

By: Senator(s) Huggins

To: Public Health and Welfare

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2205

1 AN ACT TO AMEND SECTION 41-29-105, MISSISSIPPI CODE OF 1972,
2 TO DEFINE CONTROLLED SUBSTANCE ANALOGUE FOR PURPOSES OF THE
3 UNIFORM CONTROLLED SUBSTANCES ACT; TO AMEND SECTION 41-29-139,
4 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MANUFACTURE,
5 DELIVERY, SALE AND POSSESSION OF A CONTROLLED SUBSTANCE ANALOGUE
6 SHALL BE TREATED AS A SCHEDULE I SUBSTANCE FOR PURPOSES OF
7 CRIMINAL PENALTIES, AND TO INCLUDE CONTROLLED SUBSTANCE ANALOGUES
8 IN THOSE STATUTES PROVIDING CRIMINAL PENALTIES FOR TRAFFICKING IN
9 CONTROLLED SUBSTANCES; TO AMEND SECTION 97-3-97, MISSISSIPPI CODE
10 OF 1972, TO INCLUDE THE USE OF CONTROLLED SUBSTANCES AND
11 CONTROLLED SUBSTANCE ANALOGUE AS A CRIMINAL ELEMENT TO
12 INCAPACITATE A PERSON UNDER THE RAPE STATUTE; TO AMEND SECTION
13 41-29-313, MISSISSIPPI CODE OF 1972, TO ADD GAMMA-BUTYROLACTONE
14 AND BUTANOLIDE TO LISTED CHEMICALS WHICH MAY BE USED AS A
15 CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE; TO AMEND
16 SECTIONS 41-29-127, 41-29-129, 41-29-142, 41-29-144, 41-29-145,
17 41-29-146, 41-29-152, 41-29-153, 41-29-154, 41-29-169, 41-29-171,
18 41-29-176, 41-29-177, 41-29-179, 63-1-71 AND 63-1-83, MISSISSIPPI
19 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

23 41-29-105. The following words and phrases, as used in this
24 article, shall have the following meanings, unless the context
25 otherwise requires:

26 (a) "Administer" means the direct application of a
27 controlled substance, whether by injection, inhalation, ingestion
28 or any other means, to the body of a patient or research subject
29 by:

30 (1) A practitioner (or, in his presence, by his
31 authorized agent); or

32 (2) The patient or research subject at the
33 direction and in the presence of the practitioner.

34 (b) "Agent" means an authorized person who acts on
35 behalf of or at the direction of a manufacturer, distributor or



36 dispenser. Such word does not include a common or contract
37 carrier, public warehouseman or employee of the carrier or
38 warehouseman. This definition shall not be applied to the term
39 "agent" when such term clearly designates a member or officer of
40 the Bureau of Narcotics or other law enforcement organization.

41 (c) "Board" means the Mississippi State Board of
42 Medical Licensure.

43 (d) "Bureau" means the Mississippi Bureau of Narcotics.
44 However, where the title "Bureau of Drug Enforcement" occurs, said
45 term shall also refer to the Mississippi Bureau of Narcotics.

46 (e) "Commissioner" means the Commissioner of the
47 Department of Public Safety.

48 (f) "Controlled substance" means a drug, substance or
49 immediate precursor in Schedules I through V of Sections 41-29-113
50 through 41-29-121 or a controlled substance analogue as defined in
51 this section.

52 (g) "Controlled substance analogue" means a substance
53 that is intended for human consumption and that either:

54 (i) Has a chemical structure substantially similar
55 to the chemical structure of a drug or substance in Schedule I or
56 II of Sections 41-29-113 and 41-29-115; or

57 (ii) Produces a stimulant, depressant or
58 hallucinogenic effect on the control nervous system substantially
59 similar to the stimulant, depressant or hallucinogenic effect on
60 the central nervous system produced by a drug or substance in
61 Schedule I or II of Sections 41-29-113 and 41-29-115; or

62 (iii) Is represented or intended to have a
63 stimulant, depressant or hallucinogenic effect on the central
64 nervous system substantially similar to the stimulant, depressant
65 or hallucinogenic effect on the central nervous system produced by
66 a drug or substance in Schedule I or II of Sections 41-29-113 and
67 41-29-115.



68 For purposes of any state law, the illicit manufacturing,
69 sale, possession or use of a controlled substance analogue shall
70 be treated as if it were the Schedule I or II substance to which
71 it is substantially similar in chemical structure, pharmacological
72 effect, intended or represented effect.

73 Controlled substance analogue does not mean any of the
74 following:

75 (1) Any substance for which there is an approved
76 new drug application as defined under Section 505 of the federal
77 Food, Drug and Cosmetic Act, or which is generally recognized as
78 safe and effective for use pursuant to Sections 501, 502 and 503
79 of the federal Food, Drug and Cosmetic Act and United States Code
80 Title 21, Section 330 et. seq.

81 (2) With respect to a particular person, any
82 substance for which an exemption is in effect for investigational
83 use for that person pursuant to Section 505 of the federal Food,
84 Drug and Cosmetic Act, to the extent that the conduct with respect
85 to that substance is pursuant to the exemption.

86 (3) Any substance, before an exemption as
87 specified in paragraph (2) takes effect with respect to the
88 substance, to the extent the substance is not intended for human
89 consumption.

90 (4) A controlled substance previously scheduled.

91 (h) "Counterfeit substance" means a controlled
92 substance which, or the container or labeling of which, without
93 authorization, bears the trademark, trade name, or other
94 identifying mark, imprint, number or device, or any likeness
95 thereof, of a manufacturer, distributor or dispenser other than
96 the person who in fact manufactured, distributed or dispensed the
97 substance.

98 (i) "Deliver" or "delivery" means the actual,
99 constructive, or attempted transfer from one person to another of



100 a controlled substance or a controlled substance analogue, whether
101 or not there is an agency relationship.

102 (j) "Director" means the Director of the Bureau of
103 Narcotics.

104 (k) "Dispense" means to deliver a controlled substance
105 to an ultimate user or research subject by or pursuant to the
106 lawful order of a practitioner, including the prescribing,
107 administering, packaging, labeling or compounding necessary to
108 prepare the substance for that delivery.

109 (l) "Dispenser" means a practitioner who dispenses.

110 (m) "Distribute" means to deliver other than by
111 administering or dispensing a controlled substance or a controlled
112 substance analogue.

113 (n) "Distributor" means a person who distributes.

114 (o) "Drug" means (1) a substance recognized as a drug
115 in the official United States Pharmacopoeia, official Homeopathic
116 Pharmacopoeia of the United States, or official National
117 Formulary, or any supplement to any of them; (2) a substance
118 intended for use in the diagnosis, cure, mitigation, treatment, or
119 prevention of disease in man or animals; (3) a substance (other
120 than food) intended to affect the structure or any function of the
121 body of man or animals; and (4) a substance intended for use as a
122 component of any article specified in this paragraph. Such word
123 does not include devices or their components, parts, or
124 accessories.

125 (p) "Hashish" means the resin extracted from any part
126 of the plants of the genus Cannabis and all species thereof or any
127 preparation, mixture or derivative made from or with said resin.

128 (q) "Immediate precursor" means a substance which the
129 board has found to be and by rule designates as being the
130 principal compound commonly used or produced primarily for use,
131 and which is an immediate chemical intermediary used or likely to



132 be used in the manufacture of a controlled substance, the control
133 of which is necessary to prevent, curtail, or limit manufacture.

134 (r) "Manufacture" means the production, preparation,
135 propagation, compounding, conversion or processing of a controlled
136 substance or a controlled substance analogue, either directly or
137 indirectly, by extraction from substances of natural origin, or
138 independently by means of chemical synthesis, or by a combination
139 of extraction and chemical synthesis, and includes any packaging
140 or repackaging of the substance or labeling or relabeling of its
141 container. The term "manufacture" does not include the
142 preparation, compounding, packaging or labeling of a controlled
143 substance in conformity with applicable state and local law:

144 (1) By a practitioner as an incident to his
145 administering or dispensing of a controlled substance in the
146 course of his professional practice; or

147 (2) By a practitioner, or by his authorized agent
148 under his supervision, for the purpose of, or as an incident to,
149 research, teaching or chemical analysis and not for sale.

150 (s) "Marihuana" means all parts of the plant of the
151 genus Cannabis and all species thereof, whether growing or not,
152 the seeds thereof, and every compound, manufacture, salt,
153 derivative, mixture or preparation of the plant or its seeds,
154 excluding hashish.

155 (t) "Narcotic drug" means any of the following, whether
156 produced directly or indirectly by extraction from substances of
157 vegetable origin, or independently by means of chemical synthesis,
158 or by a combination of extraction and chemical synthesis:

159 (1) Opium and opiate, and any salt, compound,
160 derivative or preparation of opium or opiate;

161 (2) Any salt, compound, isomer, derivative or
162 preparation thereof which is chemically equivalent or identical
163 with any of the substances referred to in clause 1, but not
164 including the isoquinoline alkaloids of opium;



165 (3) Opium poppy and poppy straw; and
166 (4) Cocaine, coca leaves and any salt, compound,
167 derivative or preparation of cocaine, coca leaves, and any salt,
168 compound, isomer, derivative or preparation thereof which is
169 chemically equivalent or identical with any of these substances,
170 but not including decocainized coca leaves or extractions of coca
171 leaves which do not contain cocaine or ecgonine.

172 (u) "Opiate" means any substance having an
173 addiction-forming or addiction-sustaining liability similar to
174 morphine or being capable of conversion into a drug having
175 addiction-forming or addiction-sustaining liability. It does not
176 include, unless specifically designated as controlled under
177 Section 41-29-111, the dextrorotatory isomer of
178 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such
179 word does include its racemic and levorotatory forms.

180 (v) "Opium poppy" means the plant of the species
181 *Papaver somniferum* L., except its seeds.

