

By: Senator(s) Tollison, Albritton, Burton,
Butler, Carmichael, Chamberlin, Chaney,
Clarke, Dearing, Flowers, Frazier, Gordon,
Harvey, Hyde-Smith, Jackson (11th), Jackson
(32nd), Jordan, Kirby, Lee (35th), Little,
Mettetal, Michel, Moffatt, Pickering, Ross,
Thames, Walley, Walls, Williamson, Harden

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
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 PROVIDE FOR AGGREGATION OF AMOUNTS IN
4 DETERMINING THE AMOUNT OF AN OFFENSE, TO AUTHORIZE THE ATTORNEY
5 GENERAL TO PROVIDE ASSISTANCE TO VICTIMS OF IDENTITY THEFT IN
6 CLEARING THEIR RECORDS, AND TO CLARIFY THAT PERPETRATORS OF
7 IDENTITY THEFT SHALL PAY RESTITUTION TO THEIR VICTIMS; TO AMEND
8 SECTION 97-45-21, MISSISSIPPI CODE OF 1972, TO CLARIFY
9 JURISDICTION OF OFFENSES OCCURRING IN MULTIPLE JURISDICTIONS; TO
10 AMEND SECTION 97-45-25, MISSISSIPPI CODE OF 1972, TO ALLOW CERTAIN
11 FUNDS TO BE USED FOR THE PURPOSE OF CONSUMER FRAUD EDUCATION; TO
12 AUTHORIZE A VICTIM OF IDENTITY THEFT TO EXPUNGE HIS RECORD OF
13 FALSE CHARGES ACCRUED ON ACCOUNT OF ACTIVITIES OF THE PERPETRATOR;
14 TO AUTHORIZE THE ATTORNEY GENERAL TO ISSUE "IDENTITY THEFT
15 PASSPORTS" UNDER CERTAIN CIRCUMSTANCES; TO DEFINE IDENTITY THEFT;
16 TO GRANT SUBPOENA POWER TO THE ATTORNEY GENERAL IN CONDUCTING
17 INVESTIGATIONS OF IDENTITY THEFT; TO AMEND SECTIONS 97-17-41 AND
18 97-17-43, MISSISSIPPI CODE OF 1972, TO REQUIRE AGGREGATION OF
19 AMOUNTS STOLEN FROM THE SAME VICTIM IN DETERMINING THE GRAVITY OF
20 THE OFFENSE OF LARCENY; AND FOR RELATED PURPOSES.

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

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

24 97-45-19. (1) A person shall not obtain or attempt to
25 obtain personal identity information of another person with the
26 intent to unlawfully use that information for any of the following
27 purposes without that person's authorization:

28 (a) To obtain financial credit.

29 (b) To purchase or otherwise obtain or lease any real
30 or personal property.

31 (c) To obtain employment.

32 (d) To obtain access to medical records or information
33 contained in medical records.

34 (e) To commit any illegal act.

35 (2) (a) A person who violates this section is guilty of a
36 felony punishable by imprisonment for not less than two (2) nor

37 more than fifteen (15) years or a fine of not more than Ten
38 Thousand Dollars (\$10,000.00), or both.

39 (b) Notwithstanding the provisions of paragraph (a) of
40 this subsection (2), if the violation involves an amount of less
41 than Five Hundred Dollars (\$500.00), a person who violates this
42 section may be found guilty of a misdemeanor punishable by
43 imprisonment in the county jail for a term of not more than six
44 (6) months, or by a fine of not more than One Thousand Dollars
45 (\$1,000.00), or both, in the discretion of the court.

46 (c) For purposes of determining the amount of the
47 violation, the value of all goods, property, services and other
48 things of value obtained or attempted to be obtained by the use of
49 an individual's identity information shall be aggregated.

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

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

58 (5) Upon the request of a person whose identifying
59 information was appropriated, the Attorney General may provide
60 assistance to the victim in obtaining information to correct
61 inaccuracies or errors in the person's credit report or other
62 identifying information; however, no legal representation shall be
63 afforded such person by the Office of the Attorney General.

64 (6) A person convicted under this section or under Section
65 97-19-85 shall be ordered to pay restitution as provided in
66 Section 99-37-1 et seq., in addition to any other fine or
67 imprisonment which may be imposed.

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

70 97-45-21. (1) For purposes of bringing a criminal action
71 under this chapter, a person who causes, by any means, the access
72 of a computer, computer system or computer network in one
73 jurisdiction from another jurisdiction is deemed to have
74 personally accessed the computer, computer system or computer
75 network in each jurisdiction.

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

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

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

101 (a) Fifty percent (50%) shall be distributed to the
102 unit of state or local government whose officers or employees

103 conducted the investigation into computer fraud, identity theft or
104 child exploitation which resulted in the arrest or arrests and
105 prosecution. Amounts distributed to units of local government
106 shall be used for training or enforcement purposes relating to
107 detection, investigation or prosecution of computer and financial
108 crimes, including computer fraud or child exploitation.

