

By: Representative McBride

To: Ways and Means

HOUSE BILL NO. 1648

1 AN ACT TO BE KNOWN AS THE UNAUTHORIZED SUBSTANCE TAX ACT; TO
2 PROVIDE DEFINITIONS; TO LEVY AN EXCISE TAX ON UNAUTHORIZED
3 SUBSTANCES; TO PROVIDE EXEMPTIONS; TO PROVIDE FOR ISSUANCE OF TAX
4 STAMPS; TO REQUIRE PAYMENT OF THE TAX; TO AUTHORIZE COLLECTION OF
5 PENALTIES AND INTEREST; TO PROVIDE FOR CONFIDENTIALITY AND
6 IMMUNITY; TO CREATE A SPECIAL FUND AND PROVIDE FOR REMITTANCE OF
7 THE TAX; TO PROHIBIT IMMUNITY FROM CRIMINAL PROSECUTION; TO
8 AUTHORIZE PROMULGATION OF RULES AND REGULATIONS; AND FOR RELATED
9 PURPOSES.

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

11 **SECTION 1.** This act shall be known and may be cited as the
12 Unauthorized Substance Tax Act.

13 **SECTION 2.** The purpose of this act is to levy an excise tax
14 to generate revenue for state and local law enforcement agencies
15 for use by those agencies to investigate, combat, prevent and
16 reduce drug crimes, and for the State General Fund. Nothing in
17 this act may in any manner provide immunity from criminal
18 prosecution for a person who possesses an illegal substance.

19 **SECTION 3.** As used in this act, unless the context clearly
20 requires otherwise:

21 (a) "Commissioner" means the Commissioner of the State
22 Tax Commission.

23 (b) "Controlled substance" means a controlled substance
24 as defined in Section 41-29-105(f), and not included in
25 "low-street-value drugs."

26 (c) "Dealer" means any of the following:

27 (i) A person who actually or constructively
28 possesses more than forty-two and one-half (42-1/2) grams of
29 marijuana, seven (7) or more grams of any other unauthorized

30 substance that is sold by weight, or ten (10) or more dosage units
31 of any other unauthorized substance that is not sold by weight.

32 (ii) A person who, in violation of Title 67,
33 Chapter 1 of the Mississippi Code of 1972, possesses an illicit
34 alcoholic beverage for sale.

35 (d) "Illicit alcoholic beverage" means an alcoholic
36 beverage, as defined in Section 67-1-5, not authorized by Title
37 67, Chapter 1 of the Mississippi Code of 1972. "Illicit alcoholic
38 beverage" includes, but is not limited to, the products known as
39 "bootleg liquor," "moonshine," "nontax-paid liquor," and "white
40 liquor."

41 (e) "Local law enforcement agency" means a municipal
42 police department or a sheriff's office.

43 (f) "Low-street-value drug" means any of the following
44 controlled substances:

45 (i) An anabolic steroid described in Section
46 41-29-117(A)(f).

47 (ii) A depressant described in Section
48 41-29-119(A)(b).

49 (iii) A hallucinogenic substance described in
50 Section 41-29-113(c).

51 (iv) A stimulant described in Section
52 41-29-119(A)(d).

53 (v) A controlled substance described in Section
54 41-29-121.

55 (g) "Marijuana" means "marihuana" as defined in Section
56 41-29-105(r).

57 (h) "Person" means "person" as defined in Section
58 41-29-105(w).

59 (i) "State law enforcement agency" means the Department
60 of Public Safety, Department of Transportation enforcement
61 officers, Department of Wildlife, Fisheries and Parks, Attorney
62 General special investigators and Public Integrity Division

63 special investigators, Alcohol Beverage Control Division
64 enforcement officers, Department of Corrections officers,
65 Department of Marine Resources enforcement officers, and any other
66 state agency, force, department, or unit responsible for enforcing
67 criminal laws of the state.

68 (j) "Unauthorized substance" means a controlled
69 substance, a low-street-value drug or an illicit alcoholic
70 beverage.

71 **SECTION 4.** (1) An excise tax is levied on unauthorized
72 substances possessed, either actually or constructively, by
73 dealers at the following rates:

74 (a) At the rate of Forty Cents (40¢) for each gram, or
75 fraction thereof, of harvested marijuana stems and stalks that
76 have been separated from and are not mixed with any other parts of
77 the marijuana plant.

78 (b) At the rate of Three Dollars and Fifty Cents
79 (\$3.50) for each gram, or fraction thereof, of marijuana, other
80 than separated stems and stalks taxed under paragraph (a) of this
81 subsection.

82 (c) At the rate of Fifty Dollars (\$50.00) for each
83 gram, or fraction thereof, of cocaine.