182 (w) "Paraphernalia" means all equipment, products and
183 materials of any kind which are used, intended for use, or
184 designed for use, in planting, propagating, cultivating, growing,
185 harvesting, manufacturing, compounding, converting, producing,
186 processing, preparing, testing, analyzing, packaging, repackaging,
187 storing, containing, concealing, injecting, ingesting, inhaling or
188 otherwise introducing into the human body a controlled substance
189 or a controlled substance analogue in violation of the Uniform
190 Controlled Substances Law. It includes, but is not limited to:

191 (i) Kits used, intended for use, or designed for
192 use in planting, propagating, cultivating, growing or harvesting
193 of any species of plant which is a controlled substance or a
194 controlled substance analogue or from which a controlled substance
195 or a controlled substance analogue can be derived;

196 (ii) Kits used, intended for use, or designed for
197 use in manufacturing, compounding, converting, producing,



198 processing or preparing controlled substances or controlled
199 substance analogues;

200 (iii) Isomerization devices used, intended for use
201 or designed for use in increasing the potency of any species of
202 plant which is a controlled substance or a controlled substance
203 analogue;

204 (iv) Testing equipment used, intended for use, or
205 designed for use in identifying or in analyzing the strength,
206 effectiveness or purity of controlled substances or controlled
207 substance analogues;

208 (v) Scales and balances used, intended for use or
209 designed for use in weighing or measuring controlled substances or
210 controlled substance analogues;

211 (vi) Diluents and adulterants, such as quinine
212 hydrochloride, mannitol, mannite, dextrose and lactose, used,
213 intended for use or designed for use in cutting controlled
214 substances or controlled substance analogues;

215 (vii) Separation gins and sifters used, intended
216 for use or designed for use in removing twigs and seeds from, or
217 in otherwise cleaning or refining, marihuana;

218 (viii) Blenders, bowls, containers, spoons and
219 mixing devices used, intended for use or designed for use in
220 compounding controlled substances or controlled substance
221 analogues;

222 (ix) Capsules, balloons, envelopes and other
223 containers used, intended for use or designed for use in packaging
224 small quantities of controlled substances or controlled substance
225 analogues;

226 (x) Containers and other objects used, intended
227 for use or designed for use in storing or concealing controlled
228 substances or controlled substance analogues;

229 (xi) Hypodermic syringes, needles and other
230 objects used, intended for use or designed for use in parenterally



231 injecting controlled substances or controlled substance analogues
232 into the human body;

233 (xii) Objects used, intended for use or designed
234 for use in ingesting, inhaling or otherwise introducing marihuana,
235 cocaine, hashish or hashish oil into the human body, such as:

- 236 1. Metal, wooden, acrylic, glass, stone,
237 plastic or ceramic pipes with or without screens, permanent
238 screens, hashish heads or punctured metal bowls;
- 239 2. Water pipes;
- 240 3. Carburetion tubes and devices;
- 241 4. Smoking and carburetion masks;
- 242 5. Roach clips, meaning objects used to hold
243 burning material, such as a marihuana cigarette, that has become
244 too small or too short to be held in the hand;
- 245 6. Miniature cocaine spoons and cocaine
246 vials;
- 247 7. Chamber pipes;
- 248 8. Carburetor pipes;
- 249 9. Electric pipes;
- 250 10. Air-driven pipes;
- 251 11. Chillums;
- 252 12. Bonges; and
- 253 13. Ice pipes or chillers.

254 In determining whether an object is paraphernalia, a court or
255 other authority should consider, in addition to all other
256 logically relevant factors, the following:

257 (i) Statements by an owner or by anyone in control
258 of the object concerning its use;

259 (ii) Prior convictions, if any, of an owner, or of
260 anyone in control of the object, under any state or federal law
261 relating to any controlled substance or controlled substance
262 analogue;



263 (iii) The proximity of the object, in time and
264 space, to a direct violation of the Uniform Controlled Substances
265 Law;

266 (iv) The proximity of the object to controlled
267 substances or controlled substance analogues;

268 (v) The existence of any residue of controlled
269 substances or controlled substance analogues on the object;

270 (vi) Direct or circumstantial evidence of the
271 intent of an owner, or of anyone in control of the object, to
272 deliver it to persons whom he knows, or should reasonably know,
273 intend to use the object to facilitate a violation of the Uniform
274 Controlled Substances Law; the innocence of an owner, or of anyone
275 in control of the object, as to a direct violation of the Uniform
276 Controlled Substances Law shall not prevent a finding that the
277 object is intended for use, or designed for use as paraphernalia;

278 (vii) Instructions, oral or written, provided with
279 the object concerning its use;

280 (viii) Descriptive materials accompanying the
281 object which explain or depict its use;

282 (ix) National and local advertising concerning its
283 use;

284 (x) The manner in which the object is displayed
285 for sale;

286 (xi) Whether the owner or anyone in control of the
287 object is a legitimate supplier of like or related items to the
288 community, such as a licensed distributor or dealer of tobacco
289 products;

290 (xii) Direct or circumstantial evidence of the
291 ratio of sales of the object(s) to the total sales of the business
292 enterprise;

293 (xiii) The existence and scope of legitimate uses
294 for the object in the community;

295 (xiv) Expert testimony concerning its use.



296 (x) "Person" means individual, corporation, government
297 or governmental subdivision or agency, business trust, estate,
298 trust, partnership or association, or any other legal entity.

299 (y) "Poppy straw" means all parts, except the seeds, of
300 the opium poppy, after mowing.

301 (z) "Practitioner" means:

302 (1) A physician, dentist, veterinarian, scientific
303 investigator, or other person licensed, registered or otherwise
304 permitted to distribute, dispense, conduct research with respect
305 to or to administer a controlled substance in the course of
306 professional practice or research in this state; and

307 (2) A pharmacy, hospital or other institution
308 licensed, registered, or otherwise permitted to distribute,
309 dispense, conduct research with respect to or to administer a
310 controlled substance in the course of professional practice or
311 research in this state.

312 (aa) "Production" includes the manufacture, planting,
313 cultivation, growing or harvesting of a controlled substance or a
314 controlled substance analogue.

315 (bb) "Sale," "sell" or "selling" means the actual,
316 constructive or attempted transfer or delivery of a controlled
317 substance or a controlled substance analogue for remuneration,
318 whether in money or other consideration.

319 (cc) "State," when applied to a part of the United
320 States, includes any state, district, commonwealth, territory,
321 insular possession thereof, and any area subject to the legal
322 authority of the United States of America.

323 (dd) "Ultimate user" means a person who lawfully
324 possesses a controlled substance for his own use or for the use of
325 a member of his household or for administering to an animal owned
326 by him or by a member of his household.

327 **SECTION 2.** Section 41-29-139, Mississippi Code of 1972, is
328 amended as follows:



329 41-29-139. (a) Except as authorized by this article, it is
330 unlawful for any person knowingly or intentionally:

331 (1) To sell, barter, transfer, manufacture, distribute,
332 dispense or possess with intent to sell, barter, transfer,
333 manufacture, distribute or dispense, a controlled substance or
334 controlled substance analogue; or

335 (2) To create, sell, barter, transfer, distribute,
336 dispense or possess with intent to create, sell, barter, transfer,
337 distribute or dispense, a counterfeit substance.

338 (b) Except as otherwise provided in subsections (f) and (g)
339 of this section or in Section 41-29-142, any person who violates
340 subsection (a) of this section shall be sentenced as follows:

341 (1) In the case of controlled substances classified in
342 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
343 any drug product containing gamma-hydroxybutyric acid as listed in
344 Section 41-29-117, or any controlled substance analogue as defined
345 in Section 41-29-105, except one (1) ounce or less of marihuana,
346 and except a first offender as defined in Section 41-29-149(e) who
347 violates subsection (a) of this section with respect to less than
348 one (1) kilogram but more than one (1) ounce of marihuana, such
349 person may, upon conviction, be imprisoned for not more than
350 thirty (30) years and shall be fined not less than Five Thousand
351 Dollars (\$5,000.00) nor more than One Million Dollars
352 (\$1,000,000.00), or both;

353 (2) In the case of a first offender who violates
354 subsection (a) of this section with an amount less than one (1)
355 kilogram but more than one (1) ounce of marihuana as classified in
356 Schedule I, as set out in Section 41-29-113, such person is guilty
357 of a felony and upon conviction may be imprisoned for not more
358 than twenty (20) years or fined not more than Thirty Thousand
359 Dollars (\$30,000.00), or both;

360 (3) In the case of one (1) ounce or less of marihuana,
361 such person may, upon conviction, be imprisoned for not more than



362 three (3) years or fined not more than Three Thousand Dollars
363 (\$3,000.00), or both;

364 (4) Except as otherwise provided, in the case of
365 controlled substances classified in Schedules III and IV, as set
366 out in Sections 41-29-117 and 41-29-119, such person may, upon
367 conviction, be imprisoned for not more than twenty (20) years and
368 shall be fined not less than One Thousand Dollars (\$1,000.00) nor
369 more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or
370 both; and

371 (5) In the case of controlled substances classified in
372 Schedule V, as set out in Section 41-29-121, such person may, upon
373 conviction, be imprisoned for not more than ten (10) years and
374 shall be fined not less than One Thousand Dollars (\$1,000.00) nor
375 more than Fifty Thousand Dollars (\$50,000.00), or both.

376 (c) It is unlawful for any person knowingly or intentionally
377 to possess any controlled substance or controlled substance
378 analogue unless the substance was obtained directly from, or
379 pursuant to, a valid prescription or order of a practitioner while
380 acting in the course of his professional practice, or except as
381 otherwise authorized by this article. The penalties for any
382 violation of this subsection (c) with respect to a controlled
383 substance classified in Schedule I, II, III, IV or V, as set out
384 in Section 41-29-113, 41-29-115, 41-29-117, 41-29-119 or
385 41-29-121, including marihuana, shall be based on dosage unit as
386 defined herein or the weight of the controlled substance as set
387 forth herein as appropriate:

388 "Dosage unit (d.u.)" means a tablet or capsule, or in the
389 case of a liquid solution, one (1) milliliter. In the case of
390 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
391 stamp, square, dot, microdot, tablet or capsule of a controlled
392 substance.

