

By: Compretta, Simpson

To: Judiciary A

HOUSE BILL NO. 1217

1 AN ACT TO AMEND SECTIONS 25-4-103 AND 25-4-105, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY EXCEPTIONS RELATIVE TO THE PROHIBITIONS
3 IMPOSED UPON PUBLIC SERVANTS; TO REVISE CERTAIN DEFINITIONS; TO
4 PROVIDE AN EXCEPTION FOR MINISTERIAL ACTS; AND FOR RELATED
5 PURPOSES.

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

7 SECTION 1. It is the intent of this act to clarify the
8 prohibitions created by Section 25-4-105 by recognizing that the
9 performance of ministerial acts by a public servant does not fall
10 within the scope of the prohibitions of Section 25-4-105,
11 Mississippi Code of 1972, or Section 109 of the Mississippi
12 Constitution of 1890. It is also the intent of this legislation
13 to recognize that there is no violation of the prohibitions of
14 Section 25-4-105, Mississippi Code of 1972, and of Section 109 of
15 the Mississippi Constitution of 1890, when any pecuniary benefit
16 to the public servant is minimal, speculative or remote.

17 SECTION 2. Section 25-4-103, Mississippi Code of 1972, is
18 amended as follows:[LH1]

19 25-4-103. The following definitions apply in this article
20 unless the context otherwise requires:

21 (a) "Authority" means any component unit of a
22 governmental entity.

23 (b) "Benefit" means any gain or advantage which is not
24 minimal, speculative or remote to the beneficiary, including any
25 gain or advantage to a third person pursuant to the desire or
26 consent of the beneficiary.

27 (c) "Business" means any corporation, partnership, sole

28 proprietorship, firm, enterprise, franchise, association,
29 organization, holding company, self-employed individual, joint
30 stock company, receivership, trust or other legal entity or
31 undertaking organized for economic gain, a nonprofit corporation
32 or other such entity, association or organization receiving public
33 funds.

34 (d) "Business with which he is associated" means any
35 business of which a public servant or his relative is an officer,
36 director, owner, partner, employee or is a holder of more than ten
37 percent (10%) of the fair market value or over which such public
38 servant or his relatives exercise control and from which he or his
39 relative derives more than Seventy-five Thousand Dollars
40 (\$75,000.00) in annual income * * *. This income figure shall
41 increase January 1 of each calendar year beginning in the year
42 2001 by an amount equal to the average year-to-year increases, if
43 any, in the United States Department of Labor Consumer Price Index
44 for the Southeastern United States statistical area.

45 Passive ownership of less than ten percent (10%) of the stock
46 in a publicly traded corporation so long as such ownership does
47 not constitute control is expressly exempted.

48 (e) "Compensation" means money or thing of value
49 received, or to be received, from any person for services
50 rendered.

51 (f) "Contract" means:

52 (i) Any agreement to which the government is a
53 party; or

54 (ii) Any agreement on behalf of the government
55 which involves the payment of public funds.

56 (g) "Government" means the state and all political
57 entities thereof, both collectively and separately, including, but
58 not limited to:

59 (i) Counties;

60 (ii) Municipalities;

61 (iii) All school districts;
62 (iv) All courts; and
63 (v) Any department, agency, board, commission,
64 institution, instrumentality, or legislative or administrative
65 body of the state, counties or municipalities created by statute,
66 ordinance or executive order including all units that expend
67 public funds.

68 (h) "Governmental entity" means the state, a county, a
69 municipality or any other separate political subdivision
70 authorized by law to exercise a part of the sovereign power of the
71 state.

72 (i) "Income" means money or thing of value received, or
73 to be received, from any source derived, including, but not
74 limited to, any salary, wage, advance, payment, dividend,
75 interest, rent, forgiveness of debt, fee, royalty, commission or
76 any combination thereof.

77 (j) "Intellectual property" means any formula, pattern,
78 compilation, program, device, method, technique or process created
79 primarily as a result of the research effort of an employee or
80 employees of an institution of higher learning of the State of
81 Mississippi.

