

By: Representative Bell (65th)

To: Drug Policy

HOUSE BILL NO. 1090

1 AN ACT TO AMEND SECTION 41-29-105, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE DEFINITION OF THE TERM "PARAPHERNALIA" UNDER THE  
3 UNIFORM CONTROLLED SUBSTANCES LAW TO EXCLUDE ANY MATERIALS USED OR  
4 INTENDED FOR USE IN TESTING FOR THE PRESENCE OF OTHER EMERGING OR  
5 EXISTING DRUG THREATS OF CONCERN TO PUBLIC HEALTH AS IDENTIFIED BY  
6 THE STATE DEPARTMENT OF HEALTH; AND FOR RELATED PURPOSES.

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

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

10 41-29-105. The following words and phrases, as used in this  
11 article, shall have the following meanings, unless the context  
12 otherwise requires:

13 (a) "Administer" means the direct application of a  
14 controlled substance, whether by injection, inhalation, ingestion  
15 or any other means, to the body of a patient or research subject  
16 by:

17 (i) A practitioner (or, in his presence, by his  
18 authorized agent); or

19 (ii) The patient or research subject at the  
20 direction and in the presence of the practitioner.



21           (b) "Agent" means an authorized person who acts on  
22 behalf of or at the direction of a manufacturer, distributor or  
23 dispenser. Such word does not include a common or contract  
24 carrier, public warehouseman or employee of the carrier or  
25 warehouseman. This definition shall not be applied to the term  
26 "agent" when such term clearly designates a member or officer of  
27 the Bureau of Narcotics or other law enforcement organization.

28           (c) "Board" means the Mississippi State Board of  
29 Medical Licensure.

30           (d) "Bureau" means the Mississippi Bureau of Narcotics.  
31 However, where the title "Bureau of Drug Enforcement" occurs, that  
32 term shall also refer to the Mississippi Bureau of Narcotics.

33           (e) "Commissioner" means the Commissioner of the  
34 Department of Public Safety.

35           (f) "Controlled substance" means a drug, substance or  
36 immediate precursor in Schedules I through V of Sections 41-29-113  
37 through 41-29-121.

38           (g) "Counterfeit substance" means a controlled  
39 substance which, or the container or labeling of which, without  
40 authorization, bears the trademark, trade name, or other  
41 identifying mark, imprint, number or device, or any likeness  
42 thereof, of a manufacturer, distributor or dispenser other than  
43 the person who in fact manufactured, distributed or dispensed the  
44 substance.



45 (h) "Deliver" or "delivery" means the actual,  
46 constructive, or attempted transfer from one person to another of  
47 a controlled substance, whether or not there is an agency  
48 relationship.

49 (i) "Director" means the Director of the Bureau of  
50 Narcotics.

51 (j) "Dispense" means to deliver a controlled substance  
52 to an ultimate user or research subject by or pursuant to the  
53 lawful order of a practitioner, including the prescribing,  
54 administering, packaging, labeling or compounding necessary to  
55 prepare the substance for that delivery.

56 (k) "Dispenser" means a practitioner who dispenses.

57 (l) "Distribute" means to deliver other than by  
58 administering or dispensing a controlled substance.

59 (m) "Distributor" means a person who distributes.

60 (n) "Drug" means (i) a substance recognized as a drug  
61 in the official United States Pharmacopoeia, official Homeopathic  
62 Pharmacopoeia of the United States, or official National  
63 Formulary, or any supplement to any of them; (ii) a substance  
64 intended for use in the diagnosis, cure, mitigation, treatment, or  
65 prevention of disease in man or animals; (iii) a substance (other  
66 than food) intended to affect the structure or any function of the  
67 body of man or animals; and (iv) a substance intended for use as a  
68 component of any article specified in this paragraph. Such word



69 does not include devices or their components, parts, or  
70 accessories.

71 (o) "Hashish" means the resin extracted from any part  
72 of the plants of the genus Cannabis and all species thereof or any  
73 preparation, mixture or derivative made from or with that resin.

74 (p) "Immediate precursor" means a substance which the  
75 board has found to be and by rule designates as being the  
76 principal compound commonly used or produced primarily for use,  
77 and which is an immediate chemical intermediary used or likely to  
78 be used in the manufacture of a controlled substance, the control  
79 of which is necessary to prevent, curtail, or limit manufacture.