393 For any controlled substance or controlled substance analogue
394 that does not fall within the definition of the term "dosage



395 unit," the penalties shall be based upon the weight of the
396 controlled substance or controlled substance analogue.

397 The weight set forth refers to the entire weight of any
398 mixture or substance containing a detectable amount of the
399 controlled substance or controlled substance analogue.

400 If a mixture or substance contains more than one (1)
401 controlled substance or controlled substance analogue, the weight
402 of the mixture or substance is assigned to the controlled
403 substance or controlled substance analogue that results in the
404 greater punishment.

405 Any person who violates this subsection with respect to:

406 (1) A controlled substance classified in Schedule I or
407 II, GHB as listed in Schedule III, or a controlled substance
408 analogue except marihuana, in the following amounts shall be
409 charged and sentenced as follows:

410 (A) Less than one-tenth (0.1) gram or one (1)
411 dosage unit or less may be charged as a misdemeanor or felony. If
412 charged by indictment as a felony: by imprisonment not less than
413 one (1) nor more than four (4) years and a fine not more than Ten
414 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by
415 imprisonment for up to one (1) year and a fine not more than One
416 Thousand Dollars (\$1,000.00).

417 (B) One-tenth (0.1) gram but less than two (2)
418 grams or two (2) dosage units but less than ten (10) dosage units,
419 by imprisonment for not less than two (2) years nor more than
420 eight (8) years and a fine of not more than Fifty Thousand Dollars
421 (\$50,000.00).

422 (C) Two (2) grams but less than ten (10) grams or
423 ten (10) dosage units but less than twenty (20) dosage units, by
424 imprisonment for not less than four (4) years nor more than
425 sixteen (16) years and a fine of not more than Two Hundred Fifty
426 Thousand Dollars (\$250,000.00).



427 (D) Ten (10) grams but less than thirty (30) grams
428 or twenty (20) dosage units but not more than forty (40) dosage
429 units, by imprisonment for not less than six (6) years nor more
430 than twenty-four (24) years and a fine of not more than Five
431 Hundred Thousand Dollars (\$500,000.00).

432 (E) Thirty (30) grams or more or forty (40) dosage
433 units or more, by imprisonment for not less than ten (10) years
434 nor more than thirty (30) years and a fine of not more than One
435 Million Dollars (\$1,000,000.00).

436 (2) Marihuana in the following amounts shall be charged
437 and sentenced as follows:

438 (A) Thirty (30) grams or less by a fine of not
439 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
440 Fifty Dollars (\$250.00). The provisions of this paragraph shall
441 be enforceable by summons, provided the offender provides proof of
442 identity satisfactory to the arresting officer and gives written
443 promise to appear in court satisfactory to the arresting officer,
444 as directed by the summons. A second conviction under this
445 section within two (2) years shall be punished by a fine of Two
446 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
447 nor more than sixty (60) days in the county jail and mandatory
448 participation in a drug education program, approved by the
449 Division of Alcohol and Drug Abuse of the State Department of
450 Mental Health, unless the court enters a written finding that such
451 drug education program is inappropriate. A third or subsequent
452 conviction under this section within two (2) years is a
453 misdemeanor punishable by a fine of not less than Two Hundred
454 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
455 (\$500.00) and confinement for not less than five (5) days nor more
456 than six (6) months in the county jail. Upon a first or second
457 conviction under this section the courts shall forward a report of
458 such conviction to the Mississippi Bureau of Narcotics which shall
459 make and maintain a private, nonpublic record for a period not to



460 exceed two (2) years from the date of conviction. The private,
461 nonpublic record shall be solely for the use of the courts in
462 determining the penalties which attach upon conviction under this
463 section and shall not constitute a criminal record for the purpose
464 of private or administrative inquiry and the record of each
465 conviction shall be expunged at the end of the period of two (2)
466 years following the date of such conviction;

467 (B) Additionally, a person who is the operator of
468 a motor vehicle, who possesses on his person or knowingly keeps or
469 allows to be kept in a motor vehicle within the area of the
470 vehicle normally occupied by the driver or passengers, more than
471 one (1) gram, but not more than thirty (30) grams, of marihuana is
472 guilty of a misdemeanor and upon conviction may be fined not more
473 than One Thousand Dollars (\$1,000.00) and confined for not more
474 than ninety (90) days in the county jail. For the purposes of
475 this subsection, such area of the vehicle shall not include the
476 trunk of the motor vehicle or the areas not normally occupied by
477 the driver or passengers if the vehicle is not equipped with a
478 trunk. A utility or glove compartment shall be deemed to be
479 within the area occupied by the driver and passengers;

480 (C) More than thirty (30) grams but less than two
481 hundred fifty (250) grams may be fined not more than One Thousand
482 Dollars (\$1,000.00), or confined in the county jail for not more
483 than one (1) year, or both; or fined not more than Three Thousand
484 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
485 not more than three (3) years, or both;

486 (D) Two hundred fifty (250) grams but less than
487 five hundred (500) grams, by imprisonment for not less than two
488 (2) years nor more than eight (8) years and by a fine of not more
489 than Fifty Thousand Dollars (\$50,000.00);

490 (E) Five hundred (500) grams but less than one (1)
491 kilogram, by imprisonment for not less than four (4) years nor



492 more than sixteen (16) years and a fine of less than Two Hundred
493 Fifty Thousand Dollars (\$250,000.00);

494 (F) One (1) kilogram but less than five (5)
495 kilograms, by imprisonment for not less than six (6) years nor
496 more than twenty-four (24) years and a fine of not more than Five
497 Hundred Thousand Dollars (\$500,000.00);

498 (G) Five (5) kilograms or more, by imprisonment
499 for not less than ten (10) years nor more than thirty (30) years
500 and a fine of not more than One Million Dollars (\$1,000,000.00).

501 (3) Except as otherwise provided, a controlled
502 substance classified in Schedule III, IV or V as set out in
503 Sections 41-29-117 through 41-29-121, upon conviction, may be
504 punished as follows:

505 (A) Less than fifty (50) grams or less than one
506 hundred (100) dosage units is a misdemeanor and punishable by not
507 more than one (1) year and a fine of not more than One Thousand
508 Dollars (\$1,000.00).

509 (B) Fifty (50) grams but less than one hundred
510 fifty (150) grams or one hundred (100) dosage units but less than
511 five hundred (500) dosage units, by imprisonment for not less than
512 one (1) year nor more than four (4) years and a fine of not more
513 than Ten Thousand Dollars (\$10,000.00).

514 (C) One hundred fifty (150) grams but less than
515 three hundred (300) grams or five hundred (500) dosage units but
516 less than one thousand (1,000) dosage units, by imprisonment for
517 not less than two (2) years nor more than eight (8) years and a
518 fine of not more than Fifty Thousand Dollars (\$50,000.00).

519 (D) Three hundred (300) grams but less than five
520 hundred (500) grams or one thousand (1,000) dosage units but less
521 than two thousand five hundred (2,500) dosage units, by
522 imprisonment for not less than four (4) years nor more than
523 sixteen (16) years and a fine of not more than Two Hundred Fifty
524 Thousand Dollars (\$250,000.00).



525 (E) Five hundred (500) grams or more or two
526 thousand five hundred (2,500) dosage units or more, by
527 imprisonment for not less than six (6) years nor more than
528 twenty-four (24) years and a fine of not more than Five Hundred
529 Thousand Dollars (\$500,000.00).

530 (d) (1) It is unlawful for a person who is not authorized
531 by the State Board of Medical Licensure, State Board of Pharmacy,
532 or other lawful authority to use, or to possess with intent to
533 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
534 manufacture, compound, convert, produce, process, prepare, test,
535 analyze, pack, repack, store, contain, conceal, inject, ingest,
536 inhale or otherwise introduce into the human body a controlled
537 substance or controlled substance analogue in violation of the
538 Uniform Controlled Substances Law. Any person who violates this
539 subsection is guilty of a misdemeanor and upon conviction may be
540 confined in the county jail for not more than six (6) months, or
541 fined not more than Five Hundred Dollars (\$500.00), or both;
542 however, no person shall be charged with a violation of this
543 subsection when such person is also charged with the possession of
544 one (1) ounce or less of marihuana under subsection (c) (2) (A) of
545 this section.

546 (2) It is unlawful for any person to deliver, sell,
547 possess with intent to deliver or sell, or manufacture with intent
548 to deliver or sell, paraphernalia, knowing, or under circumstances
549 where one reasonably should know, that it will be used to plant,
550 propagate, cultivate, grow, harvest, manufacture, compound,
551 convert, produce, process, prepare, test, analyze, pack, repack,
552 store, contain, conceal, inject, ingest, inhale, or otherwise
553 introduce into the human body a controlled substance or controlled
554 substance analogue in violation of the Uniform Controlled
555 Substances Law. Any person who violates this subsection is guilty
556 of a misdemeanor and upon conviction may be confined in the county



557 jail for not more than six (6) months, or fined not more than Five
558 Hundred Dollars (\$500.00), or both.

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

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

575 (e) It shall be unlawful for any physician practicing
576 medicine in this state to prescribe, dispense or administer any
577 amphetamine or amphetamine-like anorectics and/or central nervous
578 system stimulants classified in Schedule II, pursuant to Section
579 41-29-115, for the exclusive treatment of obesity, weight control
580 or weight loss. Any person who violates this subsection, upon
581 conviction, is guilty of a misdemeanor and may be confined for a
582 period not to exceed six (6) months, or fined not more than One
583 Thousand Dollars (\$1,000.00), or both.