82 (k) "Material financial interest" means a personal and
83 pecuniary interest, direct or indirect, accruing to a public
84 servant or spouse, either individually or in combination with each
85 other. Notwithstanding the foregoing, the following shall not be
86 deemed to be a material financial interest with respect to a
87 business with which a public servant may be associated:

88 (i) Ownership of any interest of less than ten
89 percent (10%) in a business where the aggregate annual net income
90 to the public servant therefrom is less than Seventy-five Thousand
91 Dollars (\$75,000.00). This income figure shall increase January 1
92 of each calendar year beginning in the year 2001 by an amount
93 equal to the average year-to-year increase, if any, in the United

94 States Department of Labor Consumer Price Index for the

95 Southeastern United States statistical area;

96 (ii) Ownership of any interest of less than two
97 percent (2%) in a business where the aggregate annual net income
98 to the public servant therefrom is less than One Hundred Fifty
99 Thousand Dollars (\$150,000.00). This income figure shall increase

100 January 1 of each calendar year beginning in the year 2001 by an
101 amount equal to the average year-to-year increase, if any, in the

102 United States Department of Labor Consumer Price Index for the

103 Southeastern United States statistical area;

104 (iii) The income as an employee of a relative if
105 neither the public servant or relative is an officer, director or
106 partner in the business and any ownership interest would not be
107 deemed material pursuant to subparagraph (i) or (ii) herein; or

108 (iv) The income of the spouse of a public servant
109 when such spouse is a contractor, subcontractor or vendor with the
110 governmental entity that employs the public servant and the public
111 servant exercises no control, direct or indirect, over the
112 contract between the spouse and such governmental entity.

113 (l) "Pecuniary benefit" means benefit in the form of
114 money, property, commercial interests or anything else the primary
115 significance of which is economic gain. Expenses associated with
116 social occasions afforded public servants shall not be deemed a
117 pecuniary benefit.

118 (m) "Person" means any individual, firm, business,
119 corporation, association, partnership, union or other legal
120 entity, and where appropriate a governmental entity.

121 (n) "Property" means all real or personal property.

122 (o) "Public funds" means money belonging to the
123 government.

124 (p) "Public servant" means:

125 (i) Any elected or appointed official of the
126 government;

127 (ii) Any officer, director, commissioner,
128 supervisor, chief, head, agent or employee of the government or
129 any agency thereof, or of any public entity created by or under
130 the laws of the state of Mississippi or created by an agency or
131 governmental entity thereof, any of which is funded by public
132 funds or which expends, authorizes or recommends the use of public
133 funds; or

134 (iii) Any individual who receives a salary, per
135 diem or expenses paid in whole or in part out of funds authorized
136 to be expended by the government.

137 (q) "Relative" means the spouse, child or parent.

138 (r) "Securities" means stocks, bonds, notes,
139 convertible debentures, warrants, evidences of debts or property
140 or other such documents.

141 SECTION 3. Section 25-4-105, Mississippi Code of 1972, is
142 amended as follows:[LH2]

143 25-4-105. (1) No public servant shall use his official
144 position to obtain pecuniary benefit for himself other than that
145 compensation provided for by law, or to obtain pecuniary benefit
146 for any relative or any business with which he is associated.

147 (2) No public servant shall be interested, directly or
148 indirectly, during the term for which he shall have been chosen,
149 or within one (1) year after the expiration of such term, in any
150 contract with the state, or any district, county, city or town
151 thereof, authorized by any law passed or order made by any board
152 of which he may be or may have been a member.

153 (3) No public servant shall:

154 (a) Be a contractor, subcontractor or vendor with the
155 governmental entity of which he is a member, officer, employee or
156 agent, other than in his contract of employment, or have a
157 material financial interest in any business which is a contractor,
158 subcontractor or vendor with the governmental entity of which he
159 is a member, officer, employee or agent.

160 (b) Be a purchaser, direct or indirect, at any sale
161 made by him in his official capacity or by the governmental entity
162 of which he is an officer or employee, except in respect of the
163 sale of goods or services when provided as public utilities or
164 offered to the general public on a uniform price schedule.

165 (c) Be a purchaser, direct or indirect, of any claim,
166 certificate, warrant or other security issued by or to be paid out
167 of the treasury of the governmental entity of which he is an
168 officer or employee.

169 (d) Perform any service for any compensation during his
170 term of office or employment by which he attempts to influence a
171 decision of the authority of the governmental entity of which he
172 is a member.

173 (e) Perform any service for any compensation for any
174 person or business after termination of his office or employment
175 in relation to any case, decision, proceeding or application with
176 respect to which he was directly concerned or in which he
177 personally participated during the period of his service or
178 employment.

