

By: Senator(s) Tollison

To: Judiciary, Division B

SENATE BILL NO. 2957

1 AN ACT TO AMEND SECTION 97-45-19, MISSISSIPPI CODE OF 1972,  
 2 TO PROVIDE A LESSER PENALTY FOR IDENTITY THEFT IN CASES INVOLVING  
 3 A LESSER AMOUNT OF MONEY, TO AUTHORIZE THE ATTORNEY GENERAL TO  
 4 PROVIDE ASSISTANCE TO VICTIMS OF IDENTITY THEFT IN CLEARING THEIR  
 5 RECORDS, AND TO CLARIFY THAT PERPETRATORS OF IDENTITY THEFT SHALL  
 6 PAY RESTITUTION TO THEIR VICTIMS; TO AMEND SECTION 97-45-21,  
 7 MISSISSIPPI CODE OF 1972, TO CLARIFY JURISDICTION OF OFFENSES  
 8 OCCURRING IN MULTIPLE JURISDICTIONS; TO AMEND SECTION 97-45-25,  
 9 MISSISSIPPI CODE OF 1972, TO ALLOW CERTAIN FUNDS TO BE USED FOR  
 10 THE PURPOSE OF CONSUMER FRAUD EDUCATION; TO AUTHORIZE A VICTIM OF  
 11 IDENTITY THEFT TO EXPUNGE HIS RECORD OF FALSE CHARGES ACCRUED ON  
 12 ACCOUNT OF ACTIVITIES OF THE PERPETRATOR; TO AUTHORIZE THE  
 13 ATTORNEY GENERAL TO ISSUE "IDENTITY THEFT PASSPORTS" UNDER CERTAIN  
 14 CIRCUMSTANCES; TO DEFINE IDENTITY THEFT; TO GRANT SUBPOENA POWER  
 15 TO THE ATTORNEY GENERAL IN CONDUCTING INVESTIGATIONS OF IDENTITY  
 16 THEFT; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** Section 97-45-19, Mississippi Code of 1972, is  
 19 amended as follows:

20 97-45-19. (1) A person shall not obtain or attempt to  
 21 obtain personal identity information of another person with the  
 22 intent to unlawfully use that information for any of the following  
 23 purposes without that person's authorization:

- 24 (a) To obtain financial credit.
- 25 (b) To purchase or otherwise obtain or lease any real  
 26 or personal property.
- 27 (c) To obtain employment.
- 28 (d) To obtain access to medical records or information  
 29 contained in medical records.
- 30 (e) To commit any illegal act.

31 (2) (a) A person who violates this section is guilty of a  
 32 felony punishable by imprisonment for not less than two (2) nor  
 33 more than fifteen (15) years or a fine of not more than Ten  
 34 Thousand Dollars (\$10,000.00), or both.

35           (b) Notwithstanding the provisions of paragraph (a) of  
36 this subsection (2), if the violation involves an amount of less  
37 than Five Hundred Dollars (\$500.00), a person who violates this  
38 section may be found guilty of a misdemeanor punishable by  
39 imprisonment in the county jail for a term of not more than six  
40 (6) months, or by a fine of not more than One Thousand Dollars  
41 (\$1,000.00), or both, in the discretion of the court.

42           (3) This section does not prohibit the person from being  
43 charged with, convicted of, or sentenced for any other violation  
44 of law committed by that person using information obtained in  
45 violation of this section.

46           (4) This section does not apply to a person who obtains or  
47 attempts to obtain personal identity information of another person  
48 pursuant to the discovery process of a civil action, an  
49 administrative proceeding or an arbitration proceeding.

50           (5) Upon the request of a person whose identifying  
51 information was appropriated, the Attorney General may provide  
52 assistance to the victim in obtaining information to correct  
53 inaccuracies or errors in the person's credit report or other  
54 identifying information; however, no legal representation shall be  
55 afforded such person by the office of the Attorney General.

56           (6) A person convicted under this section or under Section  
57 97-19-85 shall be ordered to pay restitution as provided in  
58 Section 99-37-1 et seq., in addition to any other fine or  
59 imprisonment which may be imposed.

60           **SECTION 2.** Section 97-45-21, Mississippi Code of 1972, is  
61 amended as follows:

62           97-45-21. (1) For purposes of bringing a criminal action  
63 under this chapter, a person who causes, by any means, the access  
64 of a computer, computer system or computer network in one  
65 jurisdiction from another jurisdiction is deemed to have  
66 personally accessed the computer, computer system or computer  
67 network in each jurisdiction.

