

5/12/16

8:33 A.M.

Chapter No. 482
16/SS26/R40SG
LR 15B/RR

SENATE BILL NO. 2169

Originated in Senate L. Welch Secretary

SENATE BILL NO. 2169

AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR SALE OF CONTROLLED SUBSTANCES; TO AMEND SECTION 41-29-149.1, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE MISSISSIPPI MEDICAL EMERGENCY GOOD SAMARITAN ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-29-139, Mississippi Code of 1972, is amended as follows:

41-29-139. (a) Transfer and possession with intent to transfer. Except as authorized by this article, it is unlawful for any person knowingly or intentionally:

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

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

(b) Punishment for transfer and possession with intent to transfer. Except as otherwise provided in Section 41-29-142, any

person who violates subsection (a) of this section * * * shall be, if convicted, sentenced as follows:

(1) * * * For controlled substances classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, * * * other than marijuana or synthetic cannabinoids * * *:

(A) If less than two (2) grams or ten (10) dosage units, * * * by imprisonment for not more than eight (8) years or * * * a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both.

(B) If two (2) or more grams or ten (10) or more dosage units * * *, but less than ten (10) grams or twenty (20) dosage units, * * * by imprisonment for not less than three (3) years nor more than twenty (20) years or * * * a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both.

(C) If ten (10) or more grams or twenty (20) or more dosage units * * *, but less than thirty (30) grams or forty (40) dosage units, * * * by imprisonment for not less than five (5) years nor more than thirty (30) years or * * * a fine of not more than Five Hundred Thousand Dollars (\$500,000.00), or both.

(2) * * * (A) For marijuana * * *:

1. If thirty (30) grams or less, by imprisonment for not more than three (3) years or a fine of not more than Three Thousand Dollars (\$3,000.00), or both;

2. If more than thirty (30) grams but less than two hundred fifty (250) grams, by imprisonment for not more than five (5) years or a fine of not more than Five Thousand Dollars (\$5,000.00), or both;

3. If two hundred fifty (250) or more grams but less than five hundred (500) grams, by imprisonment for not less than three (3) years nor more than ten (10) years or a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or both;

4. If five hundred (500) or more grams but less than one (1) kilogram, by imprisonment for not less than five (5) years nor more than twenty (20) years or a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.

* * *

(B) For synthetic cannabinoids:

1. If ten (10) grams or less, by imprisonment for not more than three (3) years or a fine of not more than Three Thousand Dollars (\$3,000.00), or both;

2. If more than ten (10) grams but less than twenty (20) grams, by imprisonment for not more than five (5) years or a fine of not more than Five Thousand Dollars (\$5,000.00), or both;

3. If twenty (20) or more grams but less than forty (40) grams, by imprisonment for not less than three (3) years nor more than ten (10) years or a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or both;

4. If forty (40) or more grams but less than two hundred (200) grams, by imprisonment for not less than five (5) years nor more than twenty (20) years or a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.

(* * *3) * * * For controlled substances classified in Schedules III and IV, as set out in Sections 41-29-117 and 41-29-119 * * *:

(A) If less than two (2) grams or ten (10) dosage units, * * * by imprisonment for not more than * * * five (5) years or * * * a fine of not more than Five Thousand Dollars (\$5,000.00), or both;

(B) If two (2) or more grams or ten (10) or more dosage units * * *, but less than ten (10) grams or twenty (20) dosage units, * * * by imprisonment for not more than eight (8) years or * * * a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both;

(C) If ten (10) or more grams or twenty (20) or more dosage units * * *, but less than thirty (30) grams or forty (40) dosage units, * * * by imprisonment for not more than fifteen (15) years or * * * a fine of not more than One Hundred Thousand Dollars (\$100,000.00) * * *, or both;

(D) If thirty (30) or more grams or forty (40) or more dosage units, but less than five hundred (500) grams or two thousand five hundred (2,500) dosage units, by imprisonment for

not more than twenty (20) years or a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both.

