

By: Senator(s) Albritton

To: Finance

SENATE BILL NO. 2710

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

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

11 **SECTION 1. Purpose.** The purpose of this act is to levy an
 12 excise tax to generate revenue for state and local law enforcement
 13 agencies for use by those agencies to investigate, combat, prevent
 14 and reduce drug crimes, and for the general fund. Nothing in this
 15 act shall in any manner provide immunity from criminal prosecution
 16 for a person who possesses an illegal substance.

17 **SECTION 2. Definitions.** The following words and phrases
 18 shall have the following meanings, unless the context otherwise
 19 requires:

20 (a) "Commissioner" means the commissioner of the
 21 Mississippi State Tax Commission.

22 (b) "Local law enforcement agency" means any municipal
 23 police department, sheriff's office or regional drug task force.

24 (c) "State law enforcement agency" means the Department
 25 of Public Safety, Department of Transportation enforcement
 26 officers, Department of Wildlife, Fisheries and Parks, Attorney
 27 General special investigators and Public Integrity Division
 28 special investigators, Alcohol Beverage Control enforcement
 29 officers, Department of Corrections officers and Department of
 30 Marine Resources enforcement officers.

31 (d) "Dealer" means any person who actually or
32 constructively possesses more than thirty (30) grams of marijuana,
33 two (2) or more grams of any other unauthorized substance that is
34 sold by weight, or ten (10) or more dosage units of any other
35 unauthorized substance that is not sold by weight.

36 (e) "Unauthorized substance" means a controlled
37 substance as used in Title 41, Chapter 29, Article 3 (Uniform
38 Controlled Substances Law).

39 (f) "Controlled substance" as defined in Section
40 41-29-105(f);

41 (g) "Counterfeit substance" as defined in Section
42 41-29-105(g);

43 (h) "Hashish" as defined in Section 41-29-105(o);

44 (i) "Marijuana" as defined in Section 41-29-105(r);

45 (j) "Narcotic drug" as defined in Section
46 41-29-105(s)(1), (2), (3) and (4);

47 (k) "Opiate" as defined in Section 41-29-105(t);

48 (l) "Opium poppy" as defined in Section 41-29-105(u);

49 (m) "Poppy straw" as defined in Section 41-29-105(x);

50 (n) "Person" as defined in Section 41-29-105(w).

51 **SECTION 3. Unauthorized substance tax rates.** An excise tax
52 is levied on unauthorized substances possessed, either actually or
53 constructively, by dealers at the following rates:

54 (1) On each gram of marijuana, or fraction of a gram,
55 Seven Dollars (\$7.00);

56 (2) On each gram of controlled substance, or fraction
57 of a gram, Two Hundred Dollars (\$200.00);

58 (3) On each fifty (50) dosage units of a controlled
59 substance that is not sold by weight, or fraction of fifty (50)
60 dosage units, Two Hundred Dollars (\$200.00)

61 **SECTION 4. Exemptions.** (1) The tax levied in this act does
62 not apply to any material, compound, mixture, or preparation which

63 contains any quantity of a controlled substance that is listed as
64 an exempt substance in 21 CFR, Section 1308.22.

65 (2) The tax levied in this act does not apply to any
66 governmental entity involved in research.

67 **SECTION 5. Issuance of stamps to indicate payment of tax;**
68 **report of seizure of unauthorized substances.** (1) The

69 commissioner shall issue stamps to affix to unauthorized
70 substances to indicate payment of the tax required by this act.
71 Dealers shall report the taxes payable under this act at the time
72 and on the form prescribed by the commissioner. Dealers are not
73 required to give their name, address, social security number, or
74 other identifying information on the form. Upon payment of the
75 tax, the commissioner shall issue stamps in an amount equal to the
76 amount of the tax paid. Taxes may be paid and stamps may be
77 issued either by mail or in person.