584 (f) Except as otherwise authorized in this article, any
585 person twenty-one (21) years of age or older who knowingly sells,
586 barter, transfers, manufactures, distributes or dispenses during
587 any twelve (12) consecutive month period: (i) ten (10) pounds or
588 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
589 two (2) or more ounces of cocaine or of any mixture containing



590 cocaine as described in Section 41-29-105(s), Mississippi Code of
591 1972; or (iv) one hundred (100) or more dosage units of morphine,
592 Demerol or Dilaudid, shall be guilty of a felony and, upon
593 conviction thereof, shall be sentenced to life imprisonment and
594 such sentence shall not be reduced or suspended nor shall such
595 person be eligible for probation or parole, the provisions of
596 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
597 of 1972, to the contrary notwithstanding. The provisions of this
598 subsection shall not apply to any person who furnishes information
599 and assistance to the bureau or its designee which, in the opinion
600 of the trial judge objectively should or would have aided in the
601 arrest or prosecution of others who violate this subsection. The
602 accused shall have adequate opportunity to develop and make a
603 record of all information and assistance so furnished.

604 (g) (1) Any person trafficking in controlled substances or
605 controlled substance analogues shall be guilty of a felony and
606 upon conviction shall be imprisoned for a term of thirty (30)
607 years and such sentence shall not be reduced or suspended nor
608 shall such person be eligible for probation or parole, the
609 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,
610 Mississippi Code of 1972, to the contrary notwithstanding and
611 shall be fined not less than Five Thousand Dollars (\$5,000.00) nor
612 more than One Million Dollars (\$1,000,000.00).

613 (2) "Trafficking in controlled substances or controlled
614 substance analogues" as used herein means to engage in three (3)
615 or more component offenses within any twelve (12) consecutive
616 month period where at least two (2) of the component offenses
617 occurred in different counties. A component offense is any act
618 which would constitute a violation of subsection (a) of this
619 section. Prior convictions shall not be used as component
620 offenses to establish the charge of trafficking in controlled
621 substances or controlled substance analogues.



622 (3) The charge of trafficking in controlled substances
623 or controlled substance analogues shall be set forth in one (1)
624 count of an indictment with each of the component offenses alleged
625 therein and it may be charged and tried in any county where a
626 component offense occurred. An indictment for trafficking in
627 controlled substances or controlled substance analogues may also
628 be returned by the State Grand Jury of Mississippi provided at
629 least two (2) of the component offenses occurred in different
630 circuit court districts.

631 **SECTION 3.** Section 97-3-97, Mississippi Code of 1972, is
632 amended as follows:

633 97-3-97. For purposes of Sections 97-3-95 through 97-3-103
634 the following words shall have the meaning ascribed herein unless
635 the context otherwise requires:

636 (a) "Sexual penetration" includes cunnilingus,
637 fellatio, buggery or pederasty, any penetration of the genital or
638 anal openings of another person's body by any part of a person's
639 body, and insertion of any object into the genital or anal
640 openings of another person's body.

641 (b) A "mentally defective person" is one who suffers
642 from a mental disease, defect or condition which renders that
643 person temporarily or permanently incapable of knowing the nature
644 and quality of his or her conduct.

645 (c) A "mentally incapacitated person" is one rendered
646 incapable of knowing or controlling his or her conduct, or
647 incapable of resisting an act due to the influence of any drug,
648 controlled substance, controlled substance analogue or other
649 substance administered to that person without his or her consent.

650 (d) A "physically helpless person" is one who is
651 unconscious or one who for any other reason is physically
652 incapable of communicating an unwillingness to engage in an act.

653 **SECTION 4.** Section 41-29-313, Mississippi Code of 1972, is
654 amended as follows:



655 41-29-313. (1) (a) Except as authorized in this section,
656 it is unlawful for any person to knowingly or intentionally:

657 (i) Purchase, possess, transfer or distribute any
658 two (2) or more of the listed * * * chemicals or drugs in any
659 amount with the intent to unlawfully manufacture a controlled
660 substance or controlled substance analogue;

661 (ii) Purchase, possess, transfer or distribute any
662 two (2) or more of the listed * * * chemicals or drugs in any
663 amount, knowing, or under circumstances where one reasonably
664 should know, that the listed precursor chemical or drug will be
665 used to unlawfully manufacture a controlled substance or
666 controlled substance analogue;

667 (b) Any person who violates this subsection (1), upon
668 conviction, is guilty of a felony and may be imprisoned for a
669 period not to exceed thirty (30) years and shall be fined not less
670 than Five Thousand Dollars (\$5,000.00) nor more than One Million
671 Dollars (\$1,000,000.00), or both fine and imprisonment.

672 (2) (a) It is unlawful for any person to knowingly or
673 intentionally steal or unlawfully take or carry away any amount of
674 anhydrous ammonia.

675 (b) It is unlawful for any person to purchase, possess,
676 transfer or distribute any amount of anhydrous ammonia, knowing,
677 or under circumstances where one reasonably should know, that the
678 anhydrous ammonia will be used to unlawfully manufacture a
679 controlled substance.

680 (c) It is unlawful for any person to purchase, possess,
681 transfer or distribute two hundred fifty (250) dosage units or
682 fifteen (15) grams in weight (dosage unit and weight as defined in
683 Section 41-29-139) of pseudoephedrine or ephedrine, knowing, or
684 under circumstances where one reasonably should know, that the
685 pseudoephedrine or ephedrine will be used to unlawfully
686 manufacture a controlled substance.



687 (d) Any person who violates this subsection (2), upon
688 conviction, is guilty of a felony and may be imprisoned for a
689 period not to exceed five (5) years and shall be fined not more
690 than Five Thousand Dollars (\$5,000.00), or both fine and
691 imprisonment.

692 (3) The terms "listed * * * drug or chemical" means a * * *
693 drug or chemical that, in addition to legitimate uses, may be used
694 as a controlled substance analogue or in manufacturing a
695 controlled substance or controlled substance analogue in violation
696 of this chapter. Such term includes any salt, optical isomer or
697 salt of an optical isomer, whenever the existence of such salt,
698 optical isomer or salt of optical isomer is possible within the
699 specific chemical designation. The chemicals or drugs listed in
700 this section are included by whatever official, common, usual,
701 chemical or trade name designated. The following are
702 "listed * * * drugs or chemicals":

- 703 (a) Ether;
- 704 (b) Anhydrous ammonia;
- 705 (c) Pseudoephedrine;
- 706 (d) Ephedrine;
- 707 (e) Denatured alcohol (Ethanol);
- 708 (f) Lithium;
- 709 (g) Freon;
- 710 (h) Hydrochloric acid;
- 711 (i) Hydriodic acid;
- 712 (j) Red phosphorous;
- 713 (k) Iodine;
- 714 (l) Sodium metal;
- 715 (m) Muriatic acid;
- 716 (n) Sulfuric acid;
- 717 (o) Hydrogen chloride gas;
- 718 (p) Potassium;
- 719 (q) Methanol;



720 (r) Isopropyl alcohol;
721 (s) Hexanes;
722 (t) Heptanes;
723 (u) Acetone;
724 (v) Toluene;
725 (w) Xylenes;
726 (x) Gamma-butyrolactone, including butyrolactone;
727 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
728 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
729 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
730 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
731 with Chemical Abstract Service number (96-48-0).

732 (y) 1,4-butanediol, including butanediol;
733 butane-1,4-diol; 1,4-butylene glycol; butylene glycol;
734 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene
735 glycol; tetramethylene 1,4-diol with Chemical Abstract Service
736 number (110-63-4).

737 (4) Nothing in this section shall preclude any farmer from
738 storing or using any of the listed * * * drugs or chemicals listed
739 in this section in the normal pursuit of farming operations.

740 (5) Nothing in this section shall preclude any wholesaler,
741 retailer or pharmacist from possessing or selling the listed * * *
742 drugs or chemicals in the normal pursuit of business.

743 (6) Nothing in this section shall preclude any manufacturer,
744 producer, distributor, transporter or retailer from possessing,
745 using, selling or storing any of the listed drugs or chemicals in
746 the normal pursuit of business and not intended for human
747 consumption.

748 **SECTION 5.** Section 41-29-127, Mississippi Code of 1972, is
749 amended as follows:

750 41-29-127. (a) The State Board of Pharmacy shall register
751 an applicant to manufacture or distribute controlled substances
752 included in Sections 41-29-113 through 41-29-121 unless it



753 determines that the issuance of that registration would be
754 inconsistent with the public interest. In determining the public
755 interest, the State Board of Pharmacy shall consider the following
756 factors:

757 (1) Maintenance of effective controls against diversion
758 of controlled substances into other than legitimate medical,
759 scientific, or industrial channels;

760 (2) Compliance with applicable state and local law;

761 (3) Any convictions of the applicant under any federal
762 and state laws relating to any controlled substance or controlled
763 substance analogue;

764 (4) Past experience in the manufacture or distribution
765 of controlled substances and the existence in the applicant's
766 establishment of effective controls against diversion;

767 (5) Furnishing by the applicant of false or fraudulent
768 material in any application filed under this article;

769 (6) Suspension or revocation of the applicant's federal
770 registration to manufacture, distribute, or dispense controlled
771 substances as authorized by federal law; and

772 (7) Any other factors relevant to and consistent with
773 the public health and safety.

774 (b) Registration under subsection (a) does not entitle a
775 registrant to manufacture and distribute controlled substances in
776 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
777 other than those specified in the registration.

778 (c) Practitioners must be registered to dispense any
779 controlled substances or to conduct research with controlled
780 substances in Schedules II through V, as set out in Sections
781 41-29-115 through 41-29-121, if they are authorized to dispense or
782 conduct research under the law of this state. The State Board of
783 Pharmacy need not require separate registration under this section
784 for practitioners engaging in research with nonnarcotic controlled
785 substances in the said Schedules II through V where the registrant



786 is already registered therein in another capacity. Practitioners
787 registered under federal law to conduct research with Schedule I
788 substances, as set out in Section 41-29-113, may conduct research
789 with Schedule I substances within this state upon furnishing the
790 State Board of Health evidence of that federal registration.

