall be fined not less than Five
354 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
355 (\$1,000,000.00). The ten-year mandatory sentence shall not be
356 reduced or suspended. The person shall not be eligible for
357 probation or parole, the provisions of Sections 41-29-149,
358 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.



359 (2) "Trafficking in controlled substances" as used
360 herein means:

361 (A) A violation of subsection (a) of this section
362 involving thirty (30) or more grams or forty (40) or more dosage
363 units of a Schedule I or II controlled substance except marijuana
364 and synthetic cannabinoids;

365 (B) A violation of subsection (a) of this section
366 involving five hundred (500) or more grams or two thousand five
367 hundred (2,500) or more dosage units of a Schedule III, IV or V
368 controlled substance;

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

373 (D) A violation of subsection (c) of this section
374 involving five hundred (500) or more grams or two thousand five
375 hundred (2,500) or more dosage units of a Schedule III, IV or V
376 controlled substance; or

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

380 (g) **Aggravated trafficking.** Any person trafficking in
381 Schedule I or II controlled substances, except marijuana and
382 synthetic cannabinoids, of two hundred (200) grams or more shall
383 be guilty of aggravated trafficking and, upon conviction, shall be



384 sentenced to a term of not less than twenty-five (25) years nor
385 more than life in prison and shall be fined not less than Five
386 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
387 (\$1,000,000.00). The twenty-five-year sentence shall be a
388 mandatory sentence and shall not be reduced or suspended. The
389 person shall not be eligible for probation or parole, the
390 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to
391 the contrary notwithstanding.

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

401 (A) The offender was not a leader of the criminal
402 enterprise;

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

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



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

410 The court may also consider whether information and
411 assistance were furnished to a law enforcement agency, or its
412 designee, which, in the opinion of the trial judge, objectively
413 should or would have aided in the arrest or prosecution of others
414 who violate this subsection. The accused shall have adequate
415 opportunity to develop and make a record of all information and
416 assistance so furnished.

417 (2) If the court reduces the prescribed sentence
418 pursuant to this subsection, it must specify on the record the
419 circumstances warranting the departure.

420 (i) This section does not apply to any of the actions that
421 are lawful under the Mississippi Medical Cannabis Act and in
422 compliance with rules and regulations adopted thereunder.

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

