

108TH CONGRESS
2D SESSION

S. 2555

To authorize the use of judicially enforceable subpoenas in terrorism investigations.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2004

Mr. KYL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize the use of judicially enforceable subpoenas in terrorism investigations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Judicially Enforceable
5 Terrorism Subpoenas Act of 2004”.

6 **SEC. 2. ADMINISTRATIVE SUBPOENAS IN TERRORISM IN-**
7 **VESTIGATIONS.**

8 (a) IN GENERAL.—Chapter 113B of title 18, United
9 States Code, is amended by inserting after section 2332f
10 the following:

1 **“§ 2332g. Judicially enforceable terrorism subpoenas**

2 “(a) AUTHORIZATION OF USE.—

3 “(1) IN GENERAL.—In any investigation con-
4 cerning a Federal crime of terrorism (as defined
5 under section 2332b(g)(5)), the Attorney General
6 may issue in writing and cause to be served a sub-
7 poena requiring the production of any records or
8 other materials that the Attorney General finds rel-
9 evant to the investigation, or requiring testimony by
10 the custodian of the materials to be produced con-
11 cerning the production and authenticity of those ma-
12 terials.

13 “(2) CONTENTS.—A subpoena issued under
14 paragraph (1) shall describe the records or items re-
15 quired to be produced and prescribe a return date
16 within a reasonable period of time within which the
17 records or items can be assembled and made avail-
18 able.

19 “(3) ATTENDANCE OF WITNESSES AND PRO-
20 DUCATION OF RECORDS.—

21 “(A) IN GENERAL.—The attendance of
22 witnesses and the production of records may be
23 required from any place in any State, or in any
24 territory or other place subject to the jurisdic-
25 tion of the United States at any designated
26 place of hearing.

1 “(B) LIMITATION.—A witness shall not be
2 required to appear at any hearing more than
3 500 miles distant from the place where he was
4 served with a subpoena.

5 “(C) REIMBURSEMENT.—Witnesses sum-
6 moned under this section shall be paid the same
7 fees and mileage that are paid to witnesses in
8 the courts of the United States.

9 “(b) SERVICE.—

10 “(1) IN GENERAL.—A subpoena issued under
11 this section may be served by any person designated
12 in the subpoena as the agent of service.

13 “(2) SERVICE OF SUBPOENA.—

14 “(A) NATURAL PERSON.—Service of a sub-
15 poena upon a natural person may be made by
16 personal delivery of the subpoena to that per-
17 son, or by certified mail with return receipt re-
18 quested.

19 “(B) BUSINESS ENTITIES AND ASSOCIA-
20 TIONS.—Service of a subpoena may be made
21 upon a domestic or foreign corporation, or upon
22 a partnership or other unincorporated associa-
23 tion that is subject to suit under a common
24 name, by delivering the subpoena to an officer,
25 to a managing or general agent, or to any other

1 agent authorized by appointment or by law to
2 receive service of process.

3 “(C) PROOF OF SERVICE.—The affidavit of
4 the person serving the subpoena entered by that
5 person on a true copy thereof shall be sufficient
6 proof of service.

7 “(c) ENFORCEMENT.—

8 “(1) IN GENERAL.—In the case of the contu-
9 macy by, or refusal to obey a subpoena issued to,
10 any person, the Attorney General may invoke the aid
11 of any court of the United States within the jurisdic-
12 tion of which the investigation is carried on, or the
13 subpoenaed person resides, carries on business, or
14 may be found, to compel compliance with the sub-
15 poena.

16 “(2) ORDER.—A court of the United States de-
17 scribed under paragraph (1) may issue an order re-
18 quiring the subpoenaed person, in accordance with
19 the subpoena, to appear, to produce records, or to
20 give testimony touching the matter under investiga-
21 tion. Any failure to obey the order of the court may
22 be punished by the court as contempt thereof.

23 “(3) SERVICE OF PROCESS.—Any process under
24 this subsection may be served in any judicial district
25 in which the person may be found.

1 “(d) NONDISCLOSURE REQUIREMENT.—

2 “(1) IN GENERAL.—If the Attorney General
3 certifies that otherwise there may result a danger to
4 the national security of the United States, no person
5 shall disclose to any other person that a subpoena
6 was received or records were provided pursuant to
7 this section, other than to—

8 “(A) those persons to whom such disclo-
9 sure is necessary in order to comply with the
10 subpoena;

11 “(B) an attorney to obtain legal advice
12 with respect to testimony or the production of
13 records in response to the subpoena; or

14 “(C) other persons as permitted by the At-
15 torney General.

16 “(2) NOTICE OF NONDISCLOSURE REQUIRE-
17 MENT.—The subpoena, or an officer, employee, or
18 agency of the United States in writing, shall notify
19 the person to whom the subpoena is directed of the
20 nondisclosure requirements under paragraph (1).

21 “(3) FURTHER APPLICABILITY OF NONDISCLO-
22 SURE REQUIREMENTS.—Any person who receives a
23 disclosure under this subsection shall be subject to
24 the same prohibitions on disclosure under paragraph
25 (1).

1 “(4) ENFORCEMENT OF NONDISCLOSURE REQUIRE-
2 MENT.—Whoever knowingly violates paragraphs (1) or (3)
3 shall be imprisoned for not more than 1 year, and if the
4 violation is committed with the intent to obstruct an inves-
5 tigation or judicial proceeding, shall be imprisoned for not
6 more than 5 years.

7 “(5) TERMINATION OF NONDISCLOSURE REQUIRE-
8 MENT.—If the Attorney General concludes that a non-
9 disclosure requirement no longer is justified by a danger
10 to the national security of the United States, an officer,
11 employee, or agency of the United States shall notify the
12 relevant person that the prohibition of disclosure is no
13 longer applicable.

14 “(e) JUDICIAL REVIEW.—

15 “(1) IN GENERAL.—At any time before the re-
16 turn date specified in a summons issued under this
17 section, the person or entity summoned may, in the
18 United States district court for the district in which
19 that person or entity does business or resides, peti-
20 tion for an order modifying or setting aside the sum-
21 mons.

22 “(2) MODIFICATION OF NONDISCLOSURE RE-
23 QUIREMENT.—Any court described under paragraph
24 (1) may modify or set aside a nondisclosure require-
25 ment imposed under subsection (d) at the request of

1 a person to whom a subpoena has been directed, un-
2 less there is reason to believe that the nondisclosure
3 requirement is justified because otherwise there may
4 result a danger to the national security of the
5 United States.

6 “(3) REVIEW OF GOVERNMENT SUBMISSIONS.—
7 In all proceedings under this subsection, the court
8 shall review the submission of the Federal Govern-
9 ment, which may include classified information, ex
10 parte and in camera.

11 “(f) IMMUNITY FROM CIVIL LIABILITY.—Any per-
12 son, including officers, agents, and employees of a non-
13 natural person, who in good faith produce the records or
14 items requested in a subpoena, shall not be liable in any
15 court of any State or the United States to any customer
16 or other person for such production, or for nondisclosure
17 of that production to the customer or other person.

18 “(g) GUIDELINES.—The Attorney General shall, by
19 rule, establish such guidelines as are necessary to ensure
20 the effective implementation of this section.”.

21 (b) AMENDMENT TO TABLE OF SECTIONS.—The
22 table of sections of chapter 113B of title 18, United States
23 Code, is amended by inserting after the item relating to
24 section 2332f the following:

“2332g. Judicially enforceable terrorism subpoenas.”.