791 (d) Compliance by manufacturers and distributors with the
792 provisions of the federal law respecting registration (excluding
793 fees) entitles them to be registered under this article.

794 **SECTION 6.** Section 41-29-129, Mississippi Code of 1972, is
795 amended as follows:

796 41-29-129. (1) A registration to manufacture, distribute,
797 or dispense a controlled substance may be suspended or revoked by
798 the State Board of Pharmacy upon a finding that the registrant:

799 (a) Has willfully furnished false or fraudulent
800 material information in any application filed under this article;

801 (b) Has been convicted of a felony within the past five
802 (5) years and has not been pardoned and his citizenship restored
803 under any state or federal law relating to any controlled
804 substance or controlled substance analogue;

805 (c) Has had his federal registration suspended or
806 revoked to manufacture, distribute or dispense controlled
807 substances;

808 (d) Has violated or failed to comply with any duly
809 promulgated regulation of the State Board of Pharmacy which
810 reflects adversely on the registrant's reliability and integrity
811 with respect to controlled substances;

812 (e) Has violated the Uniform Controlled Substances Law
813 of the State of Mississippi;

814 (f) Has violated any duly promulgated rule or
815 regulation of the State Board of Pharmacy pertaining to the
816 manufacture, distribution, storage, possession, control or
817 dispensing of controlled substances;



818 (g) Has been convicted of a violation relating to any
819 substance defined in this article as a controlled substance.

820 (2) The State Board of Pharmacy may limit revocation or
821 suspension of a registration to the particular controlled
822 substance with respect to which grounds for revocation or
823 suspension exist.

824 (3) If the board or the State Board of Pharmacy suspends or
825 revokes a registration, all controlled substances owned or
826 possessed by the registrant at the time of suspension or the
827 effective date of the revocation order may be placed under seal.
828 No disposition may be made of substances under seal until the time
829 for taking an appeal has elapsed or until all appeals have been
830 concluded unless a court, upon application therefor, orders the
831 sale of perishable substances and the deposit of the proceeds of
832 the sale with the court. Upon a revocation order becoming final,
833 all controlled substances may be forfeited to the state. All
834 state professional or business licensing agencies shall promptly
835 notify the bureau of all orders of suspensions or revocations
836 which are the result of drug violations or drug-related matters.

837 (4) The bureau shall promptly notify the federal Bureau of
838 Narcotics and dangerous drugs of all orders suspending or revoking
839 registration and all forfeitures of controlled substances.

840 **SECTION 7.** Section 41-29-142, Mississippi Code of 1972, is
841 amended as follows:

842 41-29-142. (1) Except as provided in subsection (f) of
843 Section 41-29-139 or in subsection (2) of this section, any person
844 who violates or conspires to violate Section 41-29-139(a)(1),
845 Mississippi Code of 1972, by selling, bartering, transferring,
846 manufacturing, distributing, dispensing or possessing with intent
847 to sell, barter, transfer, manufacture, distribute or dispense, a
848 controlled substance or controlled substance analogue, in or on,
849 or within one thousand five hundred (1,500) feet of, a building or
850 outbuilding which is all or part of a public or private



851 elementary, vocational or secondary school, or any church, public
852 park, ballpark, public gymnasium, youth center or movie theater or
853 within one thousand (1,000) feet of, the real property comprising
854 such public or private elementary, vocational or secondary school,
855 or any church, public park, ballpark, public gymnasium, youth
856 center or movie theater shall, upon conviction thereof, be
857 punished by the term of imprisonment or a fine, or both, of that
858 authorized by Section 41-29-139(b) and, in the discretion of the
859 court, may be punished by a term of imprisonment or a fine, or
860 both, of up to twice that authorized by Section 41-29-139(b).

861 (2) Except as otherwise provided in subsection (f) of
862 Section 41-29-139, any person who violates or conspires to violate
863 Section 41-29-139(a)(1), Mississippi Code of 1972, by selling,
864 bartering, transferring, manufacturing, distributing, dispensing
865 or possessing with intent to sell, barter, transfer, manufacture,
866 distribute or dispense, a controlled substance or controlled
867 substance analogue, in or on, or within one thousand five hundred
868 (1,500) feet of, a building or outbuilding which is all or part of
869 a public or private elementary, vocational or secondary school, or
870 any church, public park, ballpark, public gymnasium, youth center
871 or movie theater or within one thousand (1,000) feet of, the real
872 property comprising such public or private elementary, vocational
873 or secondary school, or any church, public park, ballpark, public
874 gymnasium, youth center or movie theater after a prior conviction
875 under subsection (1) of this section has become final, shall, upon
876 conviction thereof, be punished by a term of imprisonment of not
877 less than three (3) years and not more than life, and in the
878 discretion of the court, may be punished by a term of imprisonment
879 of up to three (3) times that authorized by Section 41-29-139(b),
880 for a first offense, or a fine of up to three (3) times that
881 authorized by Section 41-29-139(b), for a first offense, or both.

882 **SECTION 8.** Section 41-29-144, Mississippi Code of 1972, is
883 amended as follows:



884 41-29-144. (1) It is unlawful for any person knowingly or
885 intentionally to acquire or obtain possession or attempt to
886 acquire or obtain possession of a controlled substance or a
887 controlled substance analogue by misrepresentation, fraud,
888 forgery, deception or subterfuge.

889 (2) It is unlawful for any person knowingly or intentionally
890 to possess, sell, deliver, transfer or attempt to possess, sell,
891 deliver or transfer a false, fraudulent or forged prescription of
892 a practitioner.

893 (3) Any person who violates this section is guilty of a
894 crime and upon conviction shall be confined for not less than one
895 (1) year nor more than five (5) years and fined not more than One
896 Thousand Dollars (\$1,000.00) or both.

897 **SECTION 9.** Section 41-29-145, Mississippi Code of 1972, is
898 amended as follows:

899 41-29-145. Any person twenty-one (21) years of age or over
900 who violates subsections (a) and (b) of Section 41-29-139 with
901 reference to a controlled substance listed in Schedules I, II,
902 III, IV and V as set out in Sections 41-29-113 through 41-29-121
903 or a controlled substance analogue, inclusive, to a person under
904 twenty-one (21) years of age may be punished by the fine
905 authorized by Section 41-29-139, or by a term of imprisonment or
906 confinement up to twice that authorized by said Section 41-29-139,
907 or both, or he may be punished as provided in Section 41-29-142.

908 **SECTION 10.** Section 41-29-146, Mississippi Code of 1972, is
909 amended as follows:

910 41-29-146. (1) It shall be unlawful for any person to sell,
911 produce, manufacture or possess with the intent to sell, produce,
912 manufacture, distribute or dispense any substance which is falsely
913 represented to be a controlled substance or controlled substance
914 analogue or which is falsely represented to be a counterfeit
915 substance as defined in Section 41-29-105.



916 (2) The provisions of this section shall not apply to a law
917 enforcement officer acting in the course and scope of his
918 employment or to a medical practitioner, pharmacist or other
919 person authorized to dispense or administer controlled substances.

920 (3) Any person who violates this section shall, upon
921 conviction, be guilty of a misdemeanor and may be punished by
922 imprisonment in the county jail for not more than one (1) year or
923 by a fine of not more than One Thousand Dollars (\$1,000.00) or by
924 both.

925 **SECTION 11.** Section 41-29-152, Mississippi Code of 1972, is
926 amended as follows:

927 41-29-152. (1) Any person who violates Section 41-29-313 or
928 who violates Section 41-29-139 with reference to a controlled
929 substance listed in Schedule I, II, III, IV or V as set out in
930 Sections 41-29-113 through 41-29-121, Mississippi Code of 1972, or
931 a controlled substance analogue, inclusive, and has in his
932 possession any firearm, either at the time of the commission of
933 the offense or at the time any arrest is made, may be punished by
934 a fine up to twice that authorized by Section 41-29-139 or
935 41-29-313, or by a term of imprisonment or confinement up to twice
936 that authorized by Section 41-29-139 or 41-29-313, or both.

937 (2) "Firearm" means any weapon, including a starter gun,
938 which will or is designed to or may readily be converted to expel
939 a projectile by the action of an explosive.

940 **SECTION 12.** Section 41-29-153, Mississippi Code of 1972, is
941 amended as follows:

942 41-29-153. (a) The following are subject to forfeiture:

943 (1) All controlled substances or controlled substance
944 analogues which have been manufactured, distributed, dispensed or
945 acquired in violation of this article;

946 (2) All raw materials, products and equipment of any
947 kind which are used, or intended for use, in manufacturing,
948 compounding, processing, delivering, importing, or exporting any



949 controlled substance or controlled substance analogues in
950 violation of this article;

951 (3) All property which is used, or intended for use, as
952 a container for property described in paragraph (1) or (2) of this
953 section;

954 (4) All conveyances, including aircraft, vehicles or
955 vessels, which are used, or intended for use, to transport, or in
956 any manner to facilitate the transportation, sale, receipt,
957 possession or concealment of property described in paragraph (1)
958 or (2) of this section, however:

959 A. No conveyance used by any person as a common
960 carrier in the transaction of business as a common carrier is
961 subject to forfeiture under this section unless it appears that
962 the owner or other person in charge of the conveyance is a
963 consenting party or privy to a violation of this article;

964 B. No conveyance is subject to forfeiture under
965 this section by reason of any act or omission proved by the owner
966 thereof to have been committed or omitted without his knowledge or
967 consent; if the confiscating authority has reason to believe that
968 the conveyance is a leased or rented conveyance, then the
969 confiscating authority shall notify the owner of the conveyance
970 within five (5) days of the confiscation;

971 C. A forfeiture of a conveyance encumbered by a
972 bona fide security interest is subject to the interest of the
973 secured party if he neither had knowledge of nor consented to the
974 act or omission;

975 D. A conveyance is not subject to forfeiture for a
976 violation of Section 41-29-139(c)(2)(A), (B) or (C);

977 (5) All money, deadly weapons, books, records, and
978 research products and materials, including formulas, microfilm,
979 tapes and data which are used, or intended for use, in violation
980 of this article;



981 (6) All drug paraphernalia as defined in Section
982 41-29-105(v); and

983 (7) Everything of value, including real estate,
984 furnished, or intended to be furnished, in exchange for a
985 controlled substance in violation of this article, all proceeds
986 traceable to such an exchange, and all monies, negotiable
987 instruments, businesses or business investments, securities, and
988 other things of value used, or intended to be used, to facilitate
989 any violation of this article. All monies, coin and currency
990 found in close proximity to forfeitable controlled substances, to
991 forfeitable drug manufacturing or distributing paraphernalia, or
992 to forfeitable records of the importation, manufacture or
993 distribution of controlled substances are presumed to be
994 forfeitable under this paragraph; the burden of proof is upon
995 claimants of the property to rebut this presumption.

