

By: Senator(s) Doty, Younger

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2420

1 AN ACT TO AMEND SECTION 7-5-59, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE ATTORNEY GENERAL TO PROSECUTE PUBLIC OFFICIAL
3 CORRUPTION CASES UPON THE OFFICIAL REQUEST BY THE STATE AUDITOR;
4 TO AMEND SECTION 7-5-37, MISSISSIPPI CODE OF 1972, IN CONFORMITY
5 THERETO; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 7-5-59, Mississippi Code of 1972, is
8 amended as follows:

9 7-5-59. (1) The following terms shall have the meanings
10 ascribed to them herein unless the context requires otherwise:

11 (a) "Computer crimes" means those crimes defined in
12 Chapter 45 of Title 97 and sex offenses involving a computer
13 affecting children as defined in Chapter 5 of Title 97.

14 (b) "White-collar crime" and "official
15 corruption" * * * include crimes chargeable under the following
16 provisions of law:

17 (i) Paragraphs (b) and (c) of * * * subsection (4)
18 of this section, which * * * relate to obstruction of official
19 corruption and white-collar crime investigations.



20 (ii) Section 97-7-10, which relates to the
21 defrauding of state and local governments.

22 (iii) Section 97-19-73, which relates to fraud by
23 mail, wire, radio or television.

24 (iv) Section 97-9-10, which relates to commercial
25 bribery.

26 (v) Section 97-45-3, which relates to computer
27 fraud.

28 (vi) Sections 97-11-25 through 97-11-31, which
29 relate to embezzlement by public officials.

30 (vii) Section 97-11-33, which relates to extortion
31 by public officials.

32 (viii) Sections 97-19-5 through 97-19-31, which
33 relate to unlawful procurement or use of credit cards.

34 (ix) Sections 97-23-1 and 97-23-3, which relate to
35 false, misleading or deceptive advertising.

36 (x) Sections 97-15-3 and 97-15-5, which relate to
37 bribery of members and employees of the * * * Mississippi
38 Department of Transportation and the defrauding of the state
39 by * * * Mississippi Department of Transportation members,
40 employees or highway contractors.

41 (xi) Section 97-9-5, which relates to bribery of
42 jurors.



43 (xii) Sections 97-11-11, 97-11-13 and 97-11-53,
44 which relate to acceptance of bribes by public officials and
45 bribery of public officials.

46 (xiii) Sections 97-13-1 and 97-13-3, which relate
47 to bribery of electors or election officials.

48 (xiv) Sections 97-23-19 through 97-23-27, which
49 relate to embezzlement.

50 (xv) Any crime investigated under the authority of
51 Section 7-7-211.

52 (c) "White-collar crime * * * investigation" or
53 "official corruption investigation" means an investigation into
54 any illegal act or acts defined as white-collar crime or official
55 corruption.

56 (d) "Computer crimes * * * investigation" means an
57 investigation into any illegal act or acts defined as computer
58 crime.

59 (e) "Person" means * * * not only an individual, but
60 also a partnership, corporation, professional firm, nonprofit
61 organization or other business entity.

62 (2) The Attorney General is hereby authorized to conduct
63 official corruption investigations and such other white-collar
64 crime investigations and computer crime investigations that are of
65 statewide interest * * *, are in the protection of public rights,
66 and prosecute, upon official request by the Office of the State



67 Auditor, investigations conducted under the authority of Section
68 7-7-211.

69 (3) (a) In conducting official corruption, white-collar
70 crime and computer crime investigations, the Attorney General
71 shall have the authority to issue and serve subpoenas to any
72 person in control of any designated documents for the production
73 of such documents, including, but not limited to, writings,
74 drawings, graphs, charts, photographs, phono-records, subscriber
75 records and other data compilations from which information can be
76 obtained, or translated through detection devices into reasonably
77 usable form. Such subpoenas shall require the named person, his
78 agent or attorney, to appear and deliver the designated documents
79 to a location in the county of his residence unless the court for
80 good cause shown directs that the subpoena be issued for the
81 person to deliver such documents to a location outside of the
82 county of his residence. Mere convenience of the Attorney General
83 shall not be considered good cause. The Attorney General or his
84 designee shall have the authority to inspect and copy such
85 documents. Such subpoenas shall be issued only upon the ex parte
86 and in camera application of the Attorney General to the circuit
87 or chancery court of the county of residence of the person in
88 control of the documents or the circuit or chancery court of the
89 county where the person in control of the documents may be found,
90 and only upon a showing that the documents sought are relevant to
91 a criminal investigation under this section or may lead to the



92 discovery of such relevant evidence. Thereafter said court shall
93 have jurisdiction to enforce or quash such subpoenas and to enter
94 appropriate orders thereon, and nothing contained in this section
95 shall affect the right of a person to assert a claim that the
96 information sought is privileged by law.