179 (4) Notwithstanding the provisions of subsection (3) of this
180 section, a public servant or his relative:

181 (a) May be an officer or stockholder of banks or
182 savings and loan associations or other such financial institutions
183 bidding for bonds, notes or other evidences of debt or for the
184 privilege of keeping as depositories the public funds of a
185 governmental entity thereof or the editor or employee of any
186 newspaper in which legal notices are required to be published in
187 respect to the publication of said legal notices.

188 (b) May be a contractor or vendor with any authority of
189 the governmental entity other than the authority of the
190 governmental entity of which he is a member, officer, employee or
191 agent or have a material financial interest in a business which is
192 a contractor or vendor with any authority of the governmental

193 entity other than the authority of the governmental entity of
194 which he is a member, officer, employee or agent where such
195 contract is let to the lowest and best bidder after competitive
196 bidding and three (3) or more legitimate bids are received or
197 where the goods, services or property involved are reasonably
198 available from two (2) or fewer commercial sources, provided such
199 transactions comply with the public purchases laws.

200 (c) May be a subcontractor with any authority of the
201 governmental entity other than the authority of the governmental
202 entity of which he is a member, officer, employee or agent or have
203 a material financial interest in a business which is a
204 subcontractor with any authority of the governmental entity other
205 than the authority of the governmental entity of which he is a
206 member, officer, employee or agent where the primary contract is
207 let to the lowest and best bidder after competitive bidding or
208 where such goods or services involved are reasonably available
209 from two (2) or fewer commercial sources, provided such
210 transactions comply with the public purchases laws.

211 (d) May be a contractor, subcontractor or vendor with
212 any authority of the governmental entity of which he is a member,
213 officer, employee or agent or have a material financial interest
214 in a business which is a contractor, subcontractor or vendor with
215 any authority of the governmental entity of which he is a member,
216 officer, employee or agent: (i) where such goods or services
217 involved are reasonably available from two (2) or fewer commercial
218 sources, provided such transactions comply with the public
219 purchases laws; or (ii) where the contractual relationship
220 involves the further research, development, testing, promotion or
221 merchandising of an intellectual property created by the public
222 servant.

223 (e) May purchase securities issued by the governmental
224 entity of which he is an officer or employee if such securities
225 are offered to the general public and are purchased at the same

226 price as such securities are offered to the general public.

227 (f) May have an interest less than a material financial
228 interest in a business which is a contractor, subcontractor or
229 vendor with any governmental entity.

230 (g) May contract with the Mississippi Veteran's Home
231 Purchase Board, Mississippi Housing Finance Corporation, or any
232 other state loan program, for the purpose of securing a loan;
233 however, public servants shall not receive favored treatment.

234 (h) May be employed by or receive compensation from an
235 authority of the governmental entity other than the authority of
236 the governmental entity of which the public servant is an officer
237 or employee.

238 (i) If a member of the Legislature or other public
239 servant employed on less than a full-time basis, may represent a
240 person or organization for compensation before an authority of the
241 governmental entity other than an authority of the governmental
242 entity of which he is an officer or employee.

243 (j) If a constable, may be employed and receive
244 compensation as a deputy sheriff of the county for which he serves
245 as constable.

246 (5) No person may intentionally use or disclose information
247 gained in the course of or by reason of his official position or
248 employment as a public servant in any way that could result in
249 pecuniary benefit for himself, any relative, or any other person,
250 if the information has not been communicated to the public or is
251 not public information.

252 (6) Notwithstanding any provisions of this section to the
253 contrary, the performance by a public servant of an act that is
254 ministerial in nature shall not be a violation of this section.

255 (7) Any contract made in violation of this section may be
256 declared void by the governing body of the contracting or selling
257 authority of the governmental subdivision or a court of competent
258 jurisdiction and the contractor or subcontractor shall retain or

259 receive only the reasonable value, with no increment for profit or
260 commission, of the property or the services furnished prior to the
261 date of receiving notice that the contract has been voided.

262 (8) Any person violating the provisions of this section
263 shall be punished as provided for in Sections 25-4-109 and
264 25-4-111.

265 SECTION 4. The Attorney General of the State of Mississippi
266 shall submit this act, immediately upon approval by the Governor,
267 or upon approval by the Legislature subsequent to a veto, to the
268 Attorney General of the United States or to the United States
269 District Court for the District of Columbia in accordance with the
270 provisions of the Voting Rights Act of 1965, as amended and
271 extended.

272 SECTION 5. This act shall take effect and be in force from
273 and after the date it is effectuated under Section 5 of the Voting
274 Rights Act of 1965, as amended and extended.