

By: Senator(s) Albritton, Browning, Burton, Butler, Carmichael, Chaney, Cuevas, Dawkins, Dearing, Gordon, Harden, Harvey, Hyde-Smith, Jackson (15th), Jackson (11th), Jackson (32nd), Jordan, King, Kirby, Lee (35th), Lee (47th), Mettetal, Morgan, Nunnelee, Pickering, Posey, Ross, Thames, Tollison, Walls, Williamson

To: Judiciary, Division B

SENATE BILL NO. 2235
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 41-29-153, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE PROVISIONS OF THE DRUG FORFEITURE LAW TO VIOLATIONS
3 OF THE METHAMPHETAMINE PRECURSOR LAW; TO AMEND SECTION 41-29-139,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTY FOR TRAFFICKING IN
5 CERTAIN DRUGS; TO AMEND SECTION 41-29-181, MISSISSIPPI CODE OF
6 1972, TO REVISE DISTRIBUTION OF PROCEEDS IN FORFEITURES INVOLVING
7 MULTIPLE LAW ENFORCEMENT AGENCIES; TO AMEND SECTION 41-29-313,
8 MISSISSIPPI CODE OF 1972, TO EXPAND THE LIST OF POSSIBLE PRECURSOR
9 DRUGS AND CHEMICALS POSSESSED IN VIOLATION OF LAW FOR THE
10 MANUFACTURE OF METHAMPHETAMINE, TO MAKE MANUFACTURE OF THE
11 PRECURSORS THEMSELVES UNLAWFUL, TO CRIMINALIZE DAMAGE TO AN
12 ANHYDROUS AMMONIA TANK VALVE, AND TO PROVIDE AN ENHANCED PENALTY
13 FOR VIOLATION OF THE METHAMPHETAMINE PRECURSOR LAW WHEN IN
14 POSSESSION OF A FIREARM OR ON BOOBY TRAPPED PREMISES; TO AMEND
15 SECTION 49-17-603, MISSISSIPPI CODE OF 1972, TO CONFORM INTERNAL
16 REFERENCES; TO AMEND SECTION 41-29-501, MISSISSIPPI CODE OF 1972,
17 TO REVISE THE DEFINITION OF "INVESTIGATIVE OR LAW ENFORCEMENT
18 OFFICER" UNDER THE WIRETAPPING LAW; TO SPECIFY THE ELEMENTS OF A
19 DEFENSE OF ENTRAPMENT AND RESTRICT THE AVAILABILITY OF THE
20 DEFENSE; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 41-29-153, Mississippi Code of 1972, is
23 amended as follows:

24 41-29-153. (a) The following are subject to forfeiture:

25 (1) All controlled substances which have been
26 manufactured, distributed, dispensed or acquired in violation of
27 this article or in violation of Article 5 of this chapter;

28 (2) All raw materials, products and equipment of any
29 kind which are used, or intended for use, in manufacturing,
30 compounding, processing, delivering, importing, or exporting any
31 controlled substance in violation of this article or in violation
32 of Article 5 of this chapter;

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

36 (4) All conveyances, including aircraft, vehicles or
37 vessels, which are used, or intended for use, to transport, or in
38 any manner to facilitate the transportation, sale, receipt,
39 possession or concealment of property described in paragraph (1)
40 or (2) of this section, however:

41 A. No conveyance used by any person as a common
42 carrier in the transaction of business as a common carrier is
43 subject to forfeiture under this section unless it appears that
44 the owner or other person in charge of the conveyance is a
45 consenting party or privy to a violation of this article;

46 B. No conveyance is subject to forfeiture under
47 this section by reason of any act or omission proved by the owner
48 thereof to have been committed or omitted without his knowledge or
49 consent; if the confiscating authority has reason to believe that
50 the conveyance is a leased or rented conveyance, then the
51 confiscating authority shall notify the owner of the conveyance
52 within five (5) days of the confiscation;

53 C. A forfeiture of a conveyance encumbered by a
54 bona fide security interest is subject to the interest of the
55 secured party if he neither had knowledge of nor consented to the
56 act or omission;

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

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

63 (6) All drug paraphernalia as defined in Section
64 41-29-105(v); and

65 (7) Everything of value, including real estate,
66 furnished, or intended to be furnished, in exchange for a
67 controlled substance in violation of this article, all proceeds
68 traceable to such an exchange, and all monies, negotiable

69 instruments, businesses or business investments, securities, and
70 other things of value used, or intended to be used, to facilitate
71 any violation of this article. All monies, coin and currency
72 found in close proximity to forfeitable controlled substances, to
73 forfeitable drug manufacturing or distributing paraphernalia, or
74 to forfeitable records of the importation, manufacture or
75 distribution of controlled substances are presumed to be
76 forfeitable under this paragraph; the burden of proof is upon
77 claimants of the property to rebut this presumption.

