

By: Senator(s) Albritton

To: Judiciary, Division A

SENATE BILL NO. 2309

1 AN ACT TO AMEND SECTION 41-29-157, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE ISSUANCE AND EXECUTION OF ADMINISTRATIVE SUBPOENAS BY
3 THE DEPARTMENT OF PUBLIC SAFETY; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 41-29-157, Mississippi Code of 1972, is
6 amended as follows:

7 41-29-157. (a) Issuance and execution of administrative
8 inspection warrants and search warrants shall be as follows,
9 except as provided in subsection (c) of this section:

10 (1) A judge of any state court of record, or any
11 justice court judge within his jurisdiction, and upon proper oath
12 or affirmation showing probable cause, may issue warrants for the
13 purpose of conducting administrative inspections authorized by
14 this article or rules thereunder, and seizures of property
15 appropriate to the inspections. For purposes of the issuance of
16 administrative inspection warrants, probable cause exists upon
17 showing a valid public interest in the effective enforcement of
18 this article or rules thereunder, sufficient to justify
19 administrative inspection of the area, premises, building or
20 conveyance in the circumstances specified in the application for
21 the warrant. All such warrants shall be served during normal
22 business hours;

23 (2) A search warrant shall issue only upon an affidavit
24 of a person having knowledge or information of the facts alleged,
25 sworn to before the judge or justice court judge and establishing
26 the grounds for issuing the warrant. If the judge or justice
27 court judge is satisfied that grounds for the application exist or

28 that there is probable cause to believe they exist, he shall issue
29 a warrant identifying the area, premises, building or conveyance
30 to be searched, the purpose of the search, and, if appropriate,
31 the type of property to be searched, if any. The warrant shall:

32 (A) State the grounds for its issuance and the
33 name of each person whose affidavit has been taken in support
34 thereof;

35 (B) Be directed to a person authorized by Section
36 41-29-159 to execute it;

37 (C) Command the person to whom it is directed to
38 inspect the area, premises, building or conveyance identified for
39 the purpose specified, and if appropriate, direct the seizure of
40 the property specified;

41 (D) Identify the item or types of property to be
42 seized, if any;

43 (E) Direct that it be served and designate the
44 judge or magistrate to whom it shall be returned;

45 (3) A warrant issued pursuant to this section must be
46 executed and returned within ten (10) days of its date unless,
47 upon a showing of a need for additional time, the court orders
48 otherwise. If property is seized pursuant to a warrant, a copy
49 shall be given to the person from whom or from whose premises the
50 property is taken, together with a receipt for the property taken.
51 The return of the warrant shall be made promptly, accompanied by a
52 written inventory of any property taken. The inventory shall be
53 made in the presence of the person executing the warrant and of
54 the person from whose possession or premises the property was
55 taken, if present, or in the presence of at least one (1) credible
56 person other than the person executing the warrant. A copy of the
57 inventory shall be delivered to the person from whom or from whose
58 premises the property was taken and to the applicant for the
59 warrant;

60 (4) The judge or justice court judge who has issued a
61 warrant shall attach thereto a copy of the return and all papers
62 returnable in connection therewith and file them with the clerk of
63 the appropriate state court for the judicial district in which the
64 inspection was made.

65 (b) The * * * Bureau of Narcotics, the State Board of
66 Pharmacy, the State Board of Medical Licensure, the State Board of
67 Dental Examiners or the * * * Board of Nursing may make
68 administrative inspections of controlled premises in accordance
69 with the following provisions:

70 (1) For purposes of this section only, "controlled
71 premises" means:

72 (A) Places where persons registered or exempted
73 from registration requirements under this article are required to
74 keep records; and

75 (B) Places including factories, warehouses,
76 establishments and conveyances in which persons registered or
77 exempted from registration requirements under this article are
78 permitted to hold, manufacture, compound, process, sell, deliver,
79 or otherwise dispose of any controlled substance.

80 (2) When authorized by an administrative inspection
81 warrant issued in accordance with the conditions imposed in this
82 section, an officer or employee designated by the * * * Bureau of
83 Narcotics, the State Board of Pharmacy, the State Board of Medical
84 Licensure, the State Board of Dental Examiners or the * * * Board
85 of Nursing, upon presenting the warrant and appropriate
86 credentials to the owner, operator or agent in charge, may enter
87 controlled premises for the purpose of conducting an
88 administrative inspection.

89 (3) When authorized by an administrative inspection
90 warrant, an officer or employee designated by the * * * Bureau of
91 Narcotics, the State Board of Pharmacy, the State Board of Medical

92 Licensure, the State Board of Dental Examiners or the * * * Board
93 of Nursing may:

94 (A) Inspect and copy records required by this
95 article to be kept;

96 (B) Inspect, within reasonable limits and in a
97 reasonable manner, controlled premises and all pertinent
98 equipment, finished and unfinished material, containers and
99 labeling found therein, and, except as provided in paragraph (5)
100 of this subsection, all other things therein, including records,
101 files, papers, processes, controls and facilities bearing on
102 violation of this article; and

103 (C) Inventory any stock of any controlled
104 substance therein and obtain samples thereof.