97 (b) A subpoena issued pursuant to this subsection shall
98 be in substantially the following form:

99 "SUBPOENA TO PRODUCE DOCUMENTS PURSUANT TO AN
100 INVESTIGATION BY THE ATTORNEY GENERAL

101 TO:

102 YOU ARE HEREBY COMMANDED to appear before the Attorney
103 General of the State of Mississippi or his designated staff
104 attorney at the place, date and time specified below in an
105 investigation being conducted by the Attorney General pursuant to
106 Section 7-5-59, Mississippi Code of 1972:

107 Place _____ Date and Time _____

108 YOU ARE ALSO COMMANDED to bring with you the following
109 document(s) or object(s) * * *:

110 _____

111 You are advised that the _____ Court of the _____
112 Judicial District of _____ County, Mississippi, has
113 approved the ex parte and in camera application of the Attorney
114 General to issue this subpoena, and jurisdiction to enforce and/or
115 quash the subpoena and to enter appropriate orders thereon is
116 statutorily vested in the said court; enforcement and penal



117 provisions applicable to an Attorney General's investigation
118 include those set forth in Section 7-5-59(4), Mississippi Code of
119 1972; and disclosure of testimony and/or records coming into
120 possession of the Attorney General pursuant to this subpoena shall
121 be limited by and subject to the provisions of Section 7-5-59(6),
122 Mississippi Code of 1972, (for informational purposes, these cited
123 statutes are reproduced on the reverse side of this subpoena).

124 You may wish to consult an attorney in regard to this
125 subpoena. You have certain state and federal constitutional
126 rights, including your protection against self-incrimination and
127 unreasonable search and seizure which this subpoena may affect.

128 ISSUED BY AND UNDER SEAL OF THE ATTORNEY GENERAL OF THE STATE
129 OF MISSISSIPPI, this the ____ day of _____, 20__.
130 (SEAL) _____"

131 (c) Following service of any subpoena, pursuant to the
132 provisions of this subsection, a record of the return shall be
133 made and kept by the Attorney General and subject only to such
134 disclosure as may be authorized pursuant to the provisions of this
135 section.

136 (4) Enforcement and penal provisions applicable to an
137 investigation under this section shall include the following:

138 (a) If a person who has been served with a
139 subpoena * * * issued and served upon him in accordance with the
140 provisions of this section * * * failsu to deliver or have
141 delivered the designated documents at the time and place required



142 in the subpoena, on application of the Attorney General, the
143 circuit or chancery court having approved the issuance of the
144 subpoena may issue an attachment for such person, returnable
145 immediately, or at such time and place as the court may direct.
146 Bond may be required and fine imposed and proceedings had thereon
147 as in the case of a subpoenaed witness who fails to appear in
148 circuit or chancery court.

149 (b) Every person who shall knowingly and willfully
150 obstruct, interfere with or impede an investigation under this
151 section by concealing or destroying any documents, papers or other
152 tangible evidence * * * relevant to an investigation under this
153 section shall be guilty of a felony and, upon conviction, shall be
154 punished by a fine of not more than Five Thousand Dollars
155 (\$5,000.00) or by imprisonment for not more than five (5) years,
156 or by both such fine and imprisonment.

157 (c) Every person who shall knowingly and willfully
158 endeavor, by means of bribery, force or intimidation, to obstruct,
159 delay or prevent the communication of information to any agent or
160 employee of the Office of the Attorney General or who injures
161 another person for the purpose of preventing the communication of
162 such information or an account of the giving of such information
163 relevant to an investigation under this section shall be guilty of
164 a felony and, upon conviction, shall be punished by a fine of not
165 more than Five Thousand Dollars (\$5,000.00) or by imprisonment for



166 not more than five (5) years, or by both such fine and
167 imprisonment.

168 (d) The provisions of paragraphs (a), (b) and (c) of
169 this subsection shall not prohibit the enforcement of, or
170 prosecution under, any other statutes of this state.