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

83 B. Neither personal property encumbered by a bona
84 fide security interest nor real estate encumbered by a bona fide
85 mortgage, deed of trust, lien or encumbrance shall be forfeited
86 under the provisions of paragraph (a)(7) of this section, to the
87 extent of the interest of the secured party or the interest of the
88 mortgagee, holder of a deed of trust, lien or encumbrance by
89 reason of any act or omission established by him to have been
90 committed or omitted without his knowledge or consent.

91 (b) Property subject to forfeiture may be seized by the
92 bureau, local law enforcement officers, enforcement officers of
93 the Mississippi Department of Transportation, highway patrolmen,
94 the board, or the State Board of Pharmacy upon process issued by
95 any appropriate court having jurisdiction over the property.

96 Seizure without process may be made if:

97 (1) The seizure is incident to an arrest or a search
98 under a search warrant or an inspection under an administrative
99 inspection warrant;

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

103 (3) The bureau, the board, local law enforcement
104 officers, enforcement officers of the Mississippi Department of
105 Transportation, or highway patrolmen, or the State Board of
106 Pharmacy have probable cause to believe that the property is
107 directly or indirectly dangerous to health or safety; or

108 (4) The bureau, local law enforcement officers,
109 enforcement officers of the Mississippi Department of
110 Transportation, highway patrolmen, the board, or the State Board
111 of Pharmacy have probable cause to believe that the property was
112 used or is intended to be used in violation of this article.

113 (c) Controlled substances listed in Schedule I of Section
114 41-29-113 that are possessed, transferred, sold, or offered for
115 sale in violation of this article are contraband and shall be
116 seized and summarily forfeited to the state. Controlled
117 substances listed in the said Schedule I, which are seized or come
118 into the possession of the state, the owners of which are unknown,
119 are contraband and shall be summarily forfeited to the state.

120 (d) Species of plants from which controlled substances in
121 Schedules I and II of Sections 41-29-113 and 41-29-115 may be
122 derived which have been planted or cultivated in violation of this
123 article, or of which the owners or cultivators are unknown, or
124 which are wild growths, may be seized and summarily forfeited to
125 the state.

126 (e) The failure, upon demand by the bureau and/or local law
127 enforcement officers, or their authorized agents, or highway
128 patrolmen designated by the bureau, the board, or the State Board
129 of Pharmacy, of the person in occupancy or in control of land or
130 premises upon which the species of plants are growing or being
131 stored, to produce an appropriate registration, or proof that he

132 is the holder thereof, constitutes authority for the seizure and
133 forfeiture of the plants.

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

136 41-29-139. (a) Except as authorized by this article, it is
137 unlawful for any person knowingly or intentionally:

138 (1) To sell, barter, transfer, manufacture, distribute,
139 dispense or possess with intent to sell, barter, transfer,
140 manufacture, distribute or dispense, a controlled substance; or

141 (2) To create, sell, barter, transfer, distribute,
142 dispense or possess with intent to create, sell, barter, transfer,
143 distribute or dispense, a counterfeit substance.

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

147 (1) In the case of controlled substances classified in
148 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
149 except thirty (30) grams or less of marihuana, and except a first
150 offender as defined in Section 41-29-149(e) who violates
151 subsection (a) of this section with respect to less than one (1)
152 kilogram but more than thirty (30) grams of marihuana, such person
153 may, upon conviction, be imprisoned for not more than thirty (30)
154 years and shall be fined not less than Five Thousand Dollars
155 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
156 both;

157 (2) In the case of a first offender who violates
158 subsection (a) of this section with an amount less than one (1)
159 kilogram but more than thirty (30) grams of marihuana as
160 classified in Schedule I, as set out in Section 41-29-113, such
161 person is guilty of a felony and upon conviction may be imprisoned
162 for not more than twenty (20) years or fined not more than Thirty
163 Thousand Dollars (\$30,000.00), or both;

164 (3) In the case of thirty (30) grams or less of
165 marihuana, such person may, upon conviction, be imprisoned for not
166 more than three (3) years or fined not more than Three Thousand
167 Dollars (\$3,000.00), or both;

168 (4) In the case of controlled substances classified in
169 Schedules III and IV, as set out in Sections 41-29-117 and
170 41-29-119, such person may, upon conviction, be imprisoned for not
171 more than twenty (20) years and shall be fined not less than One
172 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
173 Thousand Dollars (\$250,000.00), or both; and

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

179 (c) It is unlawful for any person knowingly or intentionally
180 to possess any controlled substance unless the substance was
181 obtained directly from, or pursuant to, a valid prescription or
182 order of a practitioner while acting in the course of his
183 professional practice, or except as otherwise authorized by this
184 article. The penalties for any violation of this subsection (c)
185 with respect to a controlled substance classified in Schedules I,
186 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
187 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be
188 based on dosage unit as defined herein or the weight of the
189 controlled substance as set forth herein as appropriate:

190 "Dosage unit (d.u.)" means a tablet or capsule, or in the
191 case of a liquid solution, one (1) milliliter. In the case of
192 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
193 stamp, square, dot, microdot, tablet or capsule of a controlled
194 substance.

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

198 The weight set forth refers to the entire weight of any
199 mixture or substance containing a detectable amount of the
200 controlled substance.