80 (q) "Manufacture" means the production, preparation,  
81 propagation, compounding, conversion or processing of a controlled  
82 substance, either directly or indirectly, by extraction from  
83 substances of natural origin, or independently by means of  
84 chemical synthesis, or by a combination of extraction and chemical  
85 synthesis, and includes any packaging or repackaging of the  
86 substance or labeling or relabeling of its container. The term  
87 "manufacture" does not include the preparation, compounding,  
88 packaging or labeling of a controlled substance in conformity with  
89 applicable state and local law:

90 (i) By a practitioner as an incident to his  
91 administering or dispensing of a controlled substance in the  
92 course of his professional practice; or



93 (ii) By a practitioner, or by his authorized agent  
94 under his supervision, for the purpose of, or as an incident to,  
95 research, teaching or chemical analysis and not for sale.

96 (r) "Marijuana" means all parts of the plant of the  
97 genus Cannabis and all species thereof, whether growing or not,  
98 the seeds thereof, and every compound, manufacture, salt,  
99 derivative, mixture or preparation of the plant or its seeds,  
100 excluding hashish.

101 The term "marijuana" does not include "hemp" as defined in  
102 and regulated by Sections 69-25-201 through 69-25-221.

103 (s) "Narcotic drug" means any of the following, whether  
104 produced directly or indirectly by extraction from substances of  
105 vegetable origin, or independently by means of chemical synthesis,  
106 or by a combination of extraction and chemical synthesis:

107 (i) Opium and opiate, and any salt, compound,  
108 derivative or preparation of opium or opiate;

109 (ii) Any salt, compound, isomer, derivative or  
110 preparation thereof which is chemically equivalent or identical  
111 with any of the substances referred to in subparagraph (i), but  
112 not including the isoquinoline alkaloids of opium;

113 (iii) Opium poppy and poppy straw; and

114 (iv) Cocaine, coca leaves and any salt, compound,  
115 derivative or preparation of cocaine, coca leaves, and any salt,  
116 compound, isomer, derivative or preparation thereof which is  
117 chemically equivalent or identical with any of these substances,



118 but not including decocainized coca leaves or extractions of coca  
119 leaves which do not contain cocaine or ecgonine.

120 (t) "Opiate" means any substance having an  
121 addiction-forming or addiction-sustaining liability similar to  
122 morphine or being capable of conversion into a drug having  
123 addiction-forming or addiction-sustaining liability. It does not  
124 include, unless specifically designated as controlled under  
125 Section 41-29-111, the dextrorotatory isomer of  
126 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).  
127 Such word does include its racemic and levorotatory forms.

128 (u) "Opium poppy" means the plant of the species  
129 *Papaver somniferum* L., except its seeds.

130 (v) (i) "Paraphernalia" means all equipment, products  
131 and materials of any kind which are used, intended for use, or  
132 designed for use, in planting, propagating, cultivating, growing,  
133 harvesting, manufacturing, compounding, converting, producing,  
134 processing, preparing, testing, analyzing, packaging, repackaging,  
135 storing, containing, concealing, injecting, ingesting, inhaling or  
136 otherwise introducing into the human body a controlled substance  
137 in violation of the Uniform Controlled Substances Law. It  
138 includes, but is not limited to:

139 1. Kits used, intended for use, or designed  
140 for use in planting, propagating, cultivating, growing or  
141 harvesting of any species of plant which is a controlled substance  
142 or from which a controlled substance can be derived;



143                   2. Kits used, intended for use, or designed  
144 for use in manufacturing, compounding, converting, producing,  
145 processing or preparing controlled substances;

146                   3. Isomerization devices used, intended for  
147 use or designed for use in increasing the potency of any species  
148 of plant which is a controlled substance;

149                   4. Testing equipment used, intended for use,  
150 or designed for use in identifying or in analyzing the strength,  
151 effectiveness or purity of controlled substances;

152                   5. Scales and balances used, intended for use  
153 or designed for use in weighing or measuring controlled  
154 substances;

155                   6. Diluents and adulterants, such as quinine  
156 hydrochloride, mannitol, mannite, dextrose and lactose, used,  
157 intended for use or designed for use in cutting controlled  
158 substances;

159                   7. Separation gins and sifters used, intended  
160 for use or designed for use in removing twigs and seeds from, or  
161 in otherwise cleaning or refining, marijuana;

162                   8. Blenders, bowls, containers, spoons and  
163 mixing devices used, intended for use or designed for use in  
164 compounding controlled substances;

165                   9. Capsules, balloons, envelopes and other  
166 containers used, intended for use or designed for use in packaging  
167 small quantities of controlled substances;



168                   10. Containers and other objects used,  
169 intended for use or designed for use in storing or concealing  
170 controlled substances;

171                   11. Hypodermic syringes, needles and other  
172 objects used, intended for use or designed for use in parenterally  
173 injecting controlled substances into the human body;