68           (2) For offenses under Section 97-45-19 or 97-19-85 which  
69 occur in multiple jurisdictions but which do not involve a  
70 computer, computer system or computer network, jurisdiction is  
71 deemed to be proper in each jurisdiction where any element of the  
72 offense occurred.

73           **SECTION 3.** Section 97-45-25, Mississippi Code of 1972, is  
74 amended as follows:

75           97-45-25. In a proceeding for violations under Title 97,  
76 Chapter 45, \* \* \* Section 97-5-33 or Section 97-19-85, the court,  
77 in addition to the criminal penalties imposed under this chapter,  
78 shall assess against the defendant convicted of such violation  
79 double those reasonable costs that are expended by the Office of  
80 Attorney General, the district attorney's office, the sheriff's  
81 office or police department involved in the investigation of such  
82 case, including, but not limited to, the cost of investigators,  
83 software and equipment utilized in the investigation, together  
84 with costs associated with process service, court reporters and  
85 expert witnesses. The Attorney General or district attorney may  
86 institute and maintain proceedings in his name for enforcement of  
87 payment in the circuit court of the county of residence of the  
88 defendant and, if the defendant is a nonresident, such proceedings  
89 shall be in the Circuit Court of the First Judicial District of  
90 Hinds County, Mississippi. The Attorney General or district  
91 attorney shall distribute the property or interest assessed under  
92 this section as follows:

93           (a) Fifty percent (50%) shall be distributed to the  
94 unit of state or local government whose officers or employees  
95 conducted the investigation into computer fraud, identity theft or  
96 child exploitation which resulted in the arrest or arrests and  
97 prosecution. Amounts distributed to units of local government  
98 shall be used for training or enforcement purposes relating to  
99 detection, investigation or prosecution of computer and financial  
100 crimes, including computer fraud or child exploitation.

101           (b) Where the prosecution was maintained by the  
102 district attorney, fifty percent (50%) shall be distributed to the  
103 county in which the prosecution was instituted by the district  
104 attorney and appropriated to the district attorney for use in  
105 training or enforcement purposes relating to detection,  
106 investigation or prosecution of computer and financial crimes,  
107 including computer fraud or child exploitation. Where a  
108 prosecution was maintained by the Attorney General, fifty percent  
109 (50%) of the proceeds shall be paid or distributed into the  
110 Attorney General's Cyber Crime Central or the Attorney General's  
111 special fund to be used for consumer fraud education and  
112 investigative and enforcement operations of the Office of Consumer  
113 Protection. Where the Attorney General and the district attorney  
114 have participated jointly in any part of the proceedings,  
115 twenty-five percent (25%) of the property forfeited shall be paid  
116 to the county in which the prosecution occurred, and twenty-five  
117 percent (25%) shall be paid to the Attorney General's Cyber Crime  
118 Central or the Attorney General's special fund to be used for the  
119 purposes as stated in this paragraph.

120           **SECTION 4.** Any person whose name or other identification has  
121 been used without his consent or authorization by another person,  
122 with the use resulting in charges, an arrest record, or a  
123 conviction putatively on the record of the person whose name or  
124 other identification was appropriated, the person whose name or  
125 other identification has been used without his consent or  
126 authorization may file a petition for expunction of such charges  
127 or arrest record or conviction, or any of them, with any court  
128 which has jurisdiction over the matter.

129           **SECTION 5.** (1) A person who has petitioned the court  
130 pursuant to Section 4 of this act to expunge any charges, arrest  
131 record or conviction falsely entered against the person as a  
132 result of the appropriation of his name or other identifying  
133 information may submit to the Attorney General a certified copy of

134 a court order obtained. The Office of the Attorney General may  
135 issue an "Identity Theft Passport" verifying that such order has  
136 been entered submitted.

137 (2) Any person who has filed a police report alleging that  
138 the person's name or other identification has been used without  
139 the person's consent or authorization by another person may submit  
140 a copy of the police report to the Attorney General. The Office  
141 of the Attorney General may issue an "Identity Theft Passport"  
142 stating that such police report has been submitted.

143 (3) The Office of the Attorney General may provide access to  
144 identity theft information to law enforcement agencies and  
145 individuals who have submitted a police report or court order  
146 pursuant to this chapter and any other person or entity as  
147 appropriate.