84 (d) At the rate of Two Hundred Dollars (\$200.00) for
85 each gram, or fraction thereof, of any other controlled substance
86 or low-street-value drug that is sold by weight.

87 (e) At the rate of Fifty Dollars (\$50.00) for each ten
88 (10) dosage units, or fraction thereof, of any low-street-value
89 drug that is not sold by weight.

90 (f) At the rate of Two Hundred Dollars (\$200.00) for
91 each ten (10) dosage units, or fraction thereof, of any other
92 controlled substance that is not sold by weight.

93 (2) A quantity of marijuana or other unauthorized substance
94 is measured by the weight of the substance whether pure or impure
95 or dilute, or by the number of dosage units in the dealer's

96 possession when the substance is not sold by weight, in the
97 dealer's possession. A quantity of an unauthorized substance is
98 dilute if it consists of a detectable quantity of pure controlled
99 substance and any excipients or fillers.

100 (3) An excise tax is levied on illicit alcoholic beverages
101 possessed by a dealer at the following rates:

102 (a) At the rate of Thirty-one Dollars and Seventy Cents
103 (\$31.70) for each gallon, or fraction thereof, of illicit
104 alcoholic beverages sold by the drink.

105 (b) At the rate of Twelve Dollars and Eighty Cents
106 (\$12.80) for each gallon, or fraction thereof, of illicit
107 alcoholic beverages not sold by the drink.

108 **SECTION 5.** (1) The tax levied by this act does not apply to
109 a substance in the possession of a dealer who is authorized by law
110 to possess the substance. This exemption applies only during the
111 time the dealer's possession of the substance is authorized by
112 law.

113 (2) The tax levied by this act does not apply to the
114 following marijuana:

115 (a) Harvested mature marijuana stalks when separated
116 from and not mixed with any parts of the marijuana plant;

117 (b) Fiber or any other product of marijuana stalks
118 described in paragraph (a) of this subsection, except resin
119 extracted from the stalks;

120 (c) Marijuana seeds that have been sterilized and are
121 incapable of germination;

122 (d) Roots of the marijuana plant.

123 **SECTION 6.** (1) The commissioner shall issue stamps to affix
124 to unauthorized substances to indicate payment of the tax required
125 by this act. Dealers shall report the taxes payable under this
126 act at the time and on the form prescribed by the commissioner.
127 Dealers are not required to give their name, address, social
128 security number, or other identifying information on the form.

129 Upon payment of the tax, the commissioner shall issue stamps in an
130 amount equal to the amount of the tax paid. Taxes may be paid and
131 stamps may be issued either by mail or in person.

132 (2) Every local law enforcement agency and every state law
133 enforcement agency must report to the State Tax Commission within
134 forty-eight (48) hours after seizing an unauthorized substance, or
135 making an arrest of an individual in possession of an unauthorized
136 substance, listed in this subsection upon which a stamp has not
137 been affixed. The report must be in the manner prescribed by the
138 commissioner and must include the time and place of the arrest or
139 seizure, the amount, location, and kind of substance, the
140 identification of any individual in possession of the substance
141 and the individual's social security number, and any other
142 information prescribed by the commissioner. The report must be
143 made when the arrest or seizure involves any of the following
144 unauthorized substances upon which a stamp has not been affixed as
145 required by this act:

146 (a) More than Forty-two and One-half (42-1/2¢) grams of
147 marijuana.

148 (b) Any illicit alcoholic beverage.

149 (c) Seven (7) or more grams of any other unauthorized
150 substance that is sold by weight.

151 (d) Ten (10) or more dosage units of any other
152 unauthorized substance that is not sold by weight.

153 **SECTION 7.** The tax imposed by this act is payable by any
154 dealer who actually or constructively possesses an unauthorized
155 substance in this state upon which the tax has not been paid, as
156 evidenced by a stamp issued by the commissioner. The tax is
157 payable within forty-eight (48) hours after the dealer acquires
158 actual or constructive possession of a nontax paid unauthorized
159 substance, exclusive of Saturdays, Sundays, and legal holidays of
160 this state, in which case the tax is payable on the next working
161 day. If the tax is not paid within forty-eight (48) hours, the

162 tax will become delinquent and shall accrue penalty and interest
163 under the statutory provisions and regulations of the State Tax
164 Commission. Upon payment of the tax, the dealer shall permanently
165 affix the appropriate stamps to the unauthorized substance. Once
166 the tax due on an unauthorized substance has been paid, no
167 additional tax is due under this act even though the unauthorized
168 substance may be handled by other dealers. If a dealer is found
169 in possession of a substance taxable under this part that does not
170 have the appropriate tax stamp affixed, it shall be presumed the
171 dealer has been in possession of the substance for longer than
172 forty-eight (48) hours, exclusive of Saturdays, Sundays and legal
173 holidays of this state.