78 (2) Every local law enforcement agency and every state law
79 enforcement agency must report to the State Tax Commission within
80 forty-eight (48) hours after seizing an unauthorized substance, or
81 making an arrest of an individual in possession of an unauthorized
82 substance, listed in this subsection (2) upon which a stamp has
83 not been affixed unless the seizure is a part of an ongoing
84 undercover operation. The report must be in the manner prescribed
85 by the commissioner and must include the time and place of the
86 arrest or seizure, the amount, location, and kind of substance,
87 the identification of any individual in possession of the
88 substance and such individual's social security number, and any
89 other information prescribed by the commissioner. The report must
90 be made when the arrest or seizure involves any of the following
91 unauthorized substances upon which a stamp has not been affixed as
92 required by this part:

93 (a) More than total weight of thirty (30) grams of
94 marijuana;

95 (b) Two (2) or more grams of any other unauthorized
96 substance that is sold by weight; or

97 (c) Ten (10) or more dosage units of any other
98 unauthorized substance that is not sold by weight.

99 **SECTION 6. Payment of tax.** The tax imposed by this act is
100 payable by any dealer who actually or constructively possesses an
101 unauthorized substance in this state upon which the tax has not
102 been paid as evidenced by a stamp issued by the commissioner. The
103 tax is payable within twenty-four (24) hours after the dealer
104 acquires actual or constructive possession of a non-tax-paid
105 unauthorized substance, exclusive of Saturdays, Sundays, and legal
106 holidays of this state, in which case the tax is payable on the
107 next working day. If the tax is not paid within twenty-four (24)
108 hours, the tax will become delinquent and shall accrue penalty and
109 interest pursuant to the provisions and regulations of the tax
110 commission. Upon payment of the tax, the dealer shall permanently
111 affix the appropriate stamps to the unauthorized substance. Once
112 the tax due on an unauthorized substance has been paid, no
113 additional tax is due under this act. If a dealer is found in
114 possession of a substance taxable under this act that does not
115 have the appropriate tax stamp affixed, it shall be presumed the
116 dealer has been in possession of such substance for longer than
117 twenty-four (24) hours, exclusive of Saturdays, Sundays, and legal
118 holidays of this state.

119 **SECTION 7. Assessment of tax, penalties and interests and**
120 **notice of collection.** Notwithstanding any other provision of law,
121 an assessment against a dealer who possesses an unauthorized
122 substance to which a stamp has not been affixed as required by
123 this act shall be made as provided in this section. The
124 commissioner shall immediately assess tax, applicable penalty, and
125 interest based on any information brought to the attention of the
126 commissioner, or the commissioner's duly authorized assistants,
127 that a person is liable for unpaid tax pursuant to this act. The

128 tax shall be assessed in the same manner as any other tax
129 assessment, except when the provisions of this act specify
130 otherwise. The commissioner shall notify the dealer in writing of
131 the amount of the tax, penalty, and interest due, and demand its
132 immediate payment. The notice of assessment and demand for
133 payment shall be either mailed to the dealer at the dealer's last
134 known address or served on the dealer in person. If the dealer
135 does not pay the tax, penalty, and interest immediately upon
136 receipt of the notice and demand, the commissioner shall collect
137 the assessment, including penalty and interest, pursuant to the
138 procedure set forth in Sections 27-3-69 and 27-3-81, unless the
139 dealer files with the commissioner sufficient security in the
140 amount of the assessment, including penalty and interest. Unless
141 security is provided, the assessment shall be deemed a delinquent
142 assessment, and the commissioner shall use all means available to
143 collect the assessment from any property in which the dealer has a
144 legal, equitable, or beneficial interest. The dealer may seek
145 review of the assessment as provided in Section 27-3-29 except to
146 the extent those provisions are modified by this act. The
147 commissioner is further authorized under this act to pursue
148 criminal tax evasion proceedings against a dealer under Sections
149 27-3-79 and 27-3-80.