996 A. No property shall be forfeited under the
997 provisions of paragraph (a)(7) of this section, to the extent of
998 the interest of an owner, by reason of any act or omission
999 established by him to have been committed or omitted without his
1000 knowledge or consent.

1001 B. Neither personal property encumbered by a bona
1002 fide security interest nor real estate encumbered by a bona fide
1003 mortgage, deed of trust, lien or encumbrance shall be forfeited
1004 under the provisions of paragraph (a)(7) of this section, to the
1005 extent of the interest of the secured party or the interest of the
1006 mortgagee, holder of a deed of trust, lien or encumbrance by
1007 reason of any act or omission established by him to have been
1008 committed or omitted without his knowledge or consent.

1009 (b) Property subject to forfeiture may be seized by the
1010 bureau, local law enforcement officers, enforcement officers of
1011 the Mississippi Department of Transportation, highway patrolmen,
1012 the board, or the State Board of Pharmacy upon process issued by



1013 any appropriate court having jurisdiction over the property.

1014 Seizure without process may be made if:

1015 (1) The seizure is incident to an arrest or a search
1016 under a search warrant or an inspection under an administrative
1017 inspection warrant;

1018 (2) The property subject to seizure has been the
1019 subject of a prior judgment in favor of the state in a criminal
1020 injunction or forfeiture proceeding based upon this article;

1021 (3) The bureau, the board, local law enforcement
1022 officers, enforcement officers of the Mississippi Department of
1023 Transportation, or highway patrolmen, or the State Board of
1024 Pharmacy have probable cause to believe that the property is
1025 directly or indirectly dangerous to health or safety; or

1026 (4) The bureau, local law enforcement officers,
1027 enforcement officers of the Mississippi Department of
1028 Transportation, highway patrolmen, the board, or the State Board
1029 of Pharmacy have probable cause to believe that the property was
1030 used or is intended to be used in violation of this article.

1031 (c) Controlled substances listed in Schedule I of Section
1032 41-29-113 or controlled substance analogues that are possessed,
1033 transferred, sold or offered for sale in violation of this article
1034 are contraband and shall be seized and summarily forfeited to the
1035 state. Controlled substances listed in the said Schedule I or
1036 controlled substance analogues, which are seized or come into the
1037 possession of the state, the owners of which are unknown, are
1038 contraband and shall be summarily forfeited to the state.

1039 (d) Species of plants from which controlled substances in
1040 Schedules I and II of Sections 41-29-113 and 41-29-115 or
1041 controlled substance analogues may be derived which have been
1042 planted or cultivated in violation of this article, or of which
1043 the owners or cultivators are unknown, or which are wild growths,
1044 may be seized and summarily forfeited to the state.



1045 (e) The failure, upon demand by the bureau and/or local law
1046 enforcement officers, or their authorized agents, or highway
1047 patrolmen designated by the bureau, the board, or the State Board
1048 of Pharmacy, of the person in occupancy or in control of land or
1049 premises upon which the species of plants are growing or being
1050 stored, to produce an appropriate registration, or proof that he
1051 is the holder thereof, constitutes authority for the seizure and
1052 forfeiture of the plants.

1053 **SECTION 13.** Section 41-29-154, Mississippi Code of 1972, is
1054 amended as follows:

1055 41-29-154. Any controlled substance, controlled substance
1056 analogue or paraphernalia seized under the authority of this
1057 article or any other law of Mississippi or of the United States,
1058 shall be destroyed, adulterated and disposed of or otherwise
1059 rendered harmless and disposed of, upon written authorization of
1060 the director, after such substance or paraphernalia has served its
1061 usefulness as evidence or after such substance or paraphernalia is
1062 no longer useful for training or demonstration purposes.

1063 A record of the disposition of such substances and
1064 paraphernalia and the method of destruction or adulteration
1065 employed along with the names of witnesses to such destruction or
1066 adulteration shall be retained by the director.

1067 No substance or paraphernalia shall be disposed of, destroyed
1068 or rendered harmless under the authority of this section without
1069 an order from the director and without at least two (2) officers
1070 or agents of the bureau present as witnesses.

1071 **SECTION 14.** Section 41-29-169, Mississippi Code of 1972, is
1072 amended as follows:

1073 41-29-169. The Mississippi Bureau of Drug Enforcement and
1074 State Board of Education shall carry out educational programs
1075 designed to prevent and deter misuse and abuse of controlled
1076 substances or controlled substance analogues. In connection with
1077 these programs they may:



1078 (1) Promote better recognition of the problems of
1079 misuse and abuse of controlled substances or controlled substance
1080 analogues within the regulated industry and among interested
1081 groups and organizations;

1082 (2) Assist the regulated industry and interested groups
1083 and organizations in contributing to the reduction of misuse and
1084 abuse of controlled substances or controlled substance analogues;

1085 (3) Consult with interested groups and organizations to
1086 aid them in solving administrative and organizational problems;

1087 (4) Evaluate procedures, projects, techniques, and
1088 controls conducted or proposed as part of educational programs on
1089 misuse and abuse of controlled substances or controlled substance
1090 analogues;

1091 (5) Disseminate the results of research on misuse and
1092 abuse of controlled substances or controlled substance analogues
1093 to promote a better public understanding of what problems exist
1094 and what can be done to combat them; and

1095 (6) Assist in the education and training of state and
1096 local law enforcement officials in their efforts to control misuse
1097 and abuse of controlled substances or controlled substance
1098 analogues.

1099 **SECTION 15.** Section 41-29-171, Mississippi Code of 1972, is
1100 amended as follows:

1101 41-29-171. (a) The Mississippi Bureau of Narcotics, the
1102 State Board of Pharmacy, the State Board of Medical Licensure,
1103 the State Board of Dental Examiners and the Mississippi Board of
1104 Nursing shall encourage research on misuse and abuse of controlled
1105 substances or controlled substance analogues. In connection with
1106 the research, and in furtherance of the enforcement of this
1107 article they may:

1108 (1) Establish methods to assess accurately the effects
1109 of controlled substances or controlled substance analogues and
1110 identify and characterize those with potential for abuse;



1111 (2) Make studies and undertake programs of research to:
1112 (A) Develop new or improved approaches,
1113 techniques, systems, equipment and devices to strengthen the
1114 enforcement of this article;
1115 (B) Determine patterns of misuse and abuse of
1116 controlled substances or controlled substance analogues and the
1117 social effects thereof; and
1118 (C) Improve methods for preventing, predicting,
1119 understanding and dealing with the misuse and abuse of controlled
1120 substances or controlled substance analogues;
1121 (3) Enter into contracts with public agencies,
1122 institutions of higher education, and private organizations or
1123 individuals for the purpose of conducting research,
1124 demonstrations, or special projects which bear directly on misuse
1125 and abuse of controlled substances or controlled substance
1126 analogues.

1127 (b) The Mississippi Bureau of Narcotics and the State Board
1128 of Education may enter into contracts for educational and research
1129 activities without performance bonds.

1130 (c) The board may authorize the possession and distribution
1131 of controlled substances or controlled substance analogues by
1132 persons engaged in research. Persons who obtain this
1133 authorization are exempt from state prosecution for possession and
1134 distribution of controlled substances or controlled substance
1135 analogues to the extent of the authorization.

1136 **SECTION 16.** Section 41-29-176, Mississippi Code of 1972, is
1137 amended as follows:

1138 41-29-176. (1) When any property other than a controlled
1139 substance, controlled substance analogue, raw material or
1140 paraphernalia, the value of which does not exceed Ten Thousand
1141 Dollars (\$10,000.00), is seized under the Uniform Controlled
1142 Substances Law, the property may be forfeited by the
1143 administrative forfeiture procedures provided for in this section.



1144 (2) The attorney for or any representative of the seizing
1145 law enforcement agency shall provide notice of intention to
1146 forfeit the seized property administratively, either by certified
1147 mail, return receipt requested, or by personal delivery, to all
1148 persons who are required to be notified pursuant to Section
1149 41-29-177(2), Mississippi Code of 1972.

1150 (3) In the event that notice of intention to forfeit the
1151 seized property administratively cannot be given as provided in
1152 subsection (2) of this section because of refusal, failure to
1153 claim, insufficient address or any other reason, the attorney for
1154 or representative of the seizing law enforcement agency shall
1155 provide notice by publication in a newspaper of general
1156 circulation in the county in which the seizure occurred for once a
1157 week for three (3) consecutive weeks.

1158 (4) Notice pursuant to subsections (2) and (3) of this
1159 section shall include the following information:

- 1160 (a) A description of the property;
- 1161 (b) The approximate value of the property;
- 1162 (c) The date and place of the seizure;
- 1163 (d) The connection between the property and the
1164 violation of the Uniform Controlled Substances Law;
- 1165 (e) The instructions for filing a request for judicial
1166 review; and
- 1167 (f) A statement that the property will be forfeited to
1168 the seizing law enforcement agency if a request for judicial
1169 review is not timely filed.