105 (4) This section does not prevent the inspection
106 without a warrant of books and records pursuant to an
107 administrative subpoena, nor does it prevent entries and
108 administrative inspections, including seizures of property,
109 without a warrant:

110 (A) If the owner, operator or agent in charge of
111 the controlled premises consents;

112 (B) In situations presenting imminent danger to
113 health or safety;

114 (C) In situations involving inspection of
115 conveyances if there is reasonable cause to believe that the
116 mobility of the conveyance makes it impracticable to obtain a
117 warrant;

118 (D) In any other exceptional or emergency
119 circumstance where time or opportunity to apply for a warrant is
120 lacking; or

121 (E) In all other situations in which a warrant is
122 not constitutionally required.

123 (5) An inspection authorized by this section shall not
124 extend to financial data, sales data, other than shipment data, or

125 pricing data unless the owner, operator or agent in charge of the
126 controlled premises consents in writing.

127 (c) Any agent of the bureau authorized to execute a search
128 warrant involving controlled substances, the penalty for which is
129 imprisonment for more than one (1) year, may, without notice of
130 his authority and purpose, break open an outer door or inner door,
131 or window of a building, or any part of the building, if the judge
132 issuing the warrant:

133 (1) Is satisfied that there is probable cause to
134 believe that:

135 (A) The property sought may, and, if such notice
136 is given, will be easily and quickly destroyed or disposed of; or

137 (B) The giving of such notice will immediately
138 endanger the life or safety of the executing officer or another
139 person; and

140 (2) Has included in the warrant a direction that the
141 officer executing the warrant shall not be required to give such
142 notice.

143 Any officer acting under such warrant shall, as soon as
144 practical, after entering the premises, identify himself and give
145 the reasons and authority for his entrance upon the premises.

146 Search warrants which include the instruction that the
147 executing officer shall not be required to give notice of
148 authority and purpose as authorized by this subsection shall be
149 issued only by the county court or county judge in vacation,
150 chancery court or by the chancellor in vacation, by the circuit
151 court or circuit judge in vacation, or by a justice of the
152 Mississippi Supreme Court.

153 This subsection shall expire and stand repealed from and
154 after July 1, 1974, except that the repeal shall not affect the
155 validity or legality of any search authorized under this
156 subsection and conducted prior to July 1, 1974.

157 (d) (1) In any investigation relating to its functions
158 under this chapter with respect to controlled substances, listed
159 chemicals, or other violations of this chapter, the Department of
160 Public Safety may subpoena witnesses, compel the attendance and
161 testimony of witnesses, and require the production of any records,
162 including books, papers, documents, and other tangible things
163 which constitute or contain evidence, which the Department of
164 Public Safety finds relevant or material to the investigation
165 subject to the approval of the Commissioner of Public Safety or
166 his designee. The attendance of witnesses and the production of
167 records may be required from any place in this state at any
168 designated place of hearing; a witness shall be required to appear
169 at any hearing consistent with the Rule 45 of the Mississippi
170 Rules of Civil Procedure. Witnesses summoned under this section
171 shall be paid the same fees and mileage that are paid witnesses in
172 the courts of this state.

173 (2) A subpoena issued under this section may be served
174 by any person designated in the subpoena to serve it. Service
175 upon a natural person may be made by personal delivery of the
176 subpoena to him. Service may be made upon a domestic or foreign
177 corporation or upon a partnership or other unincorporated
178 association which is subject to suit under a common name, by
179 delivering the subpoena to an officer, to a managing or general
180 agent, or to any other agent authorized by appointment or by law
181 to receive service of process. The affidavit of the person
182 serving the subpoena entered on a true copy thereof by the person
183 serving it shall be proof of service.

184 (3) In the case of contumacy by or refusal to obey a
185 subpoena issued to any person, the Department of Public Safety may
186 invoke the aid of any court of this state within the jurisdiction
187 of which the investigation is carried on or of which the
188 subpoenaed person is an inhabitant, or in which he carries on
189 business or may be found, to compel compliance with the subpoena,

190 or if a foreign person, corporation or entity, the Circuit Court
191 of Hinds County, Mississippi, may compel the compliance with the
192 subpoena. The court may issue an order requiring the subpoenaed
193 person to appear before the Department of Public Safety to produce
194 records, if so ordered, or to give testimony touching the matter
195 under investigation. Any failure to obey the order of the court
196 may be punished by the court as contempt. All process in such
197 case may be served in any judicial district in which the person
198 may be found.

199 (4) The Commissioner of Public Safety or his designee shall
200 implement a procedure whereby a listing of all subpoenas issued by
201 the Department of Public Safety is recorded, including a date and
202 time the subpoena was served, upon whom served, and a listing of
203 all documents produced pursuant to the subpoena. The legal
204 department of the Bureau of Narcotics shall be required to
205 maintain a complete copy of all subpoenas issued and all documents
206 produced pursuant thereto. The Commissioner of Public Safety or
207 his designee shall implement procedures to insure the proper
208 safeguarding of subpoenas and produced documents for a period of
209 three (3) years.

210 **SECTION 2.** This act shall take effect and be in force from
211 and after July 1, 2005.