201 If a mixture or substance contains more than one (1)
202 controlled substance, the weight of the mixture or substance is
203 assigned to the controlled substance that results in the greater
204 punishment.

205 Any person who violates this subsection with respect to:

206 (1) A controlled substance classified in Schedule I or
207 II, except marihuana, in the following amounts shall be charged
208 and sentenced as follows:

209 (A) Less than one-tenth (0.1) gram or one (1)
210 dosage unit or less may be charged as a misdemeanor or felony. If
211 charged by indictment as a felony: by imprisonment not less than
212 one (1) nor more than four (4) years and a fine not more than Ten
213 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by
214 imprisonment for up to one (1) year and a fine not more than One
215 Thousand Dollars (\$1,000.00).

216 (B) One-tenth (0.1) gram but less than two (2)
217 grams or two (2) dosage units but less than ten (10) dosage units,
218 by imprisonment for not less than two (2) years nor more than
219 eight (8) years and a fine of not more than Fifty Thousand Dollars
220 (\$50,000.00).

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

226 (D) Ten (10) grams but less than thirty (30) grams
227 or twenty (20) dosage units but not more than forty (40) dosage

228 units, by imprisonment for not less than six (6) years nor more
229 than twenty-four (24) years and a fine of not more than Five
230 Hundred Thousand Dollars (\$500,000.00).

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

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

237 (A) Thirty (30) grams or less by a fine of not
238 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
239 Fifty Dollars (\$250.00). The provisions of this paragraph shall
240 be enforceable by summons, provided the offender provides proof of
241 identity satisfactory to the arresting officer and gives written
242 promise to appear in court satisfactory to the arresting officer,
243 as directed by the summons. A second conviction under this
244 section within two (2) years shall be punished by a fine of Two
245 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
246 nor more than sixty (60) days in the county jail and mandatory
247 participation in a drug education program, approved by the
248 Division of Alcohol and Drug Abuse of the State Department of
249 Mental Health, unless the court enters a written finding that such
250 drug education program is inappropriate. A third or subsequent
251 conviction under this section within two (2) years is a
252 misdemeanor punishable by a fine of not less than Two Hundred
253 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
254 (\$500.00) and confinement for not less than five (5) days nor more
255 than six (6) months in the county jail. Upon a first or second
256 conviction under this section the courts shall forward a report of
257 such conviction to the Mississippi Bureau of Narcotics which shall
258 make and maintain a private, nonpublic record for a period not to
259 exceed two (2) years from the date of conviction. The private,
260 nonpublic record shall be solely for the use of the courts in

261 determining the penalties which attach upon conviction under this
262 section and shall not constitute a criminal record for the purpose
263 of private or administrative inquiry and the record of each
264 conviction shall be expunged at the end of the period of two (2)
265 years following the date of such conviction;

266 (B) Additionally, a person who is the operator of
267 a motor vehicle, who possesses on his person or knowingly keeps or
268 allows to be kept in a motor vehicle within the area of the
269 vehicle normally occupied by the driver or passengers, more than
270 one (1) gram, but not more than thirty (30) grams, of marihuana is
271 guilty of a misdemeanor and upon conviction may be fined not more
272 than One Thousand Dollars (\$1,000.00) and confined for not more
273 than ninety (90) days in the county jail. For the purposes of
274 this subsection, such area of the vehicle shall not include the
275 trunk of the motor vehicle or the areas not normally occupied by
276 the driver or passengers if the vehicle is not equipped with a
277 trunk. A utility or glove compartment shall be deemed to be
278 within the area occupied by the driver and passengers;

279 (C) More than thirty (30) grams but less than two
280 hundred fifty (250) grams may be fined not more than One Thousand
281 Dollars (\$1,000.00), or confined in the county jail for not more
282 than one (1) year, or both; or fined not more than Three Thousand
283 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
284 not more than three (3) years, or both;

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

289 (E) Five hundred (500) grams but less than one (1)
290 kilogram, by imprisonment for not less than four (4) years nor
291 more than sixteen (16) years and a fine of less than Two Hundred
292 Fifty Thousand Dollars (\$250,000.00);

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

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

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

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

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

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

317 (D) Three hundred (300) grams but less than five
318 hundred (500) grams or one thousand (1,000) dosage units but less
319 than two thousand five hundred (2,500) dosage units, by
320 imprisonment for not less than four (4) years nor more than
321 sixteen (16) years and a fine of not more than Two Hundred Fifty
322 Thousand Dollars (\$250,000.00).

323 (E) Five hundred (500) grams or more or two
324 thousand five hundred (2,500) dosage units or more, by
325 imprisonment for not less than six (6) years nor more than

326 twenty-four (24) years and a fine of not more than Five Hundred
327 Thousand Dollars (\$500,000.00).