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

128 **SECTION 4.** Any person whose name or other identification has
129 been used without his consent or authorization by another person,
130 with the use resulting in charges, an arrest record, or a
131 conviction putatively on the record of the person whose name or
132 other identification was appropriated, the person whose name or
133 other identification has been used without his consent or
134 authorization may file a petition for expunction of such charges

135 or arrest record or conviction, or any of them, with any court
136 which has jurisdiction over the matter.

137 **SECTION 5.** (1) A person who has petitioned the court
138 pursuant to Section 4 of this act to expunge any charges, arrest
139 record or conviction falsely entered against the person as a
140 result of the appropriation of his name or other identifying
141 information may submit to the Attorney General a certified copy of
142 a court order obtained. The Office of the Attorney General may
143 issue an "Identity Theft Passport" verifying that such order has
144 been entered submitted.

145 (2) Any person who has filed a police report alleging that
146 the person's name or other identification has been used without
147 the person's consent or authorization by another person may submit
148 a copy of the police report to the Attorney General. The Office
149 of the Attorney General may issue an "Identity Theft Passport"
150 stating that such police report has been submitted.

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

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

159 (a) Section 97-9-79, which relates to false
160 information.

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

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

166 (d) Section 97-45-19, which relates to obtaining
167 personal identity information of another person without
168 authorization.

169 (2) (a) In conducting identity theft investigations, the
170 Attorney General shall have the authority to issue and serve
171 subpoenas to any person in control of any designated documents for
172 the production of such documents, including, but not limited to,
173 writings, drawings, graphs, charts, photographs, phono-records and
174 other data compilations from which information can be obtained, or
175 translated through detection devices into reasonably usable form.
176 Such subpoenas shall require the named person, his agent or
177 attorney, to appear and deliver the designated documents to a
178 location in the county of his residence unless the court for good
179 cause shown directs that the subpoena be issued for the person to
180 deliver such documents to a location outside of the county of his
181 residence. Mere convenience of the Attorney General shall not be
182 considered good cause. The Attorney General or his designee shall
183 have the authority to inspect and copy such documents. Such
184 subpoenas shall be issued only upon the ex parte and in camera
185 application of the Attorney General to the circuit or chancery
186 court of the county of residence of the person in control of the
187 documents or the circuit or chancery court of the county where the
188 person in control of the documents may be found, and only upon a
189 showing that the documents sought are relevant to a criminal
190 investigation under this act or may lead to the discovery of such
191 relevant evidence. Thereafter said court shall have jurisdiction
192 to enforce or quash such subpoenas and to enter appropriate orders
193 thereon, and nothing contained in this section shall affect the
194 right of a person to assert a claim that the information sought is
195 privileged by law.

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

198 SUBPOENA TO PRODUCE DOCUMENTS

199 PURSUANT TO AN INVESTIGATION BY THE ATTORNEY GENERAL

200 TO:

201 YOU ARE HEREBY COMMANDED to appear before the Attorney
202 General of the State of Mississippi or his designated staff
203 attorney at the place, date and time specified below in an
204 investigation being conducted by the Attorney General pursuant to
205 Section _____, Mississippi Code of 1972:

206 Place _____ Date and Time _____

207 YOU ARE ALSO COMMANDED to bring with you the following
208 document(s) or object(s) _____.

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

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

226 ISSUED BY AND UNDER SEAL OF THE ATTORNEY GENERAL OF THE STATE
227 OF MISSISSIPPI, this the ___ day of _____, 20____.

228 (SEAL)_____

229 (c) Following service of any subpoena, pursuant to the
230 provisions of this subsection, a record of the return shall be
231 made and kept by the Attorney General and subject only to such

232 disclosure as may be authorized pursuant to the provisions of this
233 section.

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

236 (a) If a person who has been served with a subpoena,
237 which has been issued and served upon him in accordance with the
238 provisions of this section, shall fail to deliver or have
239 delivered the designated documents at the time and place required
240 in the subpoena, on application of the Attorney General the
241 circuit or chancery court having approved the issuance of the
242 subpoena may issue an attachment for such person, returnable
243 immediately, or at such time and place as the court may direct.
244 Bond may be required and fine imposed and proceedings had thereon
245 as in the case of a subpoenaed witness who fails to appear in
246 circuit or chancery court.

247 (b) Every person who shall knowingly and willfully
248 obstruct, interfere with or impede an investigation under this
249 section by concealing or destroying any documents, papers or other
250 tangible evidence which are relevant to an investigation under
251 this section shall be guilty of a felony and, upon conviction,
252 shall be punished by a fine of not more than Five Thousand Dollars
253 (\$5,000.00) or by imprisonment for not more than five (5) years,
254 or by both such fine and imprisonment.