148 **SECTION 6.** (1) For the purposes of this chapter, "identity  
149 theft" includes crimes chargeable under the following provisions  
150 of law:

151 (a) Section 97-9-79, which relates to false  
152 information.

153 (b) Section 97-19-83, which relates to fraud by mail or  
154 other means of communication.

155 (c) Section 97-19-85, which relates to the fraudulent  
156 use of identity social security number, credit card or debit card  
157 number or other identifying information.

158 (d) Section 97-45-19, which relates to obtaining  
159 personal identity information of another person without  
160 authorization.

161 (2) (a) In conducting identity theft investigations, the  
162 Attorney General shall have the authority to issue and serve  
163 subpoenas to any person in control of any designated documents for  
164 the production of such documents, including, but not limited to,  
165 writings, drawings, graphs, charts, photographs, phono-records and  
166 other data compilations from which information can be obtained, or

167 translated through detection devices into reasonably usable form.  
168 Such subpoenas shall require the named person, his agent or  
169 attorney, to appear and deliver the designated documents to a  
170 location in the county of his residence unless the court for good  
171 cause shown directs that the subpoena be issued for the person to  
172 deliver such documents to a location outside of the county of his  
173 residence. Mere convenience of the Attorney General shall not be  
174 considered good cause. The Attorney General or his designee shall  
175 have the authority to inspect and copy such documents. Such  
176 subpoenas shall be issued only upon the ex parte and in camera  
177 application of the Attorney General to the circuit or chancery  
178 court of the county of residence of the person in control of the  
179 documents or the circuit or chancery court of the county where the  
180 person in control of the documents may be found, and only upon a  
181 showing that the documents sought are relevant to a criminal  
182 investigation under this act or may lead to the discovery of such  
183 relevant evidence. Thereafter said court shall have jurisdiction  
184 to enforce or quash such subpoenas and to enter appropriate orders  
185 thereon, and nothing contained in this section shall affect the  
186 right of a person to assert a claim that the information sought is  
187 privileged by law.

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

190 SUBPOENA TO PRODUCE DOCUMENTS  
191 PURSUANT TO AN INVESTIGATION BY THE ATTORNEY GENERAL  
192 TO:

193 YOU ARE HEREBY COMMANDED to appear before the Attorney  
194 General of the State of Mississippi or his designated staff  
195 attorney at the place, date and time specified below in an  
196 investigation being conducted by the Attorney General pursuant to  
197 Section \_\_\_\_\_, Mississippi Code of 1972:

198 Place \_\_\_\_\_ Date and Time \_\_\_\_\_

199 YOU ARE ALSO COMMANDED to bring with you the following  
200 document(s) or object(s) \_\_\_\_\_.

201 You are advised that the \_\_\_ Court of the \_\_\_ Judicial  
202 District of \_\_\_\_\_ County, Mississippi, has approved the ex  
203 parte and in camera application of the Attorney General to issue  
204 this subpoena, and jurisdiction to enforce and/or quash the  
205 subpoena and to enter appropriate orders thereon is statutorily  
206 vested in the said court; enforcement and penal provisions  
207 applicable to an Attorney General's investigation include those  
208 set forth in Section \_\_\_\_\_ Mississippi Code of 1972; and  
209 disclosure of testimony and/or records coming into possession of  
210 the Attorney General pursuant to this subpoena shall be limited by  
211 and subject to the provisions of said section (for informational  
212 purposes, these cited statutes are reproduced on the reverse side  
213 of this subpoena).

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

218 ISSUED BY AND UNDER SEAL OF THE ATTORNEY GENERAL OF THE STATE  
219 OF MISSISSIPPI, this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
220 (SEAL)\_\_\_\_\_

221 (c) Following service of any subpoena, pursuant to the  
222 provisions of this subsection, a record of the return shall be  
223 made and kept by the Attorney General and subject only to such  
224 disclosure as may be authorized pursuant to the provisions of this  
225 section.

226 (3) Enforcement and penal provisions applicable to an  
227 investigation under this section shall include the following:

228 (a) If a person who has been served with a subpoena,  
229 which has been issued and served upon him in accordance with the  
230 provisions of this section, shall fail to deliver or have  
231 delivered the designated documents at the time and place required

232 in the subpoena, on application of the Attorney General the  
233 circuit or chancery court having approved the issuance of the  
234 subpoena may issue an attachment for such person, returnable  
235 immediately, or at such time and place as the court may direct.  
236 Bond may be required and fine imposed and proceedings had thereon  
237 as in the case of a subpoenaed witness who fails to appear in  
238 circuit or chancery court.