1170 (5) Any person claiming an interest in property which is the
1171 subject of a notice under this section may, within thirty (30)
1172 days after receipt of the notice or of the date of the first
1173 publication of the notice, file a petition to contest forfeiture
1174 signed by the claimant in the county court, if a county court
1175 exists, or otherwise in the circuit court of the county in which
1176 the seizure is made or the county in which the criminal



1177 prosecution is brought, in order to claim an interest in the
1178 property. Upon the filing of the petition and the payment of the
1179 filing fees, service of the petition shall be made on the attorney
1180 for or representative of the seizing law enforcement agency, and
1181 the proceedings shall thereafter be governed by the rules of civil
1182 procedure.

1183 (6) If no petition to contest forfeiture is timely filed,
1184 the attorney for the seizing law enforcement agency shall prepare
1185 a written declaration of forfeiture of the subject property and
1186 the forfeited property shall be used, distributed or disposed of
1187 in accordance with the provisions of Section 41-29-181,
1188 Mississippi Code of 1972.

1189 **SECTION 17.** Section 41-29-177, Mississippi Code of 1972, is
1190 amended as follows:

1191 41-29-177. (1) Except as otherwise provided in Section
1192 41-29-176, Mississippi Code of 1972, when any property, other than
1193 a controlled substance, controlled substance analogue, raw
1194 material or paraphernalia, is seized under the Uniform Controlled
1195 Substances Law, proceedings under this section shall be instituted
1196 within thirty (30) days from the date of seizure or the subject
1197 property shall be immediately returned to the party from whom
1198 seized.

1199 (2) A petition for forfeiture shall be filed in the name of
1200 the State of Mississippi, the county or the municipality and may
1201 be filed in the county in which the seizure is made, the county in
1202 which the criminal prosecution is brought or the county in which
1203 the owner of the seized property is found. Forfeiture proceedings
1204 may be brought in the circuit court or the county court if a
1205 county court exists in the county and the value of the seized
1206 property is within the jurisdictional limits of the county court
1207 as set forth in Section 9-9-21, Mississippi Code of 1972. A copy
1208 of such petition shall be served upon the following persons by
1209 service of process in the same manner as in civil cases:



1210 (a) The owner of the property, if address is known;
1211 (b) Any secured party who has registered his lien or
1212 filed a financing statement as provided by law, if the identity of
1213 such secured party can be ascertained by the Bureau of Narcotics
1214 or the local law enforcement agency by making a good faith effort
1215 to ascertain the identity of such secured party as described in
1216 subsections (3), (4), (5), (6) and (7) of this section;
1217 (c) Any other bona fide lienholder or secured party or
1218 other person holding an interest in the property in the nature of
1219 a security interest of whom the Mississippi Bureau of Narcotics or
1220 the local law enforcement agency has actual knowledge;
1221 (d) Any holder of a mortgage, deed of trust, lien or
1222 encumbrance of record, if the property is real estate, by making a
1223 good faith inquiry as described in subsection (8) of this section;
1224 and
1225 (e) Any person in possession of property subject to
1226 forfeiture at the time that it was seized.

1227 (3) If the property is a motor vehicle susceptible of
1228 titling under the Mississippi Motor Vehicle Title Law and if there
1229 is any reasonable cause to believe that the vehicle has been
1230 titled, the Bureau of Narcotics or the local law enforcement
1231 agency shall make inquiry of the State Tax Commission as to what
1232 the records of the State Tax Commission show as to who is the
1233 record owner of the vehicle and who, if anyone, holds any lien or
1234 security interest which affects the vehicle.

1235 (4) If the property is a motor vehicle and is not titled in
1236 the State of Mississippi, then the Bureau of Narcotics or the
1237 local law enforcement agency shall attempt to ascertain the name
1238 and address of the person in whose name the vehicle is licensed,
1239 and if the vehicle is licensed in a state which has in effect a
1240 certificate of title law, the bureau or the local law enforcement
1241 agency shall make inquiry of the appropriate agency of that state
1242 as to what the records of the agency show as to who is the record



1243 owner of the vehicle and who, if anyone, holds any lien, security
1244 interest or other instrument in the nature of a security device
1245 which affects the vehicle.

1246 (5) If the property is of a nature that a financing
1247 statement is required by the laws of this state to be filed to
1248 perfect a security interest affecting the property and if there is
1249 any reasonable cause to believe that a financing statement
1250 covering the security interest has been filed under the laws of
1251 this state, the Bureau of Narcotics or the local law enforcement
1252 agency shall make inquiry of the appropriate office designated in
1253 Section 75-9-501, Mississippi Code of 1972, as to what the records
1254 show as to who is the record owner of the property and who, if
1255 anyone, has filed a financing statement affecting the property.

1256 (6) If the property is an aircraft or part thereof and if
1257 there is any reasonable cause to believe that an instrument in the
1258 nature of a security device affects the property, then the Bureau
1259 of Narcotics or the local law enforcement agency shall make
1260 inquiry of the Mississippi Department of Transportation as to what
1261 the records of the Federal Aviation Administration show as to who
1262 is the record owner of the property and who, if anyone, holds an
1263 instrument in the nature of a security device which affects the
1264 property.

1265 (7) In the case of all other personal property subject to
1266 forfeiture, if there is any reasonable cause to believe that an
1267 instrument in the nature of a security device affects the
1268 property, then the Bureau of Narcotics or the local law
1269 enforcement agency shall make a good faith inquiry to identify the
1270 holder of any such instrument.

1271 (8) If the property is real estate, the Bureau of Narcotics
1272 or the local law enforcement agency shall make inquiry of the
1273 chancery clerk of the county wherein the property is located to
1274 determine who is the owner of record and who, if anyone, is a



1275 holder of a bona fide mortgage, deed of trust, lien or
1276 encumbrance.

1277 (9) In the event the answer to an inquiry states that the
1278 record owner of the property is any person other than the person
1279 who was in possession of it when it was seized, or states that any
1280 person holds any lien, encumbrance, security interest, other
1281 interest in the nature of a security interest, mortgage or deed of
1282 trust which affects the property, the Bureau of Narcotics or the
1283 local law enforcement agency shall cause any record owner and also
1284 any lienholder, secured party, other person who holds an interest
1285 in the property in the nature of a security interest, or holder of
1286 an encumbrance, mortgage or deed of trust which affects the
1287 property to be named in the petition of forfeiture and to be
1288 served with process in the same manner as in civil cases.

1289 (10) If the owner of the property cannot be found and served
1290 with a copy of the petition of forfeiture, or if no person was in
1291 possession of the property subject to forfeiture at the time that
1292 it was seized and the owner of the property is unknown, the Bureau
1293 of Narcotics or the local law enforcement agency shall file with
1294 the clerk of the court in which the proceeding is pending an
1295 affidavit to such effect, whereupon the clerk of the court shall
1296 publish notice of the hearing addressed to "the Unknown Owner of
1297 _____," filling in the blank space with a reasonably
1298 detailed description of the property subject to forfeiture.
1299 Service by publication shall contain the other requisites
1300 prescribed in Section 11-33-41, and shall be served as provided in
1301 Section 11-33-37, Mississippi Code of 1972, for publication of
1302 notice for attachments at law.

1303 (11) No proceedings instituted pursuant to the provisions of
1304 this article shall proceed to hearing unless the judge conducting
1305 the hearing is satisfied that this section has been complied with.
1306 Any answer received from an inquiry required by subsections (3)



1307 through (8) of this section shall be introduced into evidence at
1308 the hearing.

1309 **SECTION 18.** Section 41-29-179, Mississippi Code of 1972, is
1310 amended as follows:

1311 41-29-179. (1) Except as otherwise provided in Section
1312 41-29-176, an owner of property, other than a controlled
1313 substance, a controlled substance analogue, raw material or
1314 paraphernalia, that has been seized shall file an answer within
1315 thirty (30) days after the completion of service of process. If
1316 an answer is not filed, the court shall hear evidence that the
1317 property is subject to forfeiture and forfeit the property to the
1318 Mississippi Bureau of Narcotics or the local law enforcement
1319 agency. If an answer is filed, a time for hearing on forfeiture
1320 shall be set within thirty (30) days of filing the answer or at
1321 the succeeding term of court if court would not be in progress
1322 within thirty (30) days after filing the answer. Provided,
1323 however, that upon request by the Bureau of Narcotics, the local
1324 law enforcement agency or the owner of the property, the court may
1325 postpone said forfeiture hearing to a date past the time any
1326 criminal action is pending against said owner.

1327 (2) If the owner of the property has filed an answer denying
1328 that the property is subject to forfeiture, then the burden is on
1329 the petitioner to prove that the property is subject to
1330 forfeiture. However, if an answer has not been filed by the owner
1331 of the property, the petition for forfeiture may be introduced
1332 into evidence and is prima facie evidence that the property is
1333 subject to forfeiture. The standard of proof placed upon the
1334 petitioner in regard to property forfeited under the provisions of
1335 this article shall be by a preponderance of the evidence.

1336 (3) At the hearing any claimant of any right, title or
1337 interest in the property may prove his lien, encumbrance, security
1338 interest, other interest in the nature of a security interest,
1339 mortgage or deed of trust to be bona fide and created without



1340 knowledge or consent that the property was to be used so as to
1341 cause the property to be subject to forfeiture.

1342 (4) If it is found that the property is subject to
1343 forfeiture, then the judge shall forfeit the property to the
1344 Mississippi Bureau of Narcotics or the local law enforcement
1345 agency. However, if proof at the hearing discloses that the
1346 interest of any bona fide lienholder, secured party, other person
1347 holding an interest in the property in the nature of a security
1348 interest, or any holder of a bona fide encumbrance, mortgage or
1349 deed of trust is greater than or equal to the present value of the
1350 property, the court shall order the property released to him. If
1351 such interest is less than the present value of the property and
1352 if the proof shows that the property is subject to forfeiture, the
1353 court shall order the property forfeited to the Mississippi Bureau
1354 of Narcotics or the local law enforcement agency.