(* * *4) * * * For controlled substances classified in Schedule V, as set out in Section 41-29-121 * * *:

(A) If less than two (2) grams or ten (10) dosage units, * * * by imprisonment for not more than one (1) year or * * * a fine of not more than Five Thousand Dollars (\$5,000.00), or both;

(B) If two (2) or more grams or ten (10) or more dosage units * * *, but less than ten (10) grams or twenty (20) dosage units, * * * by imprisonment for not more than five (5) years or * * * a fine of not more than Ten Thousand Dollars (\$10,000.00), or both;

(C) If ten (10) or more grams or twenty (20) or more dosage units * * *, but less than thirty (30) grams or forty (40) dosage units, * * * by imprisonment for not more than ten (10) years or * * * a fine of not more than Twenty Thousand Dollars (\$20,000.00) * * *, or both;

(D) For thirty (30) or more grams or forty (40) or more dosage units, but less than five hundred (500) grams or two thousand five hundred (2,500) dosage units, by imprisonment for not more than fifteen (15) years or a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both.

(c) Simple possession. It is unlawful for any person knowingly or intentionally to possess any controlled substance

unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article. The penalties for any violation of this subsection (c) with respect to a controlled substance classified in Schedules I, II, III, IV or V, as set out in Section 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including marijuana or synthetic cannabinoids, shall be based on dosage unit as defined herein or the weight of the controlled substance as set forth herein as appropriate:

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

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

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

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

* * * A person * * * shall be charged and sentenced as follows for a violation of this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, except marijuana * * * and synthetic cannabinoids * * *:

(A) If less than one-tenth (0.1) gram or two (2) dosage units * * *, the violation is a misdemeanor and * * * punishable by imprisonment for * * * not more than one (1) year or * * * a fine of not more than One Thousand Dollars (\$1,000.00), or both.

(B) If one-tenth (0.1) gram or more or two (2) or more dosage units * * *, but less than two (2) grams or ten (10) dosage units, * * * by imprisonment for not more than three (3) years or a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both.

(C) If two (2) or more grams or ten (10) or more dosage units * * *, but less than ten (10) grams or twenty (20) dosage units, * * * by imprisonment for not more than eight (8) years * * * or a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both.

(D) If ten (10) or more grams or twenty (20) or more dosage units * * *, but less than thirty (30) grams or forty (40) dosage units, * * * by imprisonment for not less than three (3) years nor more than twenty (20) years * * * or a fine of not more than Five Hundred Thousand Dollars (\$500,000.00), or both.

(2) (A) Marijuana * * * and synthetic
cannabinoids * * *:

* * *1. If thirty (30) grams or less of marijuana or ten (10) grams or less of synthetic cannabinoids, by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00). The provisions of this paragraph (2) (A) * * * may be enforceable by summons * * * if the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this section within two (2) years * * * is a misdemeanor punishable by a fine of Two Hundred Fifty Dollars (\$250.00) * * *, not more than sixty (60) days in the county jail, and mandatory participation in a drug education program * * * approved by the Division of Alcohol and Drug Abuse of the State Department of Mental Health, unless the court enters a written finding that * * * a drug education program is inappropriate. A third or subsequent conviction under this * * * paragraph (2) (A) within two (2) years is a misdemeanor punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than * * * One Thousand Dollars (\$1,000.00) and confinement for not * * * more than six (6) months in the county jail.

Upon a first or second conviction under this * * * paragraph (2) (A), the courts shall forward a report of * * * the conviction to the Mississippi Bureau of Narcotics which shall make and

maintain a private, nonpublic record for a period not to exceed two (2) years from the date of conviction. The private, nonpublic record shall be solely for the use of the courts in determining the penalties which attach upon conviction under this * * * paragraph (2)(A) and shall not constitute a criminal record for the purpose of private or administrative inquiry and the record of each conviction shall be expunged at the end of the period of two (2) years following the date of such conviction;

* * * 2. Additionally, a person who is the operator of a motor vehicle, who possesses on his person or knowingly keeps or allows to be kept in a motor vehicle within the area of the vehicle normally occupied by the driver or passengers, more than one (1) gram, but not more than thirty (30) grams * * * of marijuana or not more than ten (10) grams of synthetic cannabinoids is guilty of a misdemeanor and, upon conviction, may be fined not more than One Thousand Dollars (\$1,000.00) * * * or confined for not more than ninety (90) days in the county jail, or both. For the purposes of this subsection, such area of the vehicle shall not include the trunk of the motor vehicle or the areas not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers;

(B) Marijuana:

* * *1. If more than thirty (30) grams but less than two hundred fifty (250) grams * * *, by a fine of not more than One Thousand Dollars (\$1,000.00), or * * * confinement in the county jail for not more than one (1) year, or both; or * * * by a fine of not more than Three Thousand Dollars (\$3,000.00), or * * * imprisonment in the * * * custody of the Department of Corrections for not more than three (3) years, or both;

