

By: Representative Jones

To: Judiciary B

HOUSE BILL NO. 1362

1 AN ACT TO AMEND SECTION 7-5-59, MISSISSIPPI CODE OF 1972, TO
2 INCLUDE COMPUTER CRIMES IN THE ATTORNEY GENERAL'S AUTHORITY TO
3 INVESTIGATE AND PROSECUTE; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 7-5-59, Mississippi Code of 1972, is
6 amended as follows:

7 7-5-59. (1) The following terms shall have the meanings
8 ascribed to them herein unless the context requires otherwise:

9 (a) "Computer crimes" means those crimes defined in
10 Chapter 45 of Title 97 and sex offenses involving a computer
11 affecting children as defined in Chapter 5 of Title 97.

12 (b) "White-collar crime and official corruption"
13 includes crimes chargeable under the following provisions of law:

14 (i) Paragraphs (b) and (c) of Section 7-5-59(4),
15 which relates to obstruction of white-collar crime investigations.

16 (ii) Section 97-7-10, which relates to the
17 defrauding of state and local governments.

18 (iii) Section 97-19-73, which relates to fraud by
19 mail, wire, radio or television.

20 (iv) Section 97-9-10, which relates to commercial
21 bribery.

22 (v) Section 97-45-3, which relates to computer
23 fraud.

24 (vi) Sections 97-11-25 through 97-11-31, which
25 relate to embezzlement by public officials.

26 (vii) Section 97-11-33, which relates to extortion
27 by public officials.



28 (viii) Sections 97-19-5 through 97-19-31, which
29 relate to unlawful procurement or use of credit cards.

30 (ix) Sections 97-23-1 and 97-23-3, which relate to
31 false, misleading or deceptive advertising.

32 (x) Sections 97-15-3 and 97-15-5, which relate to
33 bribery of members and employees of the Highway Commission and the
34 defrauding of the state by Highway Commission members, employees
35 or highway contractors.

36 (xi) Section 97-9-5, which relates to bribery of
37 jurors.

38 (xii) Sections 97-11-11, 97-11-13 and 97-11-53,
39 which relate to acceptance of bribes by public officials and
40 bribery of public officials.

41 (xiii) Sections 97-13-1 and 97-13-3, which relate
42 to bribery of electors or election officials.

43 (xiv) Sections 97-23-19 through 97-23-27, which
44 relate to embezzlement.

45 (c) "White-collar crime investigations" means an
46 investigation into any illegal act or acts defined as white-collar
47 crime.

48 (d) "Computer crimes investigations" means an
49 investigation into any illegal act or acts defined as computer
50 crime.

51 (e) "Person" means and includes not only an individual,
52 but also a partnership, corporation, professional firm, nonprofit
53 organization or other business entity.

54 (2) The Attorney General is hereby authorized to conduct
55 official corruption investigations and such other white-collar
56 crime investigations and computer crime investigations that are of
57 statewide interest or which are in the protection of public
58 rights.

59 (3) (a) In conducting white-collar crime and computer crime
60 investigations, the Attorney General shall have the authority to



61 issue and serve subpoenas to any person in control of any
62 designated documents for the production of such documents,
63 including, but not limited to, writings, drawings, graphs, charts,
64 photographs, phono-records, subscriber records and other data
65 compilations from which information can be obtained, or translated
66 through detection devices into reasonably usable form. Such
67 subpoenas shall require the named person, his agent or attorney,
68 to appear and deliver the designated documents to a location in
69 the county of his residence unless the court for good cause shown
70 directs that the subpoena be issued for the person to deliver such
71 documents to a location outside of the county of his residence.
72 Mere convenience of the Attorney General shall not be considered
73 good cause. The Attorney General or his designee shall have the
74 authority to inspect and copy such documents. Such subpoenas
75 shall be issued only upon the ex parte and in camera application
76 of the Attorney General to the circuit or chancery court of the
77 county of residence of the person in control of the documents or
78 the circuit or chancery court of the county where the person in
79 control of the documents may be found, and only upon a showing
80 that the documents sought are relevant to a criminal investigation
81 under this act or may lead to the discovery of such relevant
82 evidence. Thereafter said court shall have jurisdiction to
83 enforce or quash such subpoenas and to enter appropriate orders
84 thereon, and nothing contained in this section shall affect the
85 right of a person to assert a claim that the information sought is
86 privileged by law.

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

89 "SUBPOENA TO PRODUCE DOCUMENTS PURSUANT TO AN
90 INVESTIGATION BY THE ATTORNEY GENERAL

91 TO:

92 YOU ARE HEREBY COMMANDED to appear before the Attorney
93 General of the State of Mississippi or his designated staff



94 attorney at the place, date and time specified below in an
95 investigation being conducted by the Attorney General pursuant to
96 Section 7-5-59, Mississippi Code of 1972:

97 Place _____ Date and Time _____

98 YOU ARE ALSO COMMANDED to bring with you the following
99 document(s) or object(s).

100 _____

101 You are advised that the _____ Court of the _____
102 Judicial District of _____ County, Mississippi, has
103 approved the ex parte and in camera application of the Attorney
104 General to issue this subpoena, and jurisdiction to enforce and/or
105 quash the subpoena and to enter appropriate orders thereon is
106 statutorily vested in the said court; enforcement and penal
107 provisions applicable to an Attorney General's investigation
108 include those set forth in Section 7-5-59(4), Mississippi Code of
109 1972; and disclosure of testimony and/or records coming into
110 possession of the Attorney General pursuant to this subpoena shall
111 be limited by and subject to the provisions of Section 7-5-59(6),
112 Mississippi Code of 1972, (for informational purposes, these cited
113 statutes are reproduced on the reverse side of this subpoena).