150 **SECTION 8. Confidentiality, immunity and statistics.**

151 Notwithstanding any other provision of law, information obtained
152 pursuant to this act is confidential and, unless independently
153 obtained, may not be used in a criminal prosecution other than a
154 prosecution for violation of this act. Stamps issued pursuant to
155 this act may not be used in a criminal prosecution other than a
156 prosecution for a violation of this act. The provisions of this
157 act including the criminal penalties specified therein, shall
158 apply to the tax levied under this act. This section does not
159 prohibit the commissioner from publishing statistics that do not

160 disclose the identity of dealers or the contents of particular
161 returns or reports.

162 **SECTION 9. Unauthorized Substances Tax Fund; remittance of**
163 **tax once unencumbered; application of proceeds of tax.** (1) There
164 is created in the State Treasury a special fund to be known as the
165 Unauthorized Substances Tax Fund. The purpose of the fund shall
166 be to provide funding for the purposes set forth in Section 1 of
167 this act. The fund shall be a continuing fund, not subject to
168 fiscal-year limitations, and shall consist of:

169 (a) Monies deposited pursuant to this act; and

170 (b) The interest accruing to the fund;

171 When the tax proceeds become unencumbered the commissioner
172 shall remit the unencumbered tax proceeds as provided in this
173 section on a quarterly or more frequent basis.

174 (2) (a) Tax proceeds are unencumbered when:

175 (i) The tax has been paid and the collection
176 process completed; and

177 (ii) 1. The taxpayer has no current right to file
178 a refund claim, and the paid tax is not the subject of any pending
179 lawsuit for the recovery of that tax; or

180 2. The time for the taxpayer to file suit
181 pursuant to rules and regulations of the Tax Commission has
182 expired.

183 (b) Legally purchased tax stamps shall be deposited
184 into the State General Fund.

185 (c) The commissioner shall first apply the unencumbered
186 tax proceeds to the costs of storing and disposing of the assets
187 seized in payment of the assessment under this act, which costs
188 shall be added to and become part of the assessment. From the
189 remaining proceeds, the commissioner shall remit fifty percent
190 (50%) of the unencumbered tax proceeds that were collected by
191 assessment to the local or state law enforcement agency that
192 conducted the investigation of a dealer that led to the

193 assessment. Twenty-five percent (25%) of any such amount remitted
194 to a local law enforcement agency shall be deposited to the
195 general fund of the county or municipality of the local law
196 enforcement jurisdiction. Proceeds retained by a law enforcement
197 agency are to be used by the agency solely for the purpose of
198 investigating, combating, preventing, and reducing drug crimes.
199 If more than one (1) local or state law enforcement agency
200 conducted the investigation, the commissioner shall determine the
201 equitable share for each agency based on the contribution each
202 agency made to the investigation. The commissioner's
203 determination of the equitable share for each agency shall be
204 final, and shall not be subject to review in an administrative or
205 judicial proceeding. Ten percent (10%) shall be remitted to the
206 Department of Public Safety for the purposes of creating,
207 operating and maintaining a Statewide Automated Victim Information
208 and Notification (SAVIN) system. The commissioner shall credit
209 the remaining forty percent (40%) of the unencumbered tax proceeds
210 to the general fund.

211 **SECTION 10. Construction.** The provisions of this act shall
212 not be construed to confer any immunity from criminal prosecution
213 or conviction for a violation or possession of an unauthorized
214 substance as defined in Section 41-29-139 upon any person who
215 voluntarily pays the tax imposed by this act or who otherwise
216 complies with the provisions of this act.

217 **SECTION 11. Rules and regulations.** The commissioner shall
218 have the authority to promulgate and adopt rules and regulations
219 and policy in accordance with the Mississippi Administrative
220 Procedures Law to implement, administer and enforce the provisions
221 of this act.

222 **SECTION 12.** This act shall take effect and be in force on
223 July 1, 2006.