174 **SECTION 8.** Notwithstanding any other provision of law, an
175 assessment against a dealer who possesses an unauthorized
176 substance to which a stamp has not been affixed as required by
177 this act shall be made as provided in this section. The
178 commissioner shall immediately assess the tax, applicable penalty,
179 and interest based on any information brought to the attention of
180 the commissioner, or the commissioner's duly authorized
181 assistants, that a person is liable for unpaid tax under this act.
182 The tax shall be assessed in the same manner as any other tax
183 assessment, except when the provisions of this act specify
184 otherwise. The commissioner shall notify the dealer in writing of
185 the amount of the tax, penalty, and interest due, and demand its
186 immediate payment. The notice of assessment and demand for
187 payment shall be either mailed to the dealer at the dealer's last
188 known address or served on the dealer in person. If the dealer
189 does not pay the tax, penalty, and interest immediately upon
190 receipt of the notice and demand, the commissioner shall collect
191 the assessment, including penalty and interest, under the
192 procedure set forth in Sections 27-3-69 and 27-3-81, unless the
193 dealer files with the commissioner sufficient security in the
194 amount of the assessment, including penalty and interest. Unless

195 security is provided, the assessment shall be deemed a jeopardy
196 assessment, and the commissioner shall use all means available to
197 collect the assessment from any property in which the dealer has a
198 legal, equitable, or beneficial interest. The dealer may seek
199 review of the assessment as provided in Section 27-3-29 except to
200 the extent those provisions are modified by this act.

201 **SECTION 9.** Notwithstanding any other provision of law,
202 information obtained under this act is confidential and, unless
203 independently obtained, may not be used in a criminal prosecution
204 other than a prosecution for a violation of this act. Stamps
205 issued under this act may not be used in a criminal prosecution
206 other than a prosecution for a violation of this act. This
207 section does not prohibit the commissioner from publishing
208 statistics that do not disclose the identity of dealers or the
209 contents of particular returns or reports.

210 **SECTION 10.** (1) There is created in the State Treasury a
211 special fund to be known as the Unauthorized Substances Tax Fund.
212 The purpose of the fund shall be to provide funding for the
213 purposes set forth in this act. The fund shall consist of monies
214 deposited under this act and the interest accruing to the fund.
215 Any interest earned on monies in the fund shall be credited to the
216 fund, and any unexpended monies remaining in the fund at the end
217 of a fiscal year shall not lapse into the State General Fund.

218 (2) The commissioner shall deposit the proceeds of the tax
219 levied by this act into the special fund until the tax proceeds
220 are unencumbered. When the tax proceeds become unencumbered, the
221 commissioner shall remit the unencumbered tax proceeds as provided
222 in this section on a quarterly or more frequent basis. Tax
223 proceeds are unencumbered when:

224 (a) The tax has been paid and the collection process
225 completed; and

226 (b) (i) The taxpayer has no current right to file a
227 refund claim, and the paid tax is not the subject of any pending
228 lawsuit for the recovery of that tax; or

229 (ii) The time for the taxpayer to file suit has
230 expired.

231 (3) The commissioner shall first apply the unencumbered tax
232 proceeds to the costs of storing and disposing of the assets
233 seized in payment of the assessment under this act, which costs
234 shall be added to and become part of the assessment. From the
235 remaining proceeds, the commissioner shall remit seventy-five
236 percent (75%) of the unencumbered tax proceeds that were collected
237 by assessment to the state or local law enforcement agency that
238 conducted the investigation of a dealer that led to the
239 assessment. Those proceeds are to be used by the agency solely
240 for the purpose of investigating, combating, preventing, and
241 reducing drug crimes. If more than one (1) state or local law
242 enforcement agency conducted the investigation, the commissioner
243 shall determine the equitable share for each agency based on the
244 contribution each agency made to the investigation. The
245 commissioner's determination of the equitable share for each
246 agency shall be final, and shall not be subject to review in an
247 administrative or judicial proceeding. The commissioner shall
248 credit the remaining unencumbered tax proceeds to the State
249 General Fund.

250 **SECTION 11.** The provisions of this act shall not be
251 construed to confer any immunity from criminal prosecution or
252 conviction for a violation of the Uniform Controlled Substances
253 Law (Section 41-29-101 et seq.) or the Alcoholic Beverage Control
254 Law (Section 67-1-1 et seq.) upon any person who voluntarily pays
255 the tax imposed by this part or who otherwise complies with the
256 provisions of this act.

257 **SECTION 12.** The commissioner shall have the authority to
258 promulgate rules and regulations in accordance with the

259 Mississippi Administrative Procedures Law to implement, administer
260 and enforce the provisions of this act.

261 **SECTION 13.** This act shall take effect and be in force from
262 and after July 1, 2006.