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

118 ISSUED BY AND UNDER SEAL OF THE ATTORNEY GENERAL OF THE STATE
119 OF MISSISSIPPI, this the ____ day of _____, 20__.
120 (SEAL) _____"

121 (c) Following service of any subpoena, pursuant to the
122 provisions of this subsection, a record of the return shall be
123 made and kept by the Attorney General and subject only to such
124 disclosure as may be authorized pursuant to the provisions of this
125 section.



126 (4) Enforcement and penal provisions applicable to an
127 investigation under this section shall include the following:

128 (a) If a person who has been served with a subpoena,
129 which has been issued and served upon him in accordance with the
130 provisions of this section, shall fail to deliver or have
131 delivered the designated documents at the time and place required
132 in the subpoena, on application of the Attorney General the
133 circuit or chancery court having approved the issuance of the
134 subpoena may issue an attachment for such person, returnable
135 immediately, or at such time and place as the court may direct.
136 Bond may be required and fine imposed and proceedings had thereon
137 as in the case of a subpoenaed witness who fails to appear in
138 circuit or chancery court.

139 (b) Every person who shall knowingly and willfully
140 obstruct, interfere with or impede an investigation under this
141 section by concealing or destroying any documents, papers or other
142 tangible evidence which are relevant to an investigation under
143 this section shall be guilty of a felony and, upon conviction,
144 shall be punished by a fine of not more than Five Thousand Dollars
145 (\$5,000.00) or by imprisonment for not more than five (5) years,
146 or by both such fine and imprisonment.

147 (c) Every person who shall knowingly and willfully
148 endeavor, by means of bribery, force or intimidation, to obstruct,
149 delay or prevent the communication of information to any agent or
150 employee of the Office of the Attorney General or who injures
151 another person for the purpose of preventing the communication of
152 such information or an account of the giving of such information
153 relevant to an investigation under this section shall be guilty of
154 a felony and, upon conviction, shall be punished by a fine of not
155 more than Five Thousand Dollars (\$5,000.00) or by imprisonment for
156 not more than five (5) years, or by both such fine and
157 imprisonment.



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

161 (5) (a) If any person shall refuse, or is likely to refuse,
162 on the basis of his privilege against self-incrimination, produce
163 the designated documents as requested by a subpoena issued under
164 this section or issued by a court, the Attorney General may
165 request the court, ex parte and in camera, to issue an order
166 requiring such person to produce the documents information which
167 he refuses to give or provide on the basis of his privilege
168 against self-incrimination. The Attorney General may request said
169 order under this subsection when, in his judgment:

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

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

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

179 (b) Whenever a witness refuses, on the basis of his
180 privilege against self-incrimination, to produce documents, and
181 the court issues to the witness an order under paragraph (a) of
182 this subsection, the witness may not refuse to comply with the
183 order on the basis of his privilege against self-incrimination,
184 but no documents or information compelled under the aforesaid
185 order, or any information directly or indirectly derived from such
186 documents may be used against the witness in any criminal
187 proceeding, except a prosecution for perjury, giving a false
188 statement, or otherwise failing to comply with the order.

189 (6) Documents in the possession of the Attorney General
190 gathered pursuant to the provisions of this section and subpoenas



191 issued by him shall be maintained in confidential files with
192 access limited to prosecutorial and other law enforcement
193 investigative personnel on a "need-to-know" basis and shall be
194 exempt from the provisions of the Mississippi Public Records Act
195 of 1983, except that upon the filing of an indictment or
196 information, or upon the filing of an action for recovery of
197 property, funds or fines, such documents shall be subject to such
198 disclosure as may be required pursuant to the applicable statutes
199 or court rules governing the trial of any such judicial
200 proceeding.

201 (7) No person, including the Attorney General, a member of
202 his staff, prosecuting attorney, law enforcement officer, witness,
203 court reporter, attorney or other person, shall disclose to an
204 unauthorized person documents, including subpoenas issued and
205 served, gathered by the Attorney General pursuant to the
206 provisions of this section, except that upon the filing of an
207 indictment or information, or upon the filing of an action for
208 recovery of property, funds or fines, or in other legal
209 proceedings, such documents shall be subject to such disclosure as
210 may be required pursuant to applicable statutes and court rules
211 governing the trial of any such judicial proceeding. In event of
212 an unauthorized disclosure of any such documents gathered by the
213 Attorney General pursuant to the provisions of this section, the
214 person making any such unauthorized disclosure shall be guilty of
215 a misdemeanor, and upon conviction thereof, shall be punished by a
216 fine of not more than One Thousand Dollars (\$1,000.00), or
217 imprisonment of not more than six (6) months, or by both such fine
218 and imprisonment.

219 (8) The powers of the Attorney General under this section
220 shall not diminish the powers of local authorities to investigate
221 or prosecute any type of white-collar crime violation, computer
222 crime violation or any other criminal conduct within their
223 respective jurisdictions, and the provisions of this section shall



224 be in addition to the powers and authority previously granted the
225 Attorney General by common, constitutional, statutory or case law.

226 (9) No person, agent or employee upon whom a subpoena is
227 served pursuant to this section shall disclose the existence of
228 the investigation to any person unless such disclosure is
229 necessary for compliance with the subpoena. Any person who
230 willfully violates this subsection shall be guilty of a
231 misdemeanor and may be confined in the county jail for a period
232 not to exceed one (1) year or fined not more than Ten Thousand
233 Dollars (\$10,000.00), or both.

234 **SECTION 2.** This act shall take effect and be in force from
235 and after July 1, 2009.