* * *2. If two hundred fifty (250) or more grams but less than five hundred (500) grams, by imprisonment for not less than two (2) years nor more than eight (8) years or by a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both;

* * *3. If five hundred (500) or more grams but less than one (1) kilogram, by imprisonment for not less than four (4) years nor more than sixteen (16) years or a fine of * * * not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

* * *4. If one (1) kilogram or more but less than five (5) kilograms, by imprisonment for not less than six (6) years nor more than twenty-four (24) years or a fine of not more than Five Hundred Thousand Dollars (\$500,000.00), or both;

* * *5. If five (5) kilograms or more, by imprisonment for not less than ten (10) years nor more than thirty

(30) years or a fine of not more than One Million Dollars (\$1,000,000.00), or both.

(C) Synthetic cannabinoids:

1. If more than ten (10) grams but less than twenty (20) grams, by a fine of not more than One Thousand Dollars (\$1,000.00), or confinement in the county jail for not more than one (1) year, or both; or by a fine of not more than Three Thousand Dollars (\$3,000.00), or imprisonment in the custody of the Department of Corrections for not more than three (3) years, or both;

2. If twenty (20) or more grams but less than forty (40) grams, by imprisonment for not less than two (2) years nor more than eight (8) years or by a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both;

3. If forty (40) or more grams but less than two hundred (200) grams, by imprisonment for not less than four (4) years nor more than sixteen (16) years or a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

4. If two hundred (200) or more grams, by imprisonment for not less than six (6) years nor more than twenty-four (24) years or a fine of not more than Five Hundred Thousand Dollars (\$500,000.00), or both.

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

(A) If less than fifty (50) grams or less than one hundred (100) dosage units, the offense is a misdemeanor and punishable by not more than one (1) year or a fine of not more than One Thousand Dollars (\$1,000.00), or both.

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

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

(D) If three hundred (300) or more grams or one thousand (1,000) or more dosage units * * *, but less than five hundred (500) grams or two thousand five hundred (2,500) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years or a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both.

(d) Paraphernalia. (1) It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate,

grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection (d) (1) is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars (\$500.00), or both; however, no person shall be charged with a violation of this subsection when such person is also charged with the possession of * * * thirty (30 grams or less of marijuana * * * under subsection (c) (2) (A) of this section.

(2) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. * * * Except as provided in subsection (d) (3), a person who violates this subsection (d) (2) is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6)

months, or fined not more than Five Hundred Dollars (\$500.00), or both.

(3) Any person eighteen (18) years of age or over who violates subsection (d)(2) of this section by delivering or selling paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars (\$1,000.00), or both.

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

(e) It shall be unlawful for any physician practicing medicine in this state to prescribe, dispense or administer any amphetamine or amphetamine-like anorectics and/or central nervous system stimulants classified in Schedule II, pursuant to Section 41-29-115, for the exclusive treatment of obesity, weight control or weight loss. Any person who violates this subsection, upon conviction, is guilty of a misdemeanor and may be confined for a

period not to exceed six (6) months, or fined not more than One Thousand Dollars (\$1,000.00), or both.

(f) Trafficking. (1) Any person trafficking in controlled substances shall be guilty of a felony and, upon conviction, shall be imprisoned for a term of not less than ten (10) years nor more than forty (40) years and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00). The ten-year mandatory sentence shall not be reduced or suspended. The person shall not be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, * * * to the contrary notwithstanding * * *.

(2) "Trafficking in controlled substances" as used herein means:

(A) A violation of subsection (a) of this section involving thirty (30) or more grams or forty (40) or more dosage units * * * of a Schedule I or II controlled substance except marijuana and synthetic cannabinoids;

(B) A violation of subsection (* * *a) of this section involving five hundred (500) or more grams or two thousand five hundred (2,500) or more dosage units of a Schedule III, IV or V controlled substance;

(C) A violation of subsection (c) of this section involving thirty (30) or more grams or forty (40) or more dosage

units * * * of a Schedule I or II controlled substance except marijuana and synthetic cannabinoids; * * *

(D) A violation of subsection (* * * c) of this section involving * * * five hundred (500) or more * * * grams or two thousand five hundred (2,500) or more dosage units of a Schedule III, IV or V controlled substance; or

(E) A violation of subsection (a) of this section involving one (1) kilogram or more of marijuana or two hundred (200) grams or more of synthetic cannabinoids.