174                   12. Objects used, intended for use or  
175 designed for use in ingesting, inhaling or otherwise introducing  
176 marijuana, cocaine, hashish or hashish oil into the human body,  
177 such as:

178                   a. Metal, wooden, acrylic, glass, stone,  
179 plastic or ceramic pipes with or without screens, permanent  
180 screens, hashish heads or punctured metal bowls;

181                   b. Water pipes;

182                   c. Carburetion tubes and devices;

183                   d. Smoking and carburetion masks;

184                   e. Roach clips, meaning objects used to  
185 hold burning material, such as a marijuana cigarette, that has  
186 become too small or too short to be held in the hand;

187                   f. Miniature cocaine spoons and cocaine  
188 vials;

189                   g. Chamber pipes;

190                   h. Carburetor pipes;

191                   i. Electric pipes;

192                   j. Air-driven pipes;





- 193 k. Chillums;  
194 l. Bongs; and  
195 m. Ice pipes or chillers.

196 (ii) In determining whether an object is  
197 paraphernalia, a court or other authority should consider, in  
198 addition to all other logically relevant factors, the following:

- 199 1. Statements by an owner or by anyone in  
200 control of the object concerning its use;
- 201 2. Prior convictions, if any, of an owner, or  
202 of anyone in control of the object, under any state or federal law  
203 relating to any controlled substance;
- 204 3. The proximity of the object, in time and  
205 space, to a direct violation of the Uniform Controlled Substances  
206 Law;
- 207 4. The proximity of the object to controlled  
208 substances;
- 209 5. The existence of any residue of controlled  
210 substances on the object;
- 211 6. Direct or circumstantial evidence of the  
212 intent of an owner, or of anyone in control of the object, to  
213 deliver it to persons whom he knows, or should reasonably know,  
214 intend to use the object to facilitate a violation of the Uniform  
215 Controlled Substances Law; the innocence of an owner, or of anyone  
216 in control of the object, as to a direct violation of the Uniform



217 Controlled Substances Law shall not prevent a finding that the  
218 object is intended for use, or designed for use as paraphernalia;

219           7. Instructions, oral or written, provided  
220 with the object concerning its use;

221           8. Descriptive materials accompanying the  
222 object which explain or depict its use;

223           9. National and local advertising concerning  
224 its use;

225           10. The manner in which the object is  
226 displayed for sale;

227           11. Whether the owner or anyone in control of  
228 the object is a legitimate supplier of like or related items to  
229 the community, such as a licensed distributor or dealer of tobacco  
230 products;

231           12. Direct or circumstantial evidence of the  
232 ratio of sales of the object(s) to the total sales of the business  
233 enterprise;

234           13. The existence and scope of legitimate  
235 uses for the object in the community;

236           14. Expert testimony concerning its use.

237           (iii) "Paraphernalia" does not include any  
238 materials used or intended for use in testing for the presence of  
239 fentanyl or a fentanyl analog in a substance, or other emerging or  
240 existing drug threats of concern to public health as identified by  
241 the State Department of Health.



242 (w) "Person" means individual, corporation, government  
243 or governmental subdivision or agency, business trust, estate,  
244 trust, partnership or association, or any other legal entity.

245 (x) "Poppy straw" means all parts, except the seeds, of  
246 the opium poppy, after mowing.

247 (y) "Practitioner" means:

248 (i) A physician, dentist, veterinarian, scientific  
249 investigator, optometrist certified to prescribe and use  
250 therapeutic pharmaceutical agents under Sections 73-19-153 through  
251 73-19-165, or other person licensed, registered or otherwise  
252 permitted to distribute, dispense, conduct research with respect  
253 to or to administer a controlled substance in the course of  
254 professional practice or research in this state; and

255 (ii) A pharmacy, hospital or other institution  
256 licensed, registered, or otherwise permitted to distribute,  
257 dispense, conduct research with respect to or to administer a  
258 controlled substance in the course of professional practice or  
259 research in this state.

260 (z) "Production" includes the manufacture, planting,  
261 cultivation, growing or harvesting of a controlled substance.

262 (aa) "Sale," "sell" or "selling" means the actual,  
263 constructive or attempted transfer or delivery of a controlled  
264 substance for remuneration, whether in money or other  
265 consideration.



266 (bb) "State," when applied to a part of the United  
267 States, includes any state, district, commonwealth, territory,  
268 insular possession thereof, and any area subject to the legal  
269 authority of the United States of America.

270 (cc) "Ultimate user" means a person who lawfully  
271 possesses a controlled substance for his own use or for the use of  
272 a member of his household or for administering to an animal owned  
273 by him or by a member of his household.

274 **SECTION 2.** This act shall take effect and be in force from  
275 and after July 1, 2024.

