

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

SENATE BILL NO. 2957
(As Sent to Governor)

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

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

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

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

29 (a) To obtain financial credit.

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

32 (c) To obtain employment.

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

35 (e) To commit any illegal act.

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

40 (b) Notwithstanding the provisions of paragraph (a) of
41 this subsection (2), if the violation involves an amount of less
42 than Two Hundred Fifty Dollars (\$250.00), a person who violates
43 this section may be found guilty of a misdemeanor punishable by
44 imprisonment in the county jail for a term of not more than six
45 (6) months, or by a fine of not more than One Thousand Dollars
46 (\$1,000.00), or both, in the discretion of the court.

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

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

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

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

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

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

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

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

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

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

102 (a) Fifty percent (50%) shall be distributed to the
103 unit of state or local government whose officers or employees
104 conducted the investigation into computer fraud, identity theft or
105 child exploitation which resulted in the arrest or arrests and
106 prosecution. Amounts distributed to units of local government
107 shall be used for training or enforcement purposes relating to
108 detection, investigation or prosecution of computer and financial
109 crimes, including computer fraud or child exploitation.

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

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

135 authorization may file a petition for expunction of such charges
136 or arrest record or conviction, or any of them, with any court
137 which has jurisdiction over the matter.

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

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

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

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

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

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

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

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

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

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

199 SUBPOENA TO PRODUCE DOCUMENTS

200 PURSUANT TO AN INVESTIGATION BY THE ATTORNEY GENERAL

201 TO:

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

207 Place _____ Date and Time _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

395 **SECTION 9.** The publisher is directed to amend the chapter
396 heading of Title 97, Chapter 45, Mississippi Code of 1972, so as
397 to refer to "Computer Crimes and Identity Theft."

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