171 (5) (a) If any person shall refuse, or is likely to refuse,
172 on the basis of his privilege against self-incrimination, to
173 produce the designated documents as requested by a subpoena issued
174 under this section or issued by a court, the Attorney General may
175 request the court, ex parte and in camera, to issue an order
176 requiring such person to produce the documents information which
177 he refuses to give or provide on the basis of his privilege
178 against self-incrimination. The Attorney General may request said
179 order under this subsection when, in his judgment:

180 (i) The documents sought from such individual may
181 be necessary to the public interest; and

182 (ii) Such individual has refused or is likely to
183 refuse to produce the designated document on the basis of his
184 privilege against self-incrimination.

185 Following such request, an order shall issue in accordance
186 with this section requiring such person to produce the documents
187 which he refuses to produce on the basis of his privilege against
188 self-incrimination.

189 (b) Whenever a witness refuses, on the basis of his
190 privilege against self-incrimination, to produce documents, and



191 the court issues to the witness an order under paragraph (a) of
192 this subsection, the witness may not refuse to comply with the
193 order on the basis of his privilege against self-incrimination,
194 but no documents or information compelled under the aforesaid
195 order, or any information directly or indirectly derived from such
196 documents, may be used against the witness in any criminal
197 proceeding, except a prosecution for perjury, giving a false
198 statement, or otherwise failing to comply with the order.

199 (6) Documents in the possession of the Attorney General
200 gathered pursuant to the provisions of this section and subpoenas
201 issued by him shall be maintained in confidential files with
202 access limited to prosecutorial and other law enforcement
203 investigative personnel on a "need-to-know" basis and shall be
204 exempt from the provisions of the Mississippi Public Records Act
205 of 1983, except that upon the filing of an indictment or
206 information, or upon the filing of an action for recovery of
207 property, funds or fines, such documents shall be subject to such
208 disclosure as may be required pursuant to the applicable statutes
209 or court rules governing the trial of any such judicial
210 proceeding.

211 (7) No person, including the Attorney General, a member of
212 his staff, prosecuting attorney, law enforcement officer, witness,
213 court reporter, attorney or other person, shall disclose to an
214 unauthorized person documents, including subpoenas issued and
215 served, gathered by the Attorney General pursuant to the



216 provisions of this section, except that upon the filing of an
217 indictment or information, or upon the filing of an action for
218 recovery of property, funds or fines, or in other legal
219 proceedings, such documents shall be subject to such disclosure as
220 may be required pursuant to applicable statutes and court rules
221 governing the trial of any such judicial proceeding. In event of
222 an unauthorized disclosure of any such documents gathered by the
223 Attorney General pursuant to the provisions of this section, the
224 person making any such unauthorized disclosure shall be guilty of
225 a misdemeanor, and upon conviction thereof, shall be punished by a
226 fine of not more than One Thousand Dollars (\$1,000.00) or
227 imprisonment of not more than six (6) months, or by both such fine
228 and imprisonment.

229 (8) The powers of the Attorney General under this section
230 shall not diminish the powers of local authorities to investigate
231 or prosecute any type of official corruption, white-collar crime
232 violation, computer crime violation or any other criminal conduct
233 within their respective jurisdictions, and the provisions of this
234 section shall be in addition to the powers and authority
235 previously granted the Attorney General by common, constitutional,
236 statutory or case law.

237 (9) No person, agent or employee upon whom a subpoena is
238 served pursuant to this section shall disclose the existence of
239 the investigation to any person unless such disclosure is
240 necessary for compliance with the subpoena. Any person who



241 willfully violates this subsection shall be guilty of a
242 misdemeanor and may be confined in the county jail for a period
243 not to exceed one (1) year or fined not more than Ten Thousand
244 Dollars (\$10,000.00), or both.

245 **SECTION 2.** Section 7-5-37, Mississippi Code of 1972, is
246 amended as follows:

247 7-5-37. The Attorney General shall, at the request of the
248 Governor or other state officer, in person or by his or her
249 assistant, prosecute suit on any official bond, or any contract in
250 which the state is interested, upon a breach thereof, and
251 prosecute or defend for the state all actions, civil or criminal,
252 relating to any matter connected with either of the state offices,
253 including, upon official request by the Office of the State
254 Auditor, the prosecution of investigations conducted under the
255 authority of Section 7-7-211. He or she may require the service
256 or assistance of any district attorney in and about such matters
257 or suits.

258 **SECTION 3.** This act shall take effect and be in force from
259 and after its passage.