328 (d) (1) It is unlawful for a person who is not authorized
329 by the State Board of Medical Licensure, State Board of Pharmacy,
330 or other lawful authority to use, or to possess with intent to
331 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
332 manufacture, compound, convert, produce, process, prepare, test,
333 analyze, pack, repack, store, contain, conceal, inject, ingest,
334 inhale or otherwise introduce into the human body a controlled
335 substance in violation of the Uniform Controlled Substances Law.
336 Any person who violates this subsection is guilty of a misdemeanor
337 and upon conviction may be confined in the county jail for not
338 more than six (6) months, or fined not more than Five Hundred
339 Dollars (\$500.00), or both; however, no person shall be charged
340 with a violation of this subsection when such person is also
341 charged with the possession of one (1) ounce or less of marihuana
342 under subsection (c)(2)(A) of this section.

343 (2) It is unlawful for any person to deliver, sell,
344 possess with intent to deliver or sell, or manufacture with intent
345 to deliver or sell, paraphernalia, knowing, or under circumstances
346 where one reasonably should know, that it will be used to plant,
347 propagate, cultivate, grow, harvest, manufacture, compound,
348 convert, produce, process, prepare, test, analyze, pack, repack,
349 store, contain, conceal, inject, ingest, inhale, or otherwise
350 introduce into the human body a controlled substance in violation
351 of the Uniform Controlled Substances Law. Any person who violates
352 this subsection is guilty of a misdemeanor and upon conviction may
353 be confined in the county jail for not more than six (6) months,
354 or fined not more than Five Hundred Dollars (\$500.00), or both.

355 (3) Any person eighteen (18) years of age or over who
356 violates subsection (d)(2) of this section by delivering or
357 selling paraphernalia to a person under eighteen (18) years of age
358 who is at least three (3) years his junior is guilty of a

359 misdemeanor and upon conviction may be confined in the county jail
360 for not more than one (1) year, or fined not more than One
361 Thousand Dollars (\$1,000.00), or both.

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

371 (e) It shall be unlawful for any physician practicing
372 medicine in this state to prescribe, dispense or administer any
373 amphetamine or amphetamine-like anorectics and/or central nervous
374 system stimulants classified in Schedule II, pursuant to Section
375 41-29-115, for the exclusive treatment of obesity, weight control
376 or weight loss. Any person who violates this subsection, upon
377 conviction, is guilty of a misdemeanor and may be confined for a
378 period not to exceed six (6) months, or fined not more than One
379 Thousand Dollars (\$1,000.00), or both.

380 (f) Except as otherwise authorized in this article, any
381 person twenty-one (21) years of age or older who knowingly sells,
382 barter, transfers, manufactures, distributes or dispenses during
383 any twelve (12) consecutive month period: (i) ten (10) pounds or
384 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
385 two (2) or more ounces of cocaine or of any mixture containing
386 cocaine as described in Section 41-29-105(s), Mississippi Code of
387 1972; * * * (iv) two (2) or more ounces of methamphetamine; or (v)
388 one hundred (100) or more dosage units of morphine, Demerol, * * *
389 Dilaudid, oxycodone hydrochloride or a derivative thereof, or
390 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a
391 felony and, upon conviction thereof, shall be sentenced to life

392 imprisonment and such sentence shall not be reduced or suspended
393 nor shall such person be eligible for probation or parole, the
394 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,
395 Mississippi Code of 1972, to the contrary notwithstanding. The
396 provisions of this subsection shall not apply to any person who
397 furnishes information and assistance to the bureau or its designee
398 which, in the opinion of the trial judge objectively should or
399 would have aided in the arrest or prosecution of others who
400 violate this subsection. The accused shall have adequate
401 opportunity to develop and make a record of all information and
402 assistance so furnished.

403 (g) (1) Any person trafficking in controlled substances
404 shall be guilty of a felony and upon conviction shall be
405 imprisoned for a term of thirty (30) years and such sentence shall
406 not be reduced or suspended nor shall such person be eligible for
407 probation or parole, the provisions of Sections 41-29-149,
408 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
409 contrary notwithstanding and shall be fined not less than Five
410 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
411 (\$1,000,000.00).

412 (2) "Trafficking in controlled substances" as used
413 herein means to engage in three (3) or more component offenses
414 within any twelve (12) consecutive month period where at least two
415 (2) of the component offenses occurred in different counties. A
416 component offense is any act which would constitute a violation of
417 subsection (a) of this section. Prior convictions shall not be
418 used as component offenses to establish the charge of trafficking
419 in controlled substances.

420 (3) The charge of trafficking in controlled substances
421 shall be set forth in one (1) count of an indictment with each of
422 the component offenses alleged therein and it may be charged and
423 tried in any county where a component offense occurred. An
424 indictment for trafficking in controlled substances may also be

425 returned by the State Grand Jury of Mississippi provided at least
426 two (2) of the component offenses occurred in different circuit
427 court districts.

428 **SECTION 3.** Section 41-29-181, Mississippi Code of 1972, is
429 amended as follows:

430 41-29-181. (1) Regarding all controlled substances, raw
431 materials and paraphernalia which have been forfeited, the circuit
432 court shall by its order direct the Bureau of Narcotics to:

433 (a) Retain the property for its official purposes;

434 (b) Deliver the property to a government agency or
435 department for official purposes;

436 (c) Deliver the property to a person authorized by the
437 court to receive it; or

438 (d) Destroy the property that is not otherwise
439 disposed, pursuant to the provisions of Section 41-29-154.