1355 (5) Upon a petition filed in the name of the State of
1356 Mississippi, the county or the municipality with the clerk of the
1357 circuit court of the county in which the seizure of any controlled
1358 substance, controlled substance analogue or raw material is made,
1359 the circuit court having jurisdiction may order the controlled
1360 substance, controlled substance analogue or raw material summarily
1361 forfeited except when lawful possession and title can be
1362 ascertained. If a person is found to have had lawful possession
1363 and title prior to seizure, the court shall order the controlled
1364 substance or raw material returned to the owner, if the owner so
1365 desires. Upon a petition filed in the name of the State of
1366 Mississippi, the county or the municipality with the clerk of the
1367 circuit court of the county in which the seizure of any purported
1368 paraphernalia is made, the circuit court having jurisdiction may
1369 order such seized property summarily forfeited when the court has
1370 determined the seized property to be paraphernalia as defined in
1371 Section 41-29-105(v).



1372 **SECTION 19.** Section 63-1-71, Mississippi Code of 1972, is
1373 amended as follows:

1374 63-1-71. (1) In addition to any penalty authorized by the
1375 Uniform Controlled Substances Law or any other statute indicating
1376 the dispositions that can be ordered for an adjudication of
1377 delinquency, every person convicted of, or entering a plea of nolo
1378 contendere to, or adjudicated delinquent in a court of this state
1379 for a violation of any offense defined in the Uniform Controlled
1380 Substances Law, and every person convicted of, or entering a plea
1381 of nolo contendere to, or adjudicated delinquent under the laws of
1382 the United States, another state, a territory or possession of the
1383 United States, the District of Columbia or the Commonwealth of
1384 Puerto Rico of a violation for the use, distribution, possession,
1385 manufacture, sale, barter, transfer or dispensing of a "controlled
1386 substance," "counterfeit substance," "controlled substance
1387 analogue," "narcotic drug" or "drug," as such terms are defined
1388 under Section 41-29-105, shall forthwith forfeit his right to
1389 operate a motor vehicle over the highways of this state for a
1390 period of six (6) months. Notwithstanding the provisions of
1391 Section 63-11-30(2)(a) and in addition to any penalty authorized
1392 by the Uniform Controlled Substances Law or any other statute
1393 indicating the dispositions that can be ordered for an
1394 adjudication of delinquency, every person convicted of driving
1395 under the influence of a controlled substance, or entering a plea
1396 of nolo contendere thereto, or adjudicated delinquent therefor, in
1397 a court of this state, and every person convicted of driving under
1398 the influence of a controlled substance or controlled substance
1399 analogue, or entering a plea of nolo contendere thereto, or
1400 adjudicated delinquent therefor, under the laws of the United
1401 States, another state, a territory or possession of the United
1402 States, the District of Columbia or the Commonwealth of Puerto
1403 Rico, shall forthwith forfeit his right to operate a motor vehicle
1404 over the highways of this state for a period of not less than six



1405 (6) months. In the case of any person who at the time of the
1406 imposition of sentence does not have a driver's license or is less
1407 than fifteen (15) years of age, the period of the suspension of
1408 driving privileges authorized herein shall commence on the day the
1409 sentence is imposed and shall run for a period of not less than
1410 six (6) months after the day the person obtains a driver's license
1411 or reaches the age of fifteen (15) years. If the driving
1412 privilege of any person is under revocation or suspension at the
1413 time of any conviction or adjudication of delinquency for a
1414 violation of any offense defined in the Uniform Controlled
1415 Substances Law, the revocation or suspension period imposed herein
1416 shall commence as of the date of termination of the existing
1417 revocation or suspension.

1418 (2) The court in this state before whom any person is
1419 convicted of or adjudicated delinquent for a violation of an
1420 offense under subsection (1) of this section shall collect
1421 forthwith the Mississippi driver's license of the person and
1422 forward such license to the Department of Public Safety along with
1423 a report indicating the first and last day of the suspension or
1424 revocation period imposed pursuant to this section. If the court
1425 is for any reason unable to collect the license of the person, the
1426 court shall cause a report of the conviction or adjudication of
1427 delinquency to be filed with the Commissioner of Public Safety.
1428 That report shall include the complete name, address, date of
1429 birth, eye color and sex of the person and shall indicate the
1430 first and last day of the suspension or revocation period imposed
1431 by the court pursuant to this section. The court shall inform the
1432 person orally and in writing that if the person is convicted of
1433 personally operating a motor vehicle during the period of license
1434 suspension or revocation imposed pursuant to this section, the
1435 person shall, upon conviction, be subject to the penalties set
1436 forth in Section 63-11-40. A person shall be required to
1437 acknowledge receipt of the written notice in writing. Failure to



1438 receive a written notice or failure to acknowledge in writing the
1439 receipt of a written notice shall not be a defense to a subsequent
1440 charge of a violation of Section 63-11-40. If the person is the
1441 holder of a driver's license from another jurisdiction, the court
1442 shall not collect the license but shall notify forthwith the
1443 Commissioner of Public Safety who shall notify the appropriate
1444 officials in the licensing jurisdiction. The court shall,
1445 however, in accordance with the provisions of this section, revoke
1446 the person's nonresident driving privilege in this state.

1447 (3) The county court or circuit court having jurisdiction,
1448 on petition, may reduce the suspension of driving privileges under
1449 this section if the denial of which would constitute a hardship on
1450 the offender. When the petition is filed, such person shall pay
1451 to the circuit clerk of the court where the petition is filed a
1452 fee of Twenty Dollars (\$20.00) for each year, or portion thereof,
1453 of license revocation or suspension remaining under the original
1454 sentence, which shall be deposited into the State General Fund to
1455 the credit of a special fund hereby created in the State Treasury
1456 to be used for alcohol or drug abuse treatment and education, upon
1457 appropriation by the Legislature. This fee shall be in addition
1458 to any other court costs or fees required for the filing of
1459 petitions.

1460 **SECTION 20.** Section 63-1-83, Mississippi Code of 1972, is
1461 amended as follows:

1462 63-1-83. (1) From and after April 1, 1992, it shall be a
1463 violation of this article and the Commissioner of Public Safety
1464 shall suspend for a period of one (1) year the commercial driver's
1465 license of any person whom he determines to have committed a first
1466 violation of:

1467 (a) Driving a commercial motor vehicle for which a
1468 commercial driver instruction permit or commercial driver's
1469 license is required under this article while under the influence



1470 of alcohol or a controlled substance or a controlled substance
1471 analogue;

1472 (b) Driving a commercial motor vehicle for which a
1473 commercial driver instruction permit or commercial driver's
1474 license is required under this article while the alcohol
1475 concentration of the person's blood, breath or urine is four
1476 one-hundredths percent (.04%) or more;

1477 (c) Knowingly and willfully leaving the scene of an
1478 accident involving a commercial motor vehicle for which a
1479 commercial driver instruction permit or commercial driver's
1480 license is required under this article, if the vehicle was driven
1481 by such person;

1482 (d) Using a commercial motor vehicle for which a
1483 commercial driver instruction permit or commercial driver's
1484 license is required under this article in the commission of any
1485 felony as defined in this article; or

1486 (e) Refusing to submit to a test to determine the
1487 driver's alcohol concentration while driving a commercial motor
1488 vehicle for which a commercial driver instruction permit or
1489 commercial driver's license is required under this article.

1490 If any of the violations in subsection (1) of this section
1491 occurred while transporting hazardous materials required to be
1492 placarded under the Hazardous Materials Transportation Act, the
1493 commissioner shall suspend the commercial driver's license of such
1494 person for a period of three (3) years.

1495 (2) The Commissioner of Public Safety shall suspend the
1496 commercial driver's license of a person for life, or such lesser
1497 minimum period of time as shall be required under applicable
1498 federal law or regulations, if a person is determined to have
1499 committed two (2) or more of the violations specified in
1500 subsection (1) of this section or any combination of such
1501 violations arising from two (2) or more separate incidents. The



1502 provisions of this subsection (2) shall apply only to violations
1503 occurring on or after April 1, 1992.

1504 (3) The Commissioner of Public Safety shall suspend for life
1505 the commercial driver's license of any person who uses a
1506 commercial motor vehicle for which a commercial driver instruction
1507 permit or commercial driver's license is required under this
1508 article in the commission of any felony involving the manufacture,
1509 distribution or dispensing of a controlled substance or controlled
1510 substance analogue, or possession with intent to manufacture,
1511 distribute or dispense a controlled substance or controlled
1512 substance analogue. The provisions of this subsection (3) shall
1513 apply only to violations occurring on or after April 1, 1992.

1514 (4) The Commissioner of Public Safety shall suspend for a
1515 period of sixty (60) days the commercial driver's license of any
1516 person convicted of two (2) serious traffic violations, or one
1517 hundred twenty (120) days if convicted of three (3) serious
1518 traffic violations, committed in a commercial motor vehicle for
1519 which a commercial driver instruction permit or commercial
1520 driver's license is required under this article arising from
1521 separate incidents occurring within a period of three (3) years.
1522 The provisions of this subsection (4) shall apply only to
1523 violations occurring on or after April 1, 1992.

1524 (5) In addition to the reasons specified in this section for
1525 suspension of the commercial driver's license, the Commissioner of
1526 Public Safety shall be authorized to suspend the commercial
1527 driver's license of any person for being out of compliance with an
1528 order for support, as defined in Section 93-11-153. The procedure
1529 for suspension of a commercial driver's license for being out of
1530 compliance with an order for support, and the procedure for the
1531 reissuance or reinstatement of a commercial driver's license
1532 suspended for that purpose, and the payment of any fees for the
1533 reissuance or reinstatement of a commercial driver's license
1534 suspended for that purpose, shall be governed by Section 93-11-157



1535 or 93-11-163, as the case may be. If there is any conflict
1536 between any provision of Section 93-11-157 or 93-11-163 and any
1537 provision of this article, the provisions of Section 93-11-157 or
1538 93-11-163, as the case may be, shall control.

1539 **SECTION 21.** This act shall take effect and be in force from
1540 and after July 1, 2002.

