

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1090: Paraphernalia; revise definition under the Uniform Controlled Substances Law.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 (iii) Opium poppy and poppy straw; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

182 b. Water pipes;

183 c. Carburetion tubes and devices;

184 d. Smoking and carburetion masks;

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

188 f. Miniature cocaine spoons and cocaine
189 vials;

190 g. Chamber pipes;

191 h. Carburetor pipes;

192 i. Electric pipes;

193 j. Air-driven pipes;

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

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

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

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

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

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

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

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

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

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

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

237 14. Expert testimony concerning its use.

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

243 identified by the State Department of Health and approved by the
244 State Board of Health.

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

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

250 (y) "Practitioner" means:

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

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

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

265 (aa) "Sale," "sell" or "selling" means the actual,
266 constructive or attempted transfer or delivery of a controlled

267 substance for remuneration, whether in money or other
268 consideration.

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

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

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 APPROVED BY THE STATE BOARD OF
7 HEALTH; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

X (SIGNED)
Hobgood-Wilkes

X (SIGNED)
Turner-Ford

X (SIGNED)
Bell (65th)

X (SIGNED)
Boyd

X (SIGNED)
Burch

X (SIGNED)
Sparks