

By: Senator(s) Thomas

To: Judiciary, Division B

SENATE BILL NO. 2185

1 AN ACT TO CREATE THE CRIME OF FALSIFICATION IN OFFICIAL
2 MATTERS; TO ENACT DEFINITIONS; TO CREATE THE CRIME OF PERJURY IN
3 AN OFFICIAL PROCEEDING; TO CREATE THE CRIME OF FALSE SWEARING IN
4 OFFICIAL MATTERS; TO CREATE THE CRIME OF UNSWORN FALSIFICATION TO
5 AUTHORITIES; TO CREATE THE CRIME OF TAMPERING WITH OR FABRICATING
6 PHYSICAL EVIDENCE; TO CREATE THE CRIME OF TAMPERING WITH PUBLIC
7 RECORDS OR INFORMATION; TO CREATE THE CRIME OF IMPERSONATING A
8 PUBLIC SERVANT; TO ENACT RESTRICTIONS UPON DEFENSES TO A CHARGE
9 UNDER THIS ACT; AND FOR RELATED PURPOSES.

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

11 SECTION 1. (1) In this act, unless a different meaning
12 plainly is required:

13 (a) "Benefit" means gain or advantage, or anything
14 regarded by the beneficiary as gain or advantage, including
15 benefit to any other person or entity in whose welfare he is
16 interested, but not an advantage promised generally to a group or
17 class of voters as a consequence of public measures which a
18 candidate engages to support or oppose;

19 (b) "Pecuniary benefit" is benefit in the form of
20 money, property, commercial interests or anything else the primary
21 significance of which is economic gain;

22 (c) "Government" includes any branch, subdivision or
23 agency of the government of the state or any locality within it;

24 (d) "Official proceeding" means a proceeding heard or
25 which may be heard before any legislative, judicial,
26 administrative or other governmental agency or official authorized
27 to take evidence under oath, including any referee, hearing
28 examiner, commissioner, notary or other person taking testimony or
29 deposition in connection with any such proceeding;

30 (e) "Public servant" means any officer or employee of
31 government, including legislators and judges, and any person
32 participating as juror, advisor, consultant or otherwise, in
33 performing a governmental function; but the term does not include
34 witnesses;

35 (f) "Statement" means any representation, but includes
36 a representation of opinion, belief or other state of mind only if
37 the representation clearly relates to state of mind apart from or
38 in addition to any facts which are the subject of the
39 representation.

40 (2) (a) A person is guilty of perjury if in any official
41 proceeding he makes a false statement under oath or equivalent
42 affirmation, or swears or affirms the truth of a statement
43 previously made, when the statement is material and he does not
44 believe it to be true.

45 (b) Falsification is material, regardless of the
46 admissibility of the statement under rules of evidence, if it
47 could have affected the course or outcome of the proceeding. It
48 is no defense that the declarant mistakenly believed the
49 falsification to be immaterial. Whether a falsification is
50 material in a given factual situation is a question of law.

51 (c) Violation of this subsection (2) is a felony
52 punishable by commitment to the custody of the Department of
53 Corrections for a period not to exceed three (3) years.

54 (3) (a) A person who makes a false statement under oath or
55 equivalent affirmation, or swears or affirms the truth of such a
56 statement previously made, when he does not believe the statement
57 to be true, is guilty of a misdemeanor if:

58 (i) The falsification occurs in an official
59 proceeding; or

60 (ii) The falsification is intended to mislead a
61 public servant in performing his official function.

62 (b) A person who makes a false statement under oath or
63 equivalent affirmation, or swears or affirms the truth of such a
64 statement previously made, when he does not believe the statement
65 to be true, is guilty of a misdemeanor if the statement is one
66 which is required by law to be sworn or affirmed before a notary
67 or other person authorized to administer oaths.

68 (c) Violation of this subsection (3) is a misdemeanor
69 punishable by confinement for a period not to exceed one (1) year.

70 (4) (a) A person commits a misdemeanor if, with purpose to
71 mislead a public servant in performing his official function, he:

72 (i) Makes any written false statement which he
73 does not believe to be true; or

74 (ii) Purposely creates a false impression in a
75 written application for any pecuniary or other benefit, by
76 omitting information necessary to prevent statements therein from
77 being misleading; or

78 (iii) Submits or invites reliance on any writing
79 which he knows to be forged, altered or otherwise lacking in
80 authenticity; or

81 (iv) Submits or invites reliance on any sample,
82 specimen, map, boundary-mark or other object which he knows to be
83 false.

84 (b) A person commits a misdemeanor if he makes a
85 written false statement which he does not believe to be true, on
86 or pursuant to a form bearing notice, authorized by law, to the
87 effect that false statements made therein are punishable.

88 (c) Violation of this subsection (4) is a misdemeanor
89 punishable by confinement for a period not to exceed six (6)
90 months.

91 (5) A person commits a misdemeanor if, believing that an
92 official proceeding or investigation is pending or about to be
93 instituted, he:

94 (a) (i) Alters, destroys, conceals or removes any
95 record, document or thing with purpose to impair its verity or
96 availability in such proceeding or investigation; or

97 (ii) Makes, presents or uses any record, document
98 or thing knowing it to be false and with purpose to mislead a
99 public servant who is or may be engaged in such proceeding or
100 investigation.

101 (b) Violation of this subsection (5) is a misdemeanor
102 punishable by confinement for a period not to exceed one (1) year.

103 (6) (a) A person commits an offense if he:

104 (i) Knowingly makes a false entry in, or false
105 alteration of, any record, document or thing belonging to, or
106 received or kept by, the government for information or record, or
107 required by law to be kept by others for information of the
108 government; or

109 (ii) Makes, presents or uses any record, document
110 or thing knowing it to be false, and with purpose that it be taken
111 as a genuine part of information or records referred to in
112 subparagraph (i); or

113 (iii) Purposely and unlawfully destroys, conceals,
114 removes or otherwise impairs the verity or availability of any
115 such record, document or thing.

116 (b) An offense under this subsection (6) is a
117 misdemeanor unless the actor's purpose is to defraud or injure
118 anyone, in which case the offense is a felony punishable by
119 commitment to the custody of the Department of Corrections for a
120 period not to exceed two (2) years.

121 (7) A person commits a misdemeanor if he falsely pretends to
122 hold a position in the public service with purpose to induce
123 another to submit to such pretended official authority or
124 otherwise to act in reliance upon that pretense to his prejudice.

125 (8) (a) It is not a defense to prosecution under this
126 section that the oath or affirmation was administered or taken in

127 an irregular manner or that the declarant was not competent to
128 make the statement. A document purporting to be made upon oath or
129 affirmation at any time when the actor presents it as being so
130 verified shall be deemed to have been duly sworn or affirmed.

131 (b) No person shall be guilty of an offense under this
132 section if he retracted the falsification in the course of the
133 proceeding in which it was made before it became manifest that the
134 falsification was or would be exposed and before the falsification
135 substantially affected the proceeding.

136 (c) Where the defendant made inconsistent statements
137 under oath or equivalent affirmation, both having been made within
138 the period of the statute of limitations, the prosecution may
139 proceed by setting forth the inconsistent statements in a single
140 count alleging in the alternative that one or the other was false
141 and not believed by the defendant. In such case it shall not be
142 necessary for the prosecution to prove which statement was false
143 but only that one or the other was false and not believed by the
144 defendant to be true.

145 (d) No person shall be convicted of an offense under
146 this section where proof of falsity rests solely upon
147 contradiction by testimony of a single person other than the
148 defendant.

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