239 (b) Every person who shall knowingly and willfully  
240 obstruct, interfere with or impede an investigation under this  
241 section by concealing or destroying any documents, papers or other  
242 tangible evidence which are relevant to an investigation under  
243 this section shall be guilty of a felony and, upon conviction,  
244 shall be punished by a fine of not more than Five Thousand Dollars  
245 (\$5,000.00) or by imprisonment for not more than five (5) years,  
246 or by both such fine and imprisonment.

247 (c) Every person who shall knowingly and willfully  
248 endeavor, by means of bribery, force or intimidation, to obstruct,  
249 delay or prevent the communication of information to any agent or  
250 employee of the office of the Attorney General or who injures  
251 another person for the purpose of preventing the communication of  
252 such information or an account of the giving of such information  
253 relevant to an investigation under this section shall be guilty of  
254 a felony and, upon conviction, shall be punished by a fine of not  
255 more than Five Thousand Dollars (\$5,000.00) or by imprisonment for  
256 not more than five (5) years, or by both such fine and  
257 imprisonment.

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

261 (4) (a) If any person shall refuse, or is likely to refuse,  
262 on the basis of his privilege against self-incrimination, to  
263 produce the designated documents as requested by a subpoena issued  
264 under this section or issued by a court, the Attorney General may



265 request the court, ex parte and in camera, to issue an order  
266 requiring such person to produce the documents information which  
267 he refuses to give or provide on the basis of his privilege  
268 against self-incrimination. The Attorney General may request said  
269 order under this subsection when, in his judgment:

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

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

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

279 (b) Whenever a witness refuses, on the basis of his  
280 privilege against self-incrimination, to produce documents, and  
281 the court issues to the witness an order under paragraph (a) of  
282 this subsection, the witness may not refuse to comply with the  
283 order on the basis of his privilege against self-incrimination,  
284 but no documents or information compelled under the aforesaid  
285 order, or any information directly or indirectly derived from such  
286 documents may be used against the witness in any criminal  
287 proceeding, except a prosecution for perjury, giving a false  
288 statement, or otherwise failing to comply with the order.

289 (5) Documents in the possession of the Attorney General  
290 gathered pursuant to the provisions of this section and subpoenas  
291 issued by him shall be maintained in confidential files with  
292 access limited to prosecutorial and other law enforcement  
293 investigative personnel on a "need to know" basis and shall be  
294 exempt from the provisions of the Mississippi Public Records Act  
295 of 1983, except that upon the filing of an indictment or  
296 information, or upon the filing of an action for recovery of  
297 property, funds or fines, such documents shall be subject to such

298 disclosure as may be required pursuant to the applicable statutes  
299 or court rules governing the trial of any such judicial  
300 proceeding.

301 (6) No person, including the Attorney General, a member of  
302 his staff, prosecuting attorney, law enforcement officer, witness,  
303 court reporter, attorney or other person, shall disclose to an  
304 unauthorized person documents, including subpoenas issued and  
305 served, gathered by the Attorney General pursuant to the  
306 provisions of this section, except that upon the filing of an  
307 indictment or information, or upon the filing of an action for  
308 recovery of property, funds or fines, or in other legal  
309 proceedings, such documents shall be subject to such disclosure as  
310 may be required pursuant to applicable statutes and court rules  
311 governing the trial of any such judicial proceeding. In event of  
312 an unauthorized disclosure of any such documents gathered by the  
313 Attorney General pursuant to the provisions of this section, the  
314 person making any such unauthorized disclosure shall be guilty of  
315 a misdemeanor, and upon conviction thereof, shall be punished by a  
316 fine of not more than One Thousand Dollars (\$1,000.00), or  
317 imprisonment of not more than six (6) months, or by both such fine  
318 and imprisonment.

319 (7) The powers of the Attorney General under this section  
320 shall not diminish the powers of local authorities to investigate  
321 or prosecute any type of identity theft crime or any other  
322 criminal conduct within their respective jurisdictions, and the  
323 provisions of this section shall be in addition to the powers and  
324 authority previously granted the Attorney General by common,  
325 constitutional, statutory or case law.

326 **SECTION 7.** The publisher is directed to amend the chapter  
327 heading of Title 97, Chapter 45, so as to refer to "Computer  
328 Crimes and Identity Theft."

329 **SECTION 8.** This act shall take effect and be in force from  
330 and after July 1, 2004.