

By: Representatives Reed, Bentz, Parker

To: Judiciary A

HOUSE BILL NO. 1191

1 AN ACT TO AMEND SECTION 41-29-157, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE ISSUANCE OF SUBPOENAS UNDER THE CONTROLLED
3 SUBSTANCES LAW; 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 Mississippi Bureau of Narcotics, the State Board of
66 Pharmacy, the State Board of Medical Licensure, the State Board of
67 Dental Examiners, the Mississippi Board of Nursing or the State
68 Board of Optometry may make administrative inspections of
69 controlled premises in accordance 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 Mississippi
83 Bureau of Narcotics, the State Board of Pharmacy, the State Board
84 of Medical Licensure, the State Board of Dental Examiners, the
85 Mississippi Board of Nursing or the State Board of Optometry, upon
86 presenting the warrant and appropriate credentials to the owner,
87 operator or agent in charge, may enter controlled premises for the
88 purpose of conducting an administrative inspection.

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

92 of Medical Licensure, the State Board of Dental Examiners, the
93 Mississippi Board of Nursing or the State Board of Optometry 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, tableting machines, encapsulating machines, or other
160 violations of Section 41-29-101 et seq., the Department of Public
161 Safety may subpoena witnesses, compel the attendance and testimony
162 of witnesses, and require the production of any records, including
163 books, papers, documents and other tangible things which
164 constitute or contain evidence, which the Department of Public
165 Safety finds relevant or material to the investigation subject to
166 the approval of the Commissioner of Public Safety or his designee.
167 The attendance of witnesses and the production of records may be
168 required from any place in this state at any designated place of
169 hearing; a witness shall be required to appear at any hearing
170 consistent with Rule 45 of the Mississippi Rules of Civil
171 Procedure. Witnesses summoned under this section shall be paid
172 the same fees and mileage that are paid witnesses in the courts of
173 this state.

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

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

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

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

211 **SECTION 2.** This act shall take effect and be in force from
212 and after July 1, 2006.