* * *

(g) Aggravated trafficking. Any person trafficking in Schedule I or II controlled substances, except marijuana and synthetic cannabinoids, of two hundred (200) grams or more shall be guilty of aggravated trafficking and, upon conviction, shall be sentenced to a term of not less than twenty-five (25) years nor more than life in prison and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00). The twenty-five-year sentence shall be a mandatory sentence and shall not be reduced or suspended. The person shall not be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, * * * to the contrary notwithstanding * * *.

(h) Sentence mitigation. (1) Notwithstanding any provision of this section, a person who has been convicted of an offense under this section that requires the judge to impose a prison

sentence which cannot be suspended or reduced and is ineligible for probation or parole may, at the discretion of the court, receive a sentence of imprisonment that is no less than twenty-five percent (25%) of the sentence prescribed by the applicable statute. In considering whether to apply the departure from the sentence prescribed, the court shall conclude that:

(A) The offender was not a leader of the criminal enterprise;

(B) The offender did not use violence or a weapon during the crime;

(C) The offense did not result in a death or serious bodily injury of a person not a party to the criminal enterprise; and

(D) The interests of justice are not served by the imposition of the prescribed mandatory sentence.

The court may also consider whether information and assistance were furnished to a law enforcement agency, or its designee, which, in the opinion of the trial judge, objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

(2) If the court reduces the prescribed sentence pursuant to this subsection, it must specify on the record the circumstances warranting the departure.

SECTION 2. Section 41-29-149.1, Mississippi Code of 1972, is amended as follows:

41-29-149.1. (1) This section shall be known as the "Mississippi Medical Emergency Good Samaritan Act."

(2) As used in this section, the following words shall have the meanings ascribed:

(a) "Drug overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or use of a controlled substance or dangerous drug in violation of this chapter or that a layperson would reasonably believe to be resulting from the consumption or use of a controlled substance or dangerous drug for which medical assistance is required.

(b) "Drug violation" means:

(i) A violation of Section 41-29-139 for possession of a controlled substance if the aggregate weight, including any mixture, is less than four (4) grams of a solid substance, less than twenty (20) dosage units, less than one (1) milliliter of liquid substance, or, if the substance is placed onto a secondary medium, has a combined weight of less than four (4) grams;

(ii) A violation of Section 41-29-139 for possession of thirty (30) grams or less of * * * marijuana or ten (10) grams or less of synthetic cannabinoids; or

(iii) A violation of Section 41-29-139(d) (2) relating to possession and use of paraphernalia.

(c) "Medical assistance" means aid provided to a person experiencing or believed to be experiencing a drug overdose by a health care professional who is licensed, registered, or certified under the laws of this state and who, acting within the lawful scope of practice, may provide diagnosis, treatment, or emergency services relative to the overdose.

(d) "Seeks medical assistance" means accesses or assists in accessing the E-911 system or otherwise contacts or assists in contacting law enforcement or a poison control center or provides care to a person experiencing or believed to be experiencing a drug overdose while awaiting the arrival of medical assistance to aid the person.

(3) (a) Any person who in good faith seeks medical assistance for someone who is experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if there is evidence that the person is under the influence of a controlled substance or in possession of a controlled substance as referenced in subsection (2) (b) of this section.

(b) Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance or is the subject of a request for medical assistance shall not be arrested, charged, or prosecuted for a drug violation if there is evidence that the person is under the influence of a controlled substance or in

possession of a controlled substance as referenced in subsection (2) (b) of this section.

(c) A person shall also not be subject to, if related to the seeking of medical assistance:

(i) Penalties for a violation of a permanent or temporary protective order or restraining order;

(ii) Sanctions for a violation of a condition of pretrial release, condition of probation, or condition of parole based on a drug violation; or

(iii) Forfeiture of property pursuant to Section 41-29-153 or 41-29-176 for a drug violation, except that prima facie contraband shall be subject to forfeiture.

(4) Nothing in this section shall be construed:

(a) To limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of subsection (3) of this section or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to subsection (3) of this section;

(b) To limit any seizure of evidence or contraband otherwise permitted by law; and

(c) To limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection (3) of this section.

SECTION 3. This act shall take effect and be in force from and after July 1, 2016.

PASSED BY THE SENATE
April 20, 2016



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
April 19, 2016



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

May 12, 2016
8:33AM