

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.