440 (2) All other property, real or personal, which is forfeited
441 under this article, except as otherwise provided in Section
442 41-29-185, and except as provided in subsections (3), (7) and (8)
443 of this section, shall be liquidated and, after deduction of court
444 costs and the expenses of liquidation, the proceeds shall be
445 divided and deposited as follows:

446 (a) In the event only one (1) law enforcement agency
447 participates in the underlying criminal case out of which the
448 forfeiture arises, twenty percent (20%) of the proceeds shall be
449 forwarded to the State Treasurer and deposited in the General Fund
450 of the state and eighty percent (80%) of the proceeds shall be
451 deposited and credited to the budget of the participating law
452 enforcement agency.

453 (b) In the event more than one (1) law enforcement
454 agency participates in the underlying criminal case out of which
455 the forfeiture arises, eighty percent (80%) of the proceeds shall
456 be deposited and credited to the budget of the law enforcement
457 agency whose officers initiated the criminal case * * * and twenty

458 percent (20%) shall be divided equitably between or among the
459 other participating law enforcement agencies, and shall be
460 deposited and credited to the budgets of the participating law
461 enforcement agencies. In the event that the other participating
462 law enforcement agencies cannot agree on the division of their
463 twenty percent (20%), a petition shall be filed by any one of them
464 in the court in which the civil forfeiture case is brought and the
465 court shall make an equitable division.

466 If the criminal case is initiated by an officer of the
467 Mississippi Bureau of Narcotics and more than one (1) law
468 enforcement agency participates in the underlying criminal case
469 out of which the forfeiture arises, * * * eighty percent (80%) of
470 the proceeds shall be deposited and credited to the budget of the
471 Mississippi Bureau of Narcotics and twenty percent (20%) shall be
472 divided equitably between or among the other participating law
473 enforcement agencies and shall be deposited and credited to the
474 budgets of the participating law enforcement agencies. In the
475 event that the other participating law enforcement agencies cannot
476 agree on the division of their twenty percent (20%), a petition
477 shall be filed by any one of them in the court in which the civil
478 forfeiture case is brought and the court shall make an equitable
479 division.

480 (3) All money which is forfeited under this article, except
481 as otherwise provided by Section 41-29-185, shall be divided,
482 deposited and credited in the same manner as set forth in
483 subsection (2) of this section.

484 (4) All property forfeited, deposited and credited to the
485 Mississippi Bureau of Narcotics under this article shall be
486 forwarded to the State Treasurer and deposited in a special fund
487 for use by the Mississippi Bureau of Narcotics upon appropriation
488 by the Legislature.

489 (5) All real estate which is forfeited under the provisions
490 of this article shall be sold to the highest and best bidder at a

491 public auction for cash, such auction to be conducted by the chief
492 law enforcement officer of the initiating law enforcement agency,
493 or his designee, at such place, on such notice and in accordance
494 with the same procedure, as far as practicable, as is required in
495 the case of sales of land under execution at law. The proceeds of
496 such sale shall first be applied to the cost and expense in
497 administering and conducting such sale, then to the satisfaction
498 of all mortgages, deeds of trust, liens and encumbrances of record
499 on such property. The remaining proceeds shall be divided,
500 forwarded and deposited in the same manner set out in subsection
501 (2) of this section.

502 (6) All other property that has been forfeited shall, except
503 as otherwise provided, be sold at a public auction for cash by the
504 chief law enforcement officer of the initiating law enforcement
505 agency, or his designee, to the highest and best bidder after
506 advertising the sale for at least once each week for three (3)
507 consecutive weeks, the last notice to appear not more than ten
508 (10) days nor less than five (5) days prior to such sale, in a
509 newspaper having a general circulation in the jurisdiction in
510 which said law enforcement agency is located. Such notices shall
511 contain a description of the property to be sold and a statement
512 of the time and place of sale. It shall not be necessary to the
513 validity of such sale either to have the property present at the
514 place of sale or to have the name of the owner thereof stated in
515 such notice. The proceeds of the sale shall be disposed of as
516 follows:

517 (a) To any bona fide lienholder, secured party, or
518 other party holding an interest in the property in the nature of a
519 security interest, to the extent of his interest; and

520 (b) The balance, if any, remaining after deduction of
521 all storage, court costs and expenses of liquidation shall be
522 divided, forwarded and deposited in the same manner set out in
523 subsection (2) of this section.

524 (7) (a) Any county or municipal law enforcement agency may
525 maintain, repair, use and operate for official purposes all
526 property, other than real property, money or such property that is
527 described in subsection (1) of this section, that has been
528 forfeited to the agency if it is free from any interest of a bona
529 fide lienholder, secured party or other party who holds an
530 interest in the property in the nature of a security interest.
531 Such county or municipal law enforcement agency may purchase the
532 interest of a bona fide lienholder, secured party or other party
533 who holds an interest so that the property can be released for its
534 use. If the property is a motor vehicle susceptible of titling
535 under the Mississippi Motor Vehicle Title Law, the law enforcement
536 agency shall be deemed to be the purchaser, and the certificate of
537 title shall be issued to it as required by subsection (9) of this
538 section.