255 (c) Every person who shall knowingly and willfully
256 endeavor, by means of bribery, force or intimidation, to obstruct,
257 delay or prevent the communication of information to any agent or
258 employee of the Office of the Attorney General or who injures
259 another person for the purpose of preventing the communication of
260 such information or an account of the giving of such information
261 relevant to an investigation under this section shall be guilty of
262 a felony and, upon conviction, shall be punished by a fine of not
263 more than Five Thousand Dollars (\$5,000.00) or by imprisonment for

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

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

269 (4) (a) If any person shall refuse, or is likely to refuse,
270 on the basis of his privilege against self-incrimination, to
271 produce the designated documents as requested by a subpoena issued
272 under this section or issued by a court, the Attorney General may
273 request the court, ex parte and in camera, to issue an order
274 requiring such person to produce the documents information which
275 he refuses to give or provide on the basis of his privilege
276 against self-incrimination. The Attorney General may request said
277 order under this subsection when, in his judgment:

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

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

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

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

297 (5) Documents in the possession of the Attorney General
298 gathered pursuant to the provisions of this section and subpoenas
299 issued by him shall be maintained in confidential files with
300 access limited to prosecutorial and other law enforcement
301 investigative personnel on a "need to know" basis and shall be
302 exempt from the provisions of the Mississippi Public Records Act
303 of 1983, except that upon the filing of an indictment or
304 information, or upon the filing of an action for recovery of
305 property, funds or fines, such documents shall be subject to such
306 disclosure as may be required pursuant to the applicable statutes
307 or court rules governing the trial of any such judicial
308 proceeding.

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

327 (7) The powers of the Attorney General under this section
328 shall not diminish the powers of local authorities to investigate
329 or prosecute any type of identity theft crime or any other

330 criminal conduct within their respective jurisdictions, and the
331 provisions of this section shall be in addition to the powers and
332 authority previously granted the Attorney General by common,
333 constitutional, statutory or case law.

334 **SECTION 7.** Section 97-17-41, Mississippi Code of 1972, is
335 amended as follows:

336 97-17-41. (1) Every person who shall be convicted of taking
337 and carrying away, feloniously, the personal property of another,
338 of the value of Five Hundred Dollars (\$500.00) or more, shall be
339 guilty of grand larceny, and shall be imprisoned in the
340 Penitentiary for a term not exceeding ten (10) years; or shall be
341 fined not more than Ten Thousand Dollars (\$10,000.00), or both.
342 The total value of property taken and carried away by the person
343 from a single victim shall be aggregated in determining the
344 gravity of the offense.

345 (2) Every person who shall be convicted of taking and
346 carrying away, feloniously, the property of a church, synagogue,
347 temple or other established place of worship, of the value of Five
348 Hundred Dollars (\$500.00) or more, shall be guilty of grand
349 larceny, and shall be imprisoned in the Penitentiary for a term
350 not exceeding ten (10) years, or shall be fined not more than Ten
351 Thousand Dollars (\$10,000.00), or both.

352 **SECTION 8.** Section 97-17-43, Mississippi Code of 1972, is
353 amended as follows:

354 97-17-43. (1) If any person shall feloniously take, steal
355 and carry away any personal property of another under the value of
356 Five Hundred Dollars (\$500.00), he shall be guilty of petit
357 larceny and, upon conviction, shall be punished by imprisonment in
358 the county jail not exceeding six (6) months or by fine not
359 exceeding One Thousand Dollars (\$1,000.00), or both. The total
360 value of property taken, stolen or carried away by the person from
361 a single victim shall be aggregated in determining the gravity of
362 the offense.

363 (2) If any person shall feloniously take, steal and carry
364 away any property of a church, synagogue, temple or other
365 established place of worship under the value of Five Hundred
366 Dollars (\$500.00), he shall be guilty of petit larceny and, upon
367 conviction, shall be punished by imprisonment in the county jail
368 not exceeding one (1) year or by fine not exceeding Two Thousand
369 Dollars (\$2,000.00), or both.

370 (3) Any person who leaves the premises of an establishment
371 at which motor fuel offered for retail sale was dispensed into the
372 fuel tank of a motor vehicle by driving away in that motor vehicle
373 without having made due payment or authorized charge for the motor
374 fuel so dispensed, with intent to defraud the retail
375 establishment, shall be guilty of petit larceny and punished as
376 provided in subsection (1) of this section and, upon any second or
377 subsequent such offense, the driver's license of the person shall
378 be suspended as follows:

379 (a) The person shall submit the driver's license to the
380 court upon conviction and the court shall forward the driver's
381 license to the Department of Public Safety.

382 (b) The first suspension of a driver's license under
383 this subsection shall be for a period of six (6) months.

384 (c) A second or subsequent suspension of a driver's
385 license under this subsection shall be for a period of one (1)
386 year.

387 (d) At the expiration of the suspension period, and
388 upon payment of a restoration fee of Twenty-five Dollars (\$25.00),
389 the suspension shall terminate and the Department of Public Safety
390 shall return the person's driver's license to the person. The
391 restoration fee shall be in addition to the fees provided for in
392 Title 63, Chapter 1, and shall be deposited into the State General
393 Fund in accordance with Section 45-1-23.

394 **SECTION 9.** The publisher is directed to amend the chapter
395 heading of Title 97, Chapter 45, so as to refer to "Computer
396 Crimes and Identity Theft."

397 **SECTION 10.** This act shall take effect and be in force from
398 and after July 1, 2004.