539 (b) (i) If a vehicle is forfeited to or transferred to
540 a sheriff's department, then the sheriff may transfer the vehicle
541 to the county for official or governmental use as the board of
542 supervisors may direct.

543 (ii) If a vehicle is forfeited to or transferred
544 to a police department, then the police chief may transfer the
545 vehicle to the municipality for official or governmental use as
546 the governing authority of the municipality may direct.

547 (c) If a motor vehicle forfeited to a county or
548 municipal law enforcement agency becomes obsolete or is no longer
549 needed for official or governmental purposes, it may be disposed
550 of in accordance with Section 19-7-5 or in the manner provided by
551 law for disposing of municipal property.

552 (8) The Mississippi Bureau of Narcotics may maintain,
553 repair, use and operate for official purposes all property, other
554 than real property, money or such property as is described in
555 subsection (1) of this section, that has been forfeited to the
556 bureau if it is free from any interest of a bona fide lienholder,

557 secured party, or other party who holds an interest in the
558 property in the nature of a security interest. In such case, the
559 bureau may purchase the interest of a bona fide lienholder,
560 secured party, or other party who holds an interest so that such
561 property can be released for use by the bureau.

562 The bureau may maintain, repair, use and operate such
563 property with money appropriated to the bureau for current
564 operations. If the property is a motor vehicle susceptible of
565 titling under the Mississippi Motor Vehicle Title Law, the bureau
566 is deemed to be the purchaser and the certificate of title shall
567 be issued to it as required by subsection (9) of this section.

568 (9) The State Tax Commission shall issue a certificate of
569 title to any person who purchases property under the provisions of
570 this section when a certificate of title is required under the
571 laws of this state.

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

574 41-29-313. (1) (a) Except as authorized in this section,
575 it is unlawful for any person to knowingly or intentionally:

576 (i) Purchase, possess, transfer, manufacture,
577 attempt to manufacture or distribute any two (2) or more of the
578 listed precursor chemicals or drugs in any amount with the intent
579 to unlawfully manufacture a controlled substance;

580 (ii) Purchase, possess, transfer, manufacture,
581 attempt to manufacture or distribute any two (2) or more of the
582 listed precursor chemicals or drugs in any amount, knowing, or
583 under circumstances where one reasonably should know, that the
584 listed precursor chemical or drug will be used to unlawfully
585 manufacture a controlled substance;

586 (b) The term "precursor drug or chemical" means a drug
587 or chemical that, in addition to legitimate uses, may be used in
588 manufacturing a controlled substance in violation of this chapter.
589 The term includes any salt, optical isomer or salt of an optical

590 isomer, whenever the existence of a salt, optical isomer or salt
591 of optical isomer is possible within the specific chemical
592 designation. The chemicals or drugs listed in this section are
593 included by whatever official, common, usual, chemical or trade
594 name designated. A "precursor drug or chemical" includes, but is
595 not limited to, the following:

- 596 (i) Ether;
- 597 (ii) Anhydrous ammonia;
- 598 (iii) Ammonium nitrate;
- 599 (iv) Pseudoephedrine;
- 600 (v) Ephedrine;
- 601 (vi) Denatured alcohol (Ethanol);
- 602 (vii) Lithium;
- 603 (viii) Freon;
- 604 (ix) Hydrochloric acid;
- 605 (x) Hydriodic acid;
- 606 (xi) Red phosphorous;
- 607 (xii) Iodine;
- 608 (xiii) Sodium metal;
- 609 (xiv) Sodium hydroxide;
- 610 (xv) Muriatic acid;
- 611 (xvi) Sulfuric acid;
- 612 (xvii) Hydrogen chloride gas;
- 613 (xviii) Potassium;
- 614 (xix) Methanol;
- 615 (xx) Isopropyl alcohol;
- 616 (xxi) Hydrogen peroxide;
- 617 (xxii) Hexanes;
- 618 (xxiii) Heptanes;
- 619 (xxiv) Acetone;
- 620 (xxv) Toluene;
- 621 (xxvi) Xylenes.

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

627 (2) (a) It is unlawful for any person to knowingly or
628 intentionally steal or unlawfully take or carry away any amount of
629 anhydrous ammonia or to break, cut, or in any manner damage the
630 valve or locking mechanism on an anhydrous ammonia tank with the
631 intent to steal or unlawfully take or carry away anhydrous
632 ammonia.

633 (b) (i) It is unlawful for any person to purchase,
634 possess, transfer or distribute any amount of anhydrous ammonia,
635 knowing, or under circumstances where one reasonably should know,
636 that the anhydrous ammonia will be used to unlawfully manufacture
637 a controlled substance.

638 (ii) The possession of any amount of anhydrous
639 ammonia in a container unauthorized for containment of anhydrous
640 ammonia pursuant to Section 75-57-9 shall be prima facie evidence
641 of intent to use the anhydrous ammonia to unlawfully manufacture a
642 controlled substance.

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

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

655 * * *

656 (3) Nothing in this section shall preclude any farmer from
657 storing or using any of the listed precursor drugs or chemicals
658 listed in this section in the normal pursuit of farming
659 operations.

660 (4) Nothing in this section shall preclude any wholesaler,
661 retailer or pharmacist from possessing or selling the listed
662 precursor drugs or chemicals in the normal pursuit of business.

663 (5) Any person who violates the provisions of this section
664 with children under the age of eighteen (18) years present may be
665 subject to a term of imprisonment or a fine, or both, of twice
666 that provided in this section.

667 (6) Any person who violates the provisions of this section
668 when the offense occurs in any hotel or apartment building or
669 complex may be subject to a term of imprisonment or a fine, or
670 both, of twice that provided in this section. For the purposes of
671 this subsection (6), the following terms shall have the meanings
672 ascribed to them:

673 (a) "Hotel" means a hotel, inn, motel, tourist court,
674 apartment house, rooming house, or any other place where sleeping
675 accommodations are furnished or offered for pay if four (4) or
676 more rooms are available for transient guests.

677 (b) "Apartment building" means any building * * *
678 having four (4) or more dwelling units, including, without
679 limitation, a condominium building.

680 (7) Any person who violates the provisions of this section
681 who has in his possession any firearm, either at the time of the
682 commission of the offense or at the time any arrest is made, may
683 be subject to a term of imprisonment or a fine, or both, of twice
684 that provided in this section.

685 (8) Any person who violates the provisions of this section
686 upon any premises upon which any booby trap has been installed or
687 rigged may be subject to a term of imprisonment or a fine, or

688 both, of twice that provided in this section. For the purposes of
689 this subsection, the term "booby trap" means any concealed or
690 camouflaged device designed to cause bodily injury when triggered
691 by any action of a person making contact with the device. The
692 term includes guns, ammunition or explosive devices attached to
693 trip wires or other triggering mechanisms, sharpened stakes,
694 nails, spikes, electrical devices, lines or wires with hooks
695 attached, and devices designed for the production of toxic fumes
696 or gases.

697 **SECTION 5.** Section 49-17-603, Mississippi Code of 1972, is
698 amended as follows:

699 49-17-603. (1) The definitions used in this section are
700 expressly limited to this section only, and the inclusion of
701 indoor air in the definition of "waste" does not expand the
702 jurisdiction of the Commission on Environmental Quality or the
703 Department of Environmental Quality to include the regulation of
704 indoor air:

705 (a) "By-product" means a substance produced without a
706 separate intent during the manufacture, processing, use or
707 disposal of another substance or mixture; and

708 (b) "Waste" means all liquid, gaseous, solid,
709 radioactive or other substances that may pollute or tend to
710 pollute any waters of the state or soil within the state, and any
711 particulate matter, dust, fumes, gas, mist, smoke or vapor, or any
712 combination thereof, that may pollute or tend to pollute air in
713 the state, including indoor air.

714 (2) The generation of waste in any quantity by any person
715 caused by the mixing, combining, processing or cooking together of
716 two (2) or more precursor drugs or chemicals listed in Section
717 41-29-313 * * * is unlawful unless:

718 (a) The person has first obtained a generator
719 identification number pursuant to the Resource Conservation and

720 Recovery Act, 42 USCS Section 6901 et seq., and the regulations
721 promulgated thereunder; or

722 (b) The person has first obtained a treatment, storage
723 or disposal permit pursuant to the Resource Conservation and
724 Recovery Act, 42 USCS Section 6901 et seq., and the regulations
725 promulgated thereunder; or

726 (c) The process that generated the waste also, as part
727 of the same process:

728 (i) Created a product that is not illegal to
729 possess pursuant to Section 41-29-139(c);

730 (ii) Created a by-product that is not illegal to
731 possess pursuant to Section 41-29-139(c), while not at the same
732 time producing a controlled substance; or

733 (iii) Was a process of servicing, maintaining or
734 cleaning an item or product that is not illegal to possess
735 pursuant to Section 41-29-139(c).

736 (3) Any person who violates this section, upon conviction,
737 is guilty of a felony and may be imprisoned for a period not to
738 exceed thirty (30) years and shall be fined not less than Five
739 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
740 (\$1,000,000.00), or may be both fined and imprisoned.

741 (4) Nothing in this section shall preclude any farmer or
742 manufacturer from storing or using any of the listed precursor
743 drugs or chemicals listed in Section 41-29-313 in the normal
744 pursuit of farming or manufacturing operations.

745 (5) Nothing in this section shall preclude any wholesaler,
746 retailer or pharmacist from possessing or selling precursor drugs
747 or chemicals listed in Section 41-29-313 in the normal pursuit of
748 business.

749 (6) Except as may be otherwise provided, a property owner or
750 occupant of land shall not be criminally or civilly liable for the
751 generation of waste caused by the criminal acts of persons other
752 than the property owner or occupant of such land if the property

753 owner or occupant did not have prior knowledge of the criminal
754 activity.

755 **SECTION 6.** Section 41-29-501, Mississippi Code of 1972, is
756 amended as follows:

757 41-29-501. As used in this article, the following terms
758 shall have the meaning ascribed to them herein unless the context
759 requires otherwise:

760 (a) "Aggrieved person" means a person who was a party
761 to an intercepted wire, oral or other communication or a person
762 against whom the interception was directed.

763 (b) "Communication common carrier" has the meaning
764 given the term "common carrier" by 47 USCS 153(h) and shall also
765 mean a provider of communication services.

766 (c) "Contents," when used with respect to a wire, oral
767 or other communication, includes any information concerning the
768 identity of the parties to the communication or the existence,
769 substance, purport or meaning of that communication.

770 (d) "Covert entry" means any entry into or onto
771 premises which if made without a court order allowing such an
772 entry under this article would be a violation of criminal law.

773 (e) "Director" means the Director of the Bureau of
774 Narcotics or, if the director is absent or unable to serve, the
775 Assistant Director of the Bureau of Narcotics.

776 (f) "Electronic, mechanical or other device" means a
777 device or apparatus primarily designed or used for the
778 nonconsensual interception of wire, oral or other communications.

779 (g) "Intercept" means the aural or other acquisition of
780 the contents of a wire, oral or other communication through the
781 use of an electronic, mechanical or other device.

782 (h) "Investigative or law enforcement officer" means an
783 officer of this state or of a political subdivision of this state
784 who is empowered by law to conduct investigations of, or to make
785 arrests for, offenses enumerated in Section 41-29-505, * * * an

786 attorney authorized by law to prosecute or participate in the
787 prosecution of such offenses, or a federal law enforcement officer
788 designated by the director.

789 (i) "Judge of competent jurisdiction" means a justice
790 of the Supreme Court or a circuit court judge.

791 (j) "Oral communication" means an oral communication
792 uttered by a person exhibiting an expectation that the
793 communication is not subject to interception under circumstances
794 justifying that expectation.

795 (k) "Other communication" means any transfer of an
796 electronic or other signal, including fax signals, computer
797 generated signals, other similar signals, or any scrambled or
798 encrypted signal transferred via wire, radio, electromagnetic,
799 photoelectric or photooptical system from one party to another in
800 which the involved parties may reasonably expect the communication
801 to be private.

802 (l) "Prosecutor" means a district attorney with
803 jurisdiction in the county in which the facility or place where
804 the communication to be intercepted is located or a legal
805 assistant to the district attorney if designated in writing by the
806 district attorney on a case-by-case basis.

807 (m) "Residence" means a structure or the portion of a
808 structure used as a person's home or fixed place of habitation to
809 which the person indicates an intent to return after any temporary
810 absence.

811 (n) "Wire communication" means a communication made in
812 whole or in part through the use of facilities for the
813 transmission of communications by the aid of wire, cable or other
814 like connection between the point of origin and the point of
815 reception furnished or operated by a person engaged as a common
816 carrier in providing or operating the facilities for the
817 transmission of communications and includes cordless telephones,
818 voice pagers, cellular telephones, any mobile telephone, or any

819 communication conducted through the facilities of a provider of
820 communication services.

821 SECTION 7. (1) It is an affirmative defense to a criminal
822 charge that the person was entrapped. To claim entrapment, the
823 person must admit by the person's testimony or other evidence the
824 substantial elements of the offense charged.

825 (2) A person who asserts an entrapment defense has the
826 burden of proving each of the following by clear and convincing
827 evidence:

828 (a) The idea of committing the offense was initiated by
829 law enforcement officers or their agents rather than by the
830 person.

831 (b) The law enforcement officers or their agents urged
832 and induced the person to commit the offense.

833 (c) The person was not predisposed to commit the type
834 of offense charged before the law enforcement officers or their
835 agents urged and induced the person to commit the offense.

836 (3) A person does not establish entrapment if the person was
837 predisposed to commit the offense and the law enforcement officers
838 or their agents merely provided the person with an opportunity to
839 commit the offense. It is not entrapment for law enforcement
840 officers or their agents merely to use a ruse or to conceal their
841 identity, nor is it entrapment for law enforcement officers or
842 their agents to supply, furnish or sell contraband to an
843 individual where:

844 (a) There is a reasonable indication, based on
845 information developed through informants or other means, that the
846 subject is engaging, has engaged, or is likely to engage in
847 illegal activity of a similar type; or

848 (b) The opportunity for illegal activity has been
849 structured so that there is reason for believing that persons
850 drawn to the opportunity, or brought to it, are predisposed to
851 engage in the contemplated illegal activity.

852 (4) The issue of entrapment shall be tried by the trier of
853 fact. The conduct of law enforcement officers and their agents
854 may be considered in determining if a person has proven
855 entrapment.

856 **SECTION 8.** This act shall take effect and be in force from
857 and